

OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Travis Vieux at 937-224-3333 or email Travis at tjvieux@green-law.com.

Court of Appeals: Seventh District, Mahoning County

Case Name: Spike Industries, Inc. v. Midwestern Indemnity Co.
(2007-Ohio-6225)

Decided: November 14, 2007 (Posted November 26, 2007)

Issue: Insurance Contract Interpretation

Summary of Opinion: The Seventh District found that the plain language of the insurance policy did not cover the claimed loss.

Spike Industries had an insurance policy with Midwestern Indemnity that covered the buildings owned by Spike Industries and the personal property of Spike Industries within these buildings. The maximum coverage for personal property was \$913,377.00. The parties extended coverage to "newly acquired or constructed property." Under the extension, the insurance of personal property was extended "to that property at any location you acquire other than at fairs or exhibitions." Property was "newly acquired or constructed" if the loss occurred within 180 days after it was acquired or construction began. The limits under this extension was "\$250,000 at each building."

On August 17, 2001, a fire destroyed the primary manufacturing facility of Spike Industries. Midwestern paid \$913,377.00 for the loss. Spike later filed a claim for an

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additional \$220,929.19 for personal property which was acquired within 180 days of the fire. Midwestern denied the claim, maintaining that this claim was not covered by the “newly acquired or constructed property” extension. Spike Industries claimed that the insurance policy covered all newly acquired personal property, other than property acquired at fairs or exhibitions. Midwestern maintained that the policy only covered personal property at newly acquired locations, except for locations at fairs and exhibitions.

Spike Industries filed suit and both parties moved for summary judgement. The trial court found for Midwestern. Spike Industries appealed.

An insurance policy is a contract. When asked to interpret a contract, the court is to give effect to the intent of the parties to the agreement. The court looks first at the language of the contract. Courts look to the plain and ordinary meaning of the words and phrases used by the parties unless another meaning is clearly apparent from contents of the policy. Ambiguities in insurance policies are construed liberally in favor of coverage, unless such an interpretation would be unreasonable.

The court found that Spike Industries interpretation of the policy would lead to an arbitrary distinction between personal property acquired at fairs and exhibitions and that acquired from all other sources. The court found that Midwestern’s interpretation to be in harmony with the remainder of the policy in that it is designed to primarily insure the real estate owned by Spike Industries and the personal property within that real estate, not all of Spike Industries personal property, wherever it may be found.

Court of Appeals: Eleventh District, Lake County

Case Name: American Modern Home Ins. Co. v. Safeco Ins. Co.
(2007-Ohio-6247)

Decided: November 21, 2007 (Posted November 26, 2007)

Issue: UM/UIM coverage, Loss of Consortium

Summary of Opinion: The Eleventh District found that loss of consortium claims are not excluded under “other owned vehicle” exception for UM/UIM.

On April 16, 2005, Bobby Oakman was fatally injured when his motorcycle was struck by a vehicle that failed to yield the right-of-way. At the time of the accident, Bobby was

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19 years old and resided with his parents. The tortfeasor's insurance company paid \$50,000 to the Oakmans, the policy limit. Bobby's motorcycle was insured through Progressive, but the policy did not provide underinsured motorist (UIM) coverage.

Bobby's parents had insurance policies through American Modern Home Insurance and Safeco Insurance, however, the motorcycle was covered under these policies. American Modern eventually paid \$50,000 in UIM coverage to the Oakmans as wrongful death beneficiaries. Safeco denied UIM coverage. Safeco claimed that the Oakmans were not entitled to UIM coverage for loss of consortium damages under its policy. American Modern and the Oakmans executed a Release and Assignment Agreement in which the Oakmans assigned American Modern any rights and claims against Safeco for damages arising from the accident.

American Modern filed a complaint and both sides moved for summary judgement. The trial court found that Safeco's policy provided UIM coverage for the wrongful death claims of the Oakmans and ordered Safeco to pay \$25,000. Safeco appealed.

The Safeco policy included an exclusion: "We do not provide Underinsured Motorists Coverage for bodily injury sustained by any insured...while occupying or operating an owned motorcycle or moped." The parties agreed that Safeco's policy did not provide coverage for the injuries that Bobby suffered. Rather, whether the policy provided coverage for the wrongful death claims of Bobby's parents.

The court found that the UIM exclusion did not apply to the Oakmans for their individual claims, only to Bobby and his estate. The Oakmans did not suffer bodily injury while operating an "other owned motorcycle" and they are entitled to recover under the contract terms.

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