

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: First District, Hamilton County

Case Name: Kuchmar v. Nationwide Mutual Insurance Co.
(2007-Ohio-6336)

Decided: November 30, 2007 (Posted November 30, 2007)

Issue: Underinsured Motorist Coverage, Policy Limits, Setoffs

Summary of Opinion: The First District found that for underinsured motorist coverage, the court is to compare the actual amount paid by the tortfeasor's insurance against the policy limit of the UIM coverage.

Monica Kuchmar was a passenger in car that Brian Peters drove into high water during flooding. Monica attempted to escape the car, was swept away by the current and was drowned. Peters' vehicle was insured for \$300,000 and had an umbrella policy in the amount of \$1 million through USAA. The Kuchmars was covered by Nationwide for \$300,000 per occurrence and had an umbrella policy for \$1 million per occurrence.

Monica's parents and both of her sisters sued for negligence and wrongful death. USAA settled the claims for \$150,000 less than the combined \$1.3 million policy limit. The Kuchmars sued Nationwide, claiming that they were entitled to payment under underinsured motorist coverage.

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As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate court decisions on cases of interest to our insurance clients. No opinion as to the legal import of the cases summarized is intended. Any questions regarding the information contained in this transmission should be directed at any time to one of the attorneys of the firm.

Nationwide filed for summary judgment, arguing that Peters was not an underinsured motorist because the policy limits of the available policies were not less than the available underinsured motorist coverage under Nationwide's policies. The Kuchmars argued that under *Clark v. Scarpelli* and *Littrell v. Wigglesworth*, that the determination of who was underinsured was NOT made by comparing policy limits. Rather, they argued that since each heir did not receive an amount equivalent to what he or she would have received if there was only one heir, Nationwide owed coverage. They argued that each Kuchmar plaintiff is entitled to the difference between the amount the received individually from USAA and the \$1.3 million policy limit under Nationwide. The trial court ruled for the Kuchmars and Nationwide appealed.

Noting first that the intent of UIM coverage is to ensure that persons injured by an underinsured motorist would receive at least the same amount of total compensation as they would have received had they been injured by an uninsured motorist and that underinsured motorist coverage is not intended to be excess insurance to the tortfeasor's liability coverage. A person injured by an underinsured motorist should never be afforded greater coverage than that which would have been available had the tortfeasor been uninsured. Based on this, the court rejected the Kuchmars' position and ruled that \$1.3 million is the maximum "amount available for payment."

Having determined that the Kuchmars were not each entitled to \$1.3 million, the court then turned to the amount of setoff. Applying *Webb v. McCarty*, the court determined that the amount Nationwide was entitled to setoff was only the amount that was actually paid, not the policy limit. The court ruled that Nationwide owed \$150,000, the difference between the UIM coverage and the amount paid by USAA.

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