

OHIO CASE SUMMARIES
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Ohio case summaries are brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. Except for holidays, these summaries will be provided Wednesday and Friday of each week. To discontinue receiving this service, please call Jared Wagner at 937-224-3333 or email Jared at jawagner@green-law.com.

Court of Appeals: Third District

Case Name: *Miller v. Erie Ins. Co.*, 2008-Ohio-515.

Decided: February 11, 2008 (posted February 11, 2008)

Issue(s): UM/UIM Coverage / Miscellaneous Vehicle Exclusion

Summary of Opinion: Plaintiff was an employee of a tow truck company. He was injured in an automobile accident while in the course and scope of his employment. However, he was driving his own personal motorcycle at the time of the accident, because the company owned vehicle he usually used for work purposes was out of service. The tortfeasor's insurance company paid its limits, but Plaintiff sought underinsured motorists coverage through his company's insurance policy issued by Erie Insurance. The Erie policy specifically excluded miscellaneous vehicles from UIM coverage. Motorcycles were included within the definition of miscellaneous vehicles. Thus, Erie denied coverage and Plaintiff brought suit. The trial court granted Erie summary judgment. On appeal, Plaintiff argued that the motorcycle fell within the definition of a temporary substitute automobile, which are covered under the UIM provisions. Therefore, Plaintiff argued, there is at least an ambiguity in the language of the contract, which should be construed in favor of coverage. On appeal, the Third District agreed with Plaintiff that his motorcycle would qualify as a temporary substitute auto under the terms of the policy. However, the court ruled that in Ohio that where two clauses of a contract appear to be inconsistent, the specific clause prevails over the general. Accordingly, the court affirmed the trial court's decision, holding that the specific clause prohibiting UM/UIM coverage for miscellaneous vehicles must prevail over the general definitions that qualify a motorcycle as a temporary substitute auto in certain situations.

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As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate 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.