

## 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 Adam Webber at 937.224.3333 or send an email to arwebber@green-law.com.**

Court of Appeals: Seventh District

Case Name: Macejko v. Ortiz, 2008-Ohio-1188

Decided: March 13, 2008

Issue(s): Subrogation Assignment and Proof-of-Claim Agreement Enforceable.

Summary of Opinion: Mrs. Macejko was involved in an automobile accident caused by other drivers. She received \$10,000 pursuant to the med-pay section of her insurance policy with Nationwide Insurance. Prior to receiving the \$10,000, Mrs. Macejko signed a proof of claim and subrogation assignment granting her insurer subrogation rights over her claim in exchange for the payment. Also, the insurance policy itself stated that Nationwide retained a right of subrogation and reimbursement.

The Macejkos later entered into a \$100,000 settlement with the insurance company of the tortfeasors. They did not, however, inform Nationwide of the settlement, and Nationwide later demanded repayment of the \$10,000.

The Macejkos argued that the subrogation assignment and release that Mrs. Macejko signed only gave Nationwide the right to sue the tortfeasors to the same extent that the Macejkos had a right to sue. The Macejkos argued that because Nationwide did not attempt to sue the tortfeasors or their insurance company before they entered into the settlement agreement, Nationwide was not entitled to any repayment. In affirming judgment for Nationwide, the court held that “an insured who destroys his insurer’s subrogation rights without the insurers knowledge does so at his peril” and that “an insurer’s mere knowledge of the underlying facts of an accident has no effect on the insured’s duty to carry out the notice provisions of the insurance policy.”

GREEN & GREEN, Lawyers represents select insurance clients in all aspects of insurance litigation, from complex coverage questions to more routine torts. We will see to it that your file will be handled only by a competent, seasoned attorney who will work diligently to obtain the best result possible.

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.

Court of Appeals: Seventh District

Case Name: Price v. Dillon, 2008-Ohio-1178

Decided: March 13, 2008

Issue(s): Auto Insurers' Direct Reimbursement to Insured's Health Insurer

Summary of Opinion: Price was injured in an automobile accident while riding as a passenger in Dillon's vehicle. At the time, Price was insured by Grange Indemnity, and he was insured under an individual health insurance policy issued by American Community Mutual. Price alleged that Grange committed a breach of contract and performed in bad faith by refusing to pay his med-pay coverage for over seven months. Grange had stalled for seven months before it eventually paid the maximum med-pay (\$5000) directly to the health insurer, American. Grange provided no justification for this delay, but instead contended that all parties were fully reimbursed and eventually compensated. Moreover, Price argued that Grange had violated the terms of the policy by sending the \$5000 directly to the health insurer.

The appellate court held that the breach of contract claim could not stand because Price could not show any damages as a result of Grange's delay. As to the payment directly to the health insurer, American, the court ruled that this was a violation of the policy's terms. The court found, however, that although the policy specifically stated that it "may make payment under the coverage to the insured or to the **medical provider** [and not the **health insurer**] on behalf of the insured," this was only a technical violation. The court held that while Grange may have violated the technical terms of the contract by paying the health insurer, there were no damages resulting from the breach.

Court of Appeals: Third District

Case Name: Calhoun v. Harner, 2008-Ohio-1141

Decided: March 17, 2008

Issue(s): UM Coverage for Family Members

Summary of Opinion: This case was brought as a declaratory judgment action to determine whether compensation was available under the uninsured motorists section of an automobile insurance policy.

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Luke Harner was the driver of the vehicle that turned left into oncoming traffic. Also in the car with him was his three-year-old son, two-year-old daughter, Isabelle, and his six-year-old stepdaughter. Luke's wife, Victoria, was the mother of all three children, and she witnessed the accident. Victoria and the children brought suit against Luke and his auto insurer, American Select Insurance Company.

The policy expressly excluded liability coverage for any insured for bodily injury to them or any family member. The policy included UM coverage, but the policy provided that "uninsured motor vehicle does not include any vehicle or equipment that is a covered automobile for which coverage is provided under this policy." The policy expressly covered Luke's car as a covered automobile. Victoria and the children argued that the restrictions in the UM terms were expressly prohibited by the Ohio Legislature in amendments to Revised Code §3937.18.

The appellate court held that the plain language of Revised Code §3937.18 clearly states that insurers may include terms and conditions in their policies that preclude UM coverage under circumstances other than those specifically listed in the statute, so long as the circumstances are specified in the policy. It noted that insurance companies and their customers are generally free to contract in any manner that they see fit. It also rejected the argument that the exception was not clearly and conspicuously displayed within the policy. The court held that the UM restriction is clear, conspicuous, and understandable because the policy advises one to read carefully and that the pertinent portions of the policy and the restriction are emphasized by bold lettering and italics.

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