

## 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](mailto:arwebber@green-law.com).**

Court of Appeals: Seventh District

Case Name: Progressive Max Insurance v. Matta, 2008-Ohio-1112

Decided: March 11, 2008

Issue(s): Insurance Contract Interpretation: Auto Being Used "For a Fee"

Summary of Opinion: Matta was employed by a food wholesaler and was involved in an accident while he was returning from a delivery. He was driving his own automobile and sought recovery from his personal auto insurance policy. Progressive denied coverage and requested summary judgment, arguing that the policy excluded liability coverage if the vehicle was being used to carry persons or property "for a fee." Matta argued that the "for a fee" exclusion was ambiguous and that he was not carrying any cargo when the accident happened (i.e., he was not receiving a fee for the return trip).

The appellate court held that the "for a fee" exclusion was ambiguous and, therefore, should be interpreted in favor of the insured. In this case, the contract stated that coverage would be denied if the injury or property damage arose out of the use of a vehicle that was "being used to carry persons or property for compensation or a fee including but not limited to delivery of magazines, newspapers, food or any other products." The court held that such "for a fee" language is ambiguous because it can be read in two different ways: (1) as excluding from coverage the use of the vehicle to transport property when there is *any* kind of payment to the insured, or (2) as excluding coverage only when a fee has been paid *specifically* for the particular act of transporting the property. The fact that Matta was being paid for his time by his employer while using his personal automobile did not trigger the "for a fee" language's application. The appellate court affirmed the denial of Progressive's motion for summary judgment.

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Court of Appeals: First District

Case Name: M&M Metals Intl. v. Continental Casualty , 2008-Ohio-1114

Decided: March 14, 2008

Issue(s): Insurance Contract Interpretation: Coverage for “Sudden and Accidental” Pollution.

Summary of Opinion: M&M Metals is an Ohio Corporation engaged in scrap metal processing and recycling. In the course of its business, M&M has sent scrap metal materials to several third-party sites –several of which have now become the environmental clean-ups. M&M’s insurers refused to cover liabilities and clean-up costs associated with the sites. M&M’s insurance policy specifically excluded coverage for “personal injury or property damage arising out of the discharge...of...contaminants or pollutants into or upon land...but this exclusion does not apply if such discharge, disbursal, release, or escape is sudden and accidental.

Continental argued that M&M’s shipment of contaminants to the third-party sites was not sudden or accidental. Continental argued that the pollution had arisen from waste metal that had been periodically shipped between 1973 and 1976. The appellate court agreed and rejected M&M’s argument that the pollution had been caused by “periodic rain storms and corresponding soil erosion” that M&M argued led to sudden and accidental pollution. Finding that erosion and rain are gradual processes that are expected to occur over time, the appellate court ruled that Continental was entitled to summary judgment as a matter of law.

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Court of Appeals: Third District

Case Name: Owner Operators Indep. Drivers Risk Retention Grp. v. Stafford,  
2008-Ohio-1347

Decided: March 24, 2008

Issue(s): Insurance Contract Interpretation: Coverage for “Expected or  
Intentional Injury.”

Summary of Opinion: This case arises out of a motor vehicle accident in which Owner Operators’ insured, White & Red Transportation Services, owned the vehicle at fault. The driver of the vehicle, and an employee of White & Red Transportation Services, was convicted of Aggravated Vehicular Assault. Owner Operators filed a complaint for declaratory judgment alleging that it had no duty to defend or indemnify White & Red or its driver in the underlying liability action. Owner Operators argued that it was not responsible for the damages caused by the insured because of the driver’s eventual criminal conviction. Owner Operators pointed out that its policy expressly excluded coverage for “bodily injury or property damage expected or intended from the standpoint of the insured.”

The appellate court found that summary judgment was appropriate for White & Red because, in order to avoid coverage on the basis of an exclusion for expected or intentional injuries, the insurer must demonstrate that the *injury itself* was expected or intended. Citing Supreme Court precedent, the appellate court held that it is not sufficient for the insured to merely show that the act was intentional. The court found that Owner Operators was unable to prove that the driver intended the injuries or believed that the injuries were substantially certain to occur as a result of his actions. The court further held that a showing of recklessness also does not bring an accident within the “expected or intended” exclusionary language of an insurance policy.

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