

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: Second Appellate District

Case Name: Nationwide Mutual Insurance Co. v. John L. Skeens

Decided: April 18, 2008

Issue(s): Denial of Coverage Due to Homeowner's Misrepresentations

Summary of Opinion: Skeens' insurance claim resulted from his act of driving a front-end loader, downhill, into his home and causing substantial damage. After investigating the incident, Nationwide concluded that it was not an accident and sought a declaratory judgment denying coverage.

At trial, the jury found that Skeens had (1) intentionally concealed or misrepresented material facts, (2) committed fraud, (3) knowingly made a false statement, and (4) failed to use all reasonable means to preserve his property from further damage. The jury also found, however, that Nationwide failed to prove, by a preponderance of the evidence, that the incident was not an accident. Based on the jury's responses, the trial court held that Nationwide's policy unambiguously precluded coverage, and the court entered a declaratory judgment that the incident was not a covered loss.

Skeens' primary argument on appeal was that his misrepresentations to Nationwide's investigator were not material. When asked where he purchased the front-end loader and how much he had paid for it, Skeens lied and said that he had bought the front-end loader from someone named "Dave" in Kentucky, that he had paid \$8,000 cash, and that no bill of sale existed. In reality, Skeens had purchased the front-end loader from a local heavy-equipment dealer, had paid \$3,000 for it using a check from his business, and had received a bill of sale and a disclaimer of warranty. Skeens insisted that these

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misrepresentations were not material because Nationwide later uncovered the truth and the facts concerning his purchase turned out to be of no assistance to Nationwide.

The Second District held that Skeens' misrepresentations were material. The court held that "false answers are material if they might have affected the attitude and action of the insurer, and they are equally material, if they may have said to have been calculated either to discourage, mislead, or deflect the company's investigation in any area that might seem to the company, at that time, a relevant or productive area to investigate." The Court held that the materiality of false answers is judged at the time of the misrepresentation, and not at the time of trial, because the purpose of requiring truthful answers to investigators' questions is to protect the insurer against false claims. Because the Court found that the origin of the front-end loader *could have been material* at the time the misstatements were made, it held that they were material irrespective of their eventual impact.

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