

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 District

Case Name: American Family Mutual Insurance Co. v. Scott, 2008-Ohio-1865

Decided: April 18, 2008

Issue(s): Insurance Coverage for Victims of Intentional Torts

Summary of Opinion: In the early morning, homeowner Robert Schulte spotted two individuals on his property. Believing they were trying to break into his home, he walked outside with a loaded shotgun. As Schulte exited the house, the trespassers began running towards the fence on the property line. As they were running away from him, Schulte fired what he claimed was a “warning shot”, but the shot hit one of the trespassers in the legs and feet. Schulte was charged with felonious assault, but was only found guilty of the lesser-included offense of negligent assault.

Schulte was insured by American Family under a homeowners’ policy. American Family asserted that it was not obligated to defend or indemnify Schulte because the policy contained an exclusion for injuries caused by a “**violation of any criminal law for which any insured is convicted.**”

The Second District Court of Appeals held that Schulte’s conviction for negligent assault violated the insurance policy’s exclusion for “criminal violations.” Coverage for the injuries, it held, was rightly refused by American Family. The Court noted that there was a concern that such policy exclusions can be written too broadly; it held, however, that this policy’s language was acceptable. The exclusion’s scope was appropriately narrow because it only was triggered by a *criminal conviction* whereas the Second District previously held that an exclusion for merely a *criminal action* is too broad. See *Allstate Ins. Co. v. Cartwright* (1997), Montgomery App. No. 15472.

Here, the Court held, the conviction for negligent assault was proof that Schulte violated a criminal law.

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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.

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