

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: Cummins v. Kettering Medical Center

Decided: May 30, 2008

Issue(s): Relevance of testimony - When medical experts share a common insurer

Summary of Opinion: This was a medical malpractice action brought against a cardiovascular surgeon and hospital. At trial, the defense called two outside doctors as medical experts, Dr. Vester and Dr. Miller. The Defendant doctor, Dr. Pavlina, and his partner, Dr. Merle, also testified as medical experts for the defense. The trial court refused to permit the Plaintiff to cross-examine the defense expert witnesses regarding their commonality of malpractice insurance with the Defendant doctor.

The Second District Court of Appeals held that the trial court's decision to prohibit this line of questioning was reversible error. Citing the Ohio Supreme Court's decision in *Ede v. Atrium South OB-GYN, Inc.*, 171 Ohio St. 3d 124, the Second District held that "in a medical malpractice action, evidence of a commonality of insurance interests between the defendant and an expert witness is sufficiently probative of the expert's bias as to clearly outweigh any potential prejudice evidence of insurance might cause."

The Court held that it was also proper for Plaintiff's counsel to establish that the law firm representing Defendants had represented one of the outside experts in a previous malpractice action and that they were insured by the same liability insurance company as the Defendants. The purpose of these questions was to "explore possible biases that any result from the existence of common insurance."

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Defendants argued that the probative value of this evidence was non-existent. The Defendants pointed out that, at deposition, the medical experts had testified that they were not aware of the commonality of insurance at the time that they formed their opinions. The Second District rejected this argument and held that the question of whether a medical expert was aware of the commonality of insurance when they formed their opinion is a question of credibility and weight, both elements for a jury to decide.

The Second District concluded by finding that there is a “reasonable possibility that the verdict would have been different had the jury been informed of” the testifying expert’s relationship with the Defendant’s insurance company. It held that “where an expert has a financial incentive to be biased, the jury may determine whether the bias exists.”

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