

## 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: Eighth Appellate District

Case Name: *Roberts v. Seneca Ins. Co.*, 2008-Ohio-3808

Decided: July 31, 2008

Issue(s): Contracts to insure for criminal activity are void

Summary of Opinion: ABC Bail Bonds contracted with Seneca Ins. Co. to write bail bonds in Ohio. ABC wrote a bond for Kenneth Weckwerth to secure his release from custody pending criminal charges in Ohio, and Weckwerth then fled to Canada. ABC contacted Plaintiffs, two bounty hunters, and enlisted them to apprehend Weckwerth. ABC agreed to cover all expenses and promise to “cover them” if the two men ran into any problems.

Plaintiffs then went to Canada and apprehended Weckwerth. At that time, they discovered he was a Canadian citizen. Upon reaching the border, the men misrepresented to border security that Weckwerth was an American. The ruse was discovered and Plaintiffs were charged with federal crimes, including alien smuggling. Plaintiffs were convicted, fined, and sentenced to jail time.

Plaintiffs sued ABC and Seneca claiming that they promised to “back them up”. Seneca moved for summary judgment. The Eighth District Court of Appeals held that summary judgment was appropriately granted by the trial court, and it held there is no legal authority to enforce an agreement by a principal to reimburse an agent for criminal fines and time spent incarcerated as a consequence of an independent criminal act committed by that agent. The Court also held that such a contract would be void, unenforceable, and against public policy.

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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.

Court of Appeals: Twelfth Appellate District

Case Name: *Blazef v. Cleveland Clinic Found.*, 2008-Ohio-3814

Decided: July 31, 2008

Issue(s): *Sua sponte* dismissal for a lack of an expert opinion

Summary of Opinion: Plaintiff brought a medical malpractice action against Cleveland Clinic for its alleged failure to prescribe medication. Plaintiff retained Dr. Knodell as an expert witness to testify regarding the standard of medical care. After discovery and trial depositions were conducted, the Clinic filed a motion in *limine* to preclude Dr. Knodell from offering standard of care and causation opinions. The Court noted that Dr. Knodell's deposition testimony failed to give an opinion that the Clinic deviated from the acceptable standard of care in its treatment.

After a hearing, the trial court granted the motion in *limine*. The court offered Plaintiff the opportunity to proffer their expert on the day of trial to correct the testimony, but Dr. Knodell was unavailable. The trial court was unwilling to continue the trial date for a third time, and the trial court dismissed the case with prejudice, *sua sponte*.

The Eight District Court of Appeals held that the trial court's decision was appropriate and did not constitute an abuse of discretion.

Court of Appeals: Eighth Appellate District

Case Name: *Leonchyk v. FCI USA, Inc.*, 2008-Ohio-3796

Decided: July 31, 2008

Issue(s): Automatic waiver of the work-product privilege

Summary of Opinion: Plaintiff sustained injuries during his employment with FCI, and he brought an intentional tort action. During the discovery process, Plaintiff discovered that FCI had drafted a letter to OSHA reporting the injury. Plaintiff requested an unredacted version of the document, and FCI objected to the disclosure on the basis of the work product doctrine.

In support of its objection to the letter's release, FCI produced an affidavit indicating that the letter to OSHA contained the results of an internal investigation that was conducted in anticipation of litigation. The Eighth District Court of Appeals noted that "work product" is a "document or tangible thing prepared in anticipation of litigation or for trial by or for another party or by or for the party's representative." The Eighth District Court of

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Appeals adopted the federal courts' rule that "when a party discloses protective materials to a government agency investigation allegations against it, the work product doctrine is waived as to all other adversaries." The Court held that the document was properly discoverable and was not protected as work product.

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