

## 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 Sean McCormick at 937.224.3333 or send an email to [smccormick@green-law.com](mailto:smccormick@green-law.com).**

Court of Appeals: Fifth District Court of Appeals

Case Name: *Allen v. Binckett*, 2009-Ohio-2969

Decided: June 19, 2009

Issue(s): Conflict of Interest/Reimbursement/Subrogation

Summary of Opinion: Allen and Binckett were involved in a car accident. Allen filed suit against Binckett claiming personal injury and loss of consortium. She also filed suit against Binckett's insurer, State Farm, for UM/UIM coverage. As a result, State Farm filed a cross-claim against Binckett to recover \$4,073.85 that it paid Allen under its policy. Binckett was also insured by State Farm under a separate policy.

Thereafter, a mediation occurred that resulted in Allen and Binckett settling for \$10,500. The settlement covered State Farm's subrogation/reimbursement interest, but left the validity of that interest for judicial determination. All other claims were dismissed, and the parties agreed to litigate the issue of whether State Farm was entitled to funds under the subrogation/reimbursement provisions of its policy.

The trial court ruled that State Farm had a valid subrogation/reimbursement claim. Allen appealed.

The Fifth District Court of Appeals first held that no conflict of interest existed that would void State Farm's subrogation claim. The court explained that State Farm never represented Allen in the lawsuit; it was made a party to the proceedings when Allen filed her UM/UIM claim. Therefore, the court reasoned that to allow Allen to prevail on a conflict of interest claim would give her the power to disregard the terms of the insurance contract

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without any action on the part of State Farm. The court concluded that had Binckett been represented by a different insurer, Allen would have found herself in the same position she was in with regard to subrogation.

Second, the court held that the “make whole” doctrine was inapplicable to this case and did not apply to State Farm’s subrogation claim because Allen had been fully compensated. Although subrogation interests are generally not given priority when doing so will result in less than a fully recovery to the insured, a voluntary settlement by an insured is persuasive evidence of the value of the claims, and tends to prove that the insured was fully compensated.

Third, the court held that the trial court did not error in refusing to reduce the subrogation amount by attorney fees. The court explained it would not alter a trial court’s determination regarding attorney fees unless it was clear that the court abused its discretion, and no such abuse was present in this case.

The judgment was affirmed.

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