

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.

Court of Appeals: Sixth District Court of Appeals

Case Name: *Roser v. State Farm Mut. Ins. Co.*, 2009-Ohio-3395

Decided: July 10, 2009

Issue(s): Underinsured Motorists Coverage

Summary of Opinion: Roser was working as an auto mechanic at a car dealership when his employer asked him to fix the brakes on a new vehicle. He made some repairs and took the car for a test drive to verify his work. Thereafter, Roser was injured in a car accident as a result of the other driver's negligence.

He initiated a claim for underinsured motorist's coverage from his insurer, State Farm Mutual Insurance Co. (State Farm). Roser's claim was denied under a policy provision that excluded coverage for any damages arising out of operating a motor vehicle of regular use to him. He filed suit seeking a declaration of coverage, coupled with an allegation that State Farm had denied coverage in bad faith. The trial court granted State Farm's motion for summary judgment and Roser appealed.

The Sixth District Court of Appeals held that Roser was entitled to underinsured coverage because the "regular use" was inapplicable. The court applied the five signposts standard to Roser's use of the vehicle and reasoned that: (1) no vehicle, including the one at issue, was available for Roser's use most of the time; (2) his use of the vehicle was, at best, occasional; (3) his use required permission; (4) his use was within his official duties as a mechanic; and (5) there was no evidence to suggest he was on any frolic or detour for personal purposes.

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As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate 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.

The court concluded that Roser was entitled to a declaration of coverage, and that the bad faith claim was to be considered on remand.

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