

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: Twelfth District Court of Appeals

Case Name: *Cincinnati Ins. Co. v. Allstate Ins. Co.*, 2009-Ohio-3540

Decided: July 24, 2009

Issue(s): *Forum Non Conveniens*

Summary of Opinion: Dustin Owens, a resident of Butler County, Ohio, was traveling in Adams County, Indiana, when he struck and injured motorcyclist Trevor Kuntz. Owens was insured by Cincinnati Insurance Company (CIC), and the vehicle he was permissibly operating was insured by Allstate Insurance Company (AIC). Thereafter, Owens agreed to a settlement with Kuntz that CIC paid. Allstate denied coverage and did not contribute to the settlement.

CIC, whose principal place of business is in Butler County, filed suit in Butler County against Allstate alleging damages via subrogation, contribution and/or assignment for Allstate's pro rata share of the settlement amount, and damages for bad faith. Although Allstate admitted insuring Owens, it claimed venue was improper because the accident occurred in Indiana, and moved for dismissal based on the common law doctrine of *forum non conveniens*. The trial court granted the motion with the condition that Allstate agree to jurisdiction in Adams County, Indiana. CIC appealed.

The Twelfth District Court of Appeals first dismissed CIC's argument that it lacked jurisdiction because the trial court's ruling was not a final appealable order. The court explained that when a case is dismissed for a reason other than on the merits, and the trial court declines to retain jurisdiction, the order is a final appealable order.

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Next, the court explained that although the plaintiff's choice of forum should rarely be disturbed, a *forum non conveniens* determination is within the sound discretion of the trial court. The court held that although the trial court did not explain its reasoning behind finding that Adams County was a more convenient and proper venue than Butler County, it must presume that the trial court properly weighed all factors in making its decision.

Lastly, the court held that although the First District Court of Appeals had made the consent to waive any statute of limitations defense, consent to comply with the discovery rules of the original forum, and consent to satisfy any judgment rendered against it in the alternate forum, mandatory conditions to a *forum non conveniens* dismissal, it would continue to make such conditions permissive.

The judgment was affirmed.

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