

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: Eighth Appellate District

Case Name: *Kincaid v. Erie Ins. Co.*, 2009-Ohio-4372

Decided: August 27, 2009

Issue(s): Breach of Contract

Summary of Opinion: Don Kincaid struck a bicyclist with his car. Erie Insurance Company (Erie), his insurer, provided for his defense when the injured party filed suit, and the parties eventually settled the lawsuit.

Thereafter, Kincaid filed a class action lawsuit against Erie, alleging that it failed to reimburse him for expenses due under his insurance policy. Kincaid claimed that he incurred miscellaneous expenses, such as transportation costs and missed time from work, at the request of the attorneys hired by Erie to represent him. He sought class certification for all Erie's insureds that were insured by the company for the previous fifteen years, and who were covered under similar policies and entitled to such payments.

The trial court granted Erie's motion for judgment on the pleadings and dismissed the case. Kincaid appealed.

The Eighth District Court of Appeals concluded that the portion of Erie's policy that obligated it to reimburse Kincaid for his expenses did not require him to provide notice in any particular way or within a certain time frame. Although the court acknowledged that it may seem strange that an insurer is required to pay for expenses it knew nothing about, it explained that it was required to interpret the contract as written. Based on the foregoing, the court concluded that the trial court erred in dismissing Kincaid's breach of contract and

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good faith claims.

However, the court affirmed the trial court's decision to dismiss Kincaid's unjust enrichment claim because such a claim cannot exist where there is a valid and enforceable written contract.

Lastly, the court explained that the trial court improperly dismissed Kincaid's claim for declaratory relief because such a claim is not a cause of action, and is only considered if Kincaid prevails on his aforementioned substantive claims.

The judgment was affirmed in part and reversed in part.

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