

OHIO CASE SUMMARIES

A SERVICE OF
GREEN & GREEN, LAWYERS
A Legal Professional Association

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: Second Appellate District

Case Name: *State Farm Fire & Cas. Co. v. Ireland Homes, Inc.*, 2009-Ohio-4793

Decided: September 11, 2009

Issue(s): Breach of Contract/Negligence/Subrogation

Summary of Opinion: Turner Carson entered into a construction contract with Ireland Homes Inc. (Ireland) to complete construction of a home. The contract between Carson and Ireland provided that Carson would obtain property insurance, and that Ireland would obtain general liability insurance. Carson's property insurance was thru State Farm.

Prior to completion of construction, the home was destroyed by fire. Ireland had been paid \$446,614 toward the purchase price of the house, and consequently, State Farm paid Carson that amount. Thereafter, State Farm filed suit claiming that it was subrogated to Carson's potential claims against Ireland for negligence and breach of contract. The trial court granted Ireland's motion for summary judgment, and State Farm appealed.

The Second District Court of Appeals explained that although the construction contract was ambiguous as to whom Carson was supposed to furnish property insurance for, it was proper to use extrinsic evidence to show that the insurance was intended to cover both Carson and Ireland.

Moreover, the court held that when there is an agreement to insure, the party purchasing the insurance is deemed to have contractually waived its right to pursue the other party and, therefore, waives the subrogation rights of the insurance company. As a result, Carson waived his right to sue Ireland, which effectively waived State Farm's

GREEN & GREEN, Lawyers represents select insurance clients in all aspects of insurance litigation, from complex coverage questions to more routine torts. We will see to it that your file will be handled only by a competent, seasoned attorney who will work diligently to obtain the best result possible.

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.

subrogation rights to any potential negligence action.

In addition, the court concluded that the State Farm policy only provided coverage for losses, and it did not provide coverage for breach of contract claims Carson may have against Ireland. Therefore, any payment made by State Farm to Carson based on a breach of contract claim was voluntary and outside the scope of the policy.

The judgment was affirmed.

GREEN & GREEN, Lawyers represents select insurance clients in all aspects of insurance litigation, from complex coverage questions to more routine torts. We will see to it that your file will be handled only by a competent, seasoned attorney who will work diligently to obtain the best result possible.

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.