

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 Appellate District

Case Name: *Celina Ins. Group v. Yoder & Frey Inc.*, 2009-Ohio-4926

Decided: September 18, 2009

Issue(s): Policy Coverage

Summary of Opinion: Yoder & Frey Inc., (Yoder) a corporation that auctions farm machinery, auctioned three skid loaders that had been cosigned to it by a client Jerry Palladino. Before the sale of the skid loaders, Yoder had Palladino sign an auction sale agreement guaranteeing that he was the owner of the equipment and that it was free from encumbrances.

Quarrick Equipment Company (Quarrick) purchased the skid loaders, but later discovered that the loaders had been stolen by Palladino. Consequently, the skid loaders were impounded, and Quarrick filed suit against Yoder for breach of warranty of title, negligent misrepresentation, and unjust enrichment. Yoder sought defense, indemnification, and coverage from its insurer, Celina Insurance Group (Celina).

Celina sought a declaration from the trial court that it had no duty to provide coverage, but the court granted Yoder's motion for summary judgment, finding that Celina had a duty to defend and provide coverage. Celina appealed.

Addressing Celina's argument that the sale of stolen goods was not an "occurrence" under the policy, the Sixth District Court of Appeals concluded that Yoder's sale of the skid loaders was not intentional, and, therefore, was accurately defined as an "accident" or "occurrence" under the policy. Additionally, the court reasoned that although Yoder sold

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the skid loaders intentionally, no evidence suggested that it was its intention to accept or sell *stolen* skid loaders.

Next, the court concluded that even though Palladino signed an auction sale agreement with Yoder, this contract did not create an agency relationship. As a result, the policy exclusion disallowing coverage for the wrongful acts of agents of the insured did not apply.

The judgment was affirmed.

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