

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: Tenth Appellate District

Case Name: *Govt. Emps. Ins. Co. v. Hughes*, 2009-Ohio-5023

Decided: September 24, 2009

Issue(s): Policy Coverage

Summary of Opinion: Barbara Hughes rented a Chevrolet Malibu from Enterprise Rent-A-Car (Enterprise) because her Ford Expedition was being repaired. Although she agreed with Enterprise that she was the only person who would drive the car, she allowed her daughter Louisa to drive it. Louisa and her sister Lynda were traveling in the Malibu when Louisa lost control of the car, and it struck a tree injuring Lynda.

Subsequently, Lynda filed a negligence action against Louisa for personal injuries sustained in the accident. Government Employees Insurance Company (GEICO) was Barbara's insurance carrier at the time of the crash, and it defended Louisa under a reservation of rights. However, GEICO filed its own action against Lynda and Louisa, seeking a declaration that Barbara's policy provided no coverage to Louisa for any of Lynda's claims. The trial court granted Lynda summary judgment and GEICO appealed.

The Tenth District Court of Appeals determined that Barbara's policy covered both "owned auto(s)" and "temporary substitute auto(s)," which the Malibu was in this case. As a result, the court concluded that Lynda was covered under Barbara's policy because she was given permission to drive the car by Barbara.

Although GEICO argued that the Malibu was not a "temporary substitute auto" because Barbara violated her contract with Enterprise when she allowed Louisa to drive

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the car, the court reasoned that if GEICO wanted both *Barbara and Enterprise* to give permission to a third party to drive it, the policy must specify such a requirement.

The court also dismissed GEICO's circuitous argument that Lynda was an insured under the policy because she was "using" the car by riding in it as a passenger, and the applicable section of the policy excludes coverage for bodily injury to any insured. The court determined that Lynda was "occupying" the Malibu as a passenger under the policy, not "using" it. Therefore, she was not an insured under the policy, and the exclusion did not apply to deny her coverage for alleged losses.

The judgment of the trial court was affirmed.

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