

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: Third Appellate District

Case Name: *Fed. Ins. Co. v. Executive Coach Luxury Travel, Inc.*, 2009-Ohio-5910

Decided: November 11, 2009

Issue(s): Liability

Summary of Opinion: This case arises out of the tragic bus crash of March 2, 2007, involving the Bluffton University baseball team. The team was on its way to Florida in a bus rented from Executive Coach Luxury Travel, Inc. (Executive Coach) when the crash occurred; seven people including five players, the bus driver, and his wife were killed in the accident. Numerous other passengers were injured as well.

Bluffton had insurance with three companies at the time of the crash, and, thereafter, two of those insurers, Federal Insurance Company (Federal) and American Alternative Insurance Corporation (American), filed separate complaints for declaratory judgment against Executive Coach and the bus driver. Specifically, Federal asked the court to declare that it did not owe Executive Coach or the bus driver excess liability insurance because neither qualified as insureds under the policy. Subsequently, the two actions were consolidated, and Federal and American were both granted summary judgment as to whether either Executive Coach or the bus driver were insureds.

On appeal, the Third District Court of Appeals affirmed the judgment of the trial court because reasonable minds could not differ in finding that the bus and driver were not “hired” by Bluffton, nor did the driver operate the bus with the “permission” of the University, within the meaning of those terms as used in the insurance contract. The court explained that although Bluffton did have some say in the logistics of the trip, Executive Coach, and

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not Bluffton, had predominate authority and control over the bus and driver under the charter contract. Therefore, the trial court was correct in determining that neither Executive Coach nor the bus driver qualified as insureds under the insurance policies.

Lastly, in addressing the argument that the trial court erred in quashing a subpoena seeking Bluffton's other insurer's (Hartford Fire Insurance Company) underwriting file and claims file, the court determined that it had not been demonstrated that either file was relevant to the issues at hand. In reaching its determination, the court explained that the declaratory judgment action concerned the specific language in the insurance contract, not what was contained in either the underwriting file or the claims file. Further, Hartford was not a party to the action, and the attorney-client privilege and work product doctrine protected Hartford's files from the subpoena.

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