

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: Eleventh Appellate District

Case Name: *Am. Internatl. Recovery v. Allstate Ins. Co.*, 2009-Ohio-6508

Decided: December 15, 2009

Issue(s): Expert Testimony

Summary of Opinion: Leann Chewning was riding in a car belonging to a co-worker Gerald Formoso. After traveling a short distance, the driver, another co-worker, asked Chewning to drive and she agreed. She proceeded to drive the car on a winding country road, and she eventually drove off the road, through a ditch, a fence, and into some trees. Leann suffered an injured hand and back as a result of the crash.

AIR, which is responsible for litigation subrogation claims of AIG, Leann's insurer, instituted a negligence action against Allstate Insurance Company, Formoso's insurer. Thereafter, deposition testimony revealed that Formoso had called his insurer a few days before the accident and asked to have his insurance suspended for the following weekend. However, Allstate immediately suspended his coverage and sent him a letter to that effect, which he did not receive until after the accident. Formoso explained that he was never informed that his coverage had been suspended immediately, and, had he known that it was, he would not have driven his car that night.

A trial was held, and at its conclusion Allstate made a motion for a directed verdict based on AIR's failure to present evidence establishing a duty of care owed by an insurance agent to an insured. The trial court granted the motion because without affirmative evidence establishing the appropriate standard of care, the jury would be left to speculate about what standard was necessary to establish the negligence claim.

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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.

The Eleventh District Court of Appeals explained that it was common knowledge that when insurance was cancelled, it was imperative to notify the insured of the effective date of termination. In this case, the court reasoned that the duty of the agent to notify Formoso that his coverage had been immediately suspended was so apparent that it only required common knowledge to understand and judge. As a result, the court determined that the jury was fully capable of determining whether or not an insurance agent had violated a duty of care without expert testimony.

The judgment was reversed and remanded.

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