

SANDUSKY COUNTY  
COMMON PLEAS COURT  
FILED

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SANDUSKY COUNTY COURT OF COMMON PLEAS

MICHAEL DUKESHIRE, et al.,

\*

Plaintiffs

\*

Case No. 99 CV 686

-vs-

\*

ELWOOD DICK, et al.,

\*

JUDGMENT ENTRY

Defendants

\*

\* \* \*

This cause is before the Court on cross motions for summary judgment filed by a plaintiff, Michael Dukeshire, individually and as administrator of his deceased wife's estate, and defendants, American and Foreign Insurance Company (hereinafter "American") and Royal Insurance Company of America (hereinafter "Royal").

FACTS

This case arose out of an accident in which a car rear-ended another car which then moved into the path of a third car traveling in the opposite direction. As a result, Plaintiff Michael Dukeshire, who was driving his own vehicle and was rear-ended, was injured and his wife was killed. There were also other parties injured in the accident. At the time of the accident, Plaintiff Michael Dukeshire and his wife Melissa were employed by Evergreen Plastics, Ltd. (hereafter "Evergreen"). The tortfeasor had insurance with limits of \$300,000. Because of the death of Melissa Dukeshire, Michael's serious injuries, as well as injuries to the other persons involved

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(at least three lawsuits are pending, and one child has not yet sued), it is likely that the \$300,000 will be exhausted. This lawsuit concerns the uninsured/ underinsured portion of a commercial policy of insurance that American issued and the umbrella policy of insurance that Royal issued and which they admit were issued to insure Evergreen Plastics, Ltd. The uninsured/underinsured has policy limits of \$1,000,000 and the umbrella has policy limits of \$15,000,000. On September 20, 1999, plaintiffs filed a complaint against the tortfeasor, Elwood Dick. On February 2, 2000, they filed their first amended complaint adding American and Royal. The plaintiffs allege that as employees of Evergreen they are entitled to uninsured/underinsured motorist benefits under the American and Royal policies. Both parties filed cross-motions for summary judgment, plaintiffs alleging a right to coverage, and defendants alleging no coverage.

### **LAW**

Summary judgment can only be granted when there is no genuine issue as to any material fact and where the moving party is entitled to judgment as a matter of law, and where, considering the facts in the light most favorable to the non-moving party, reasonable minds can come to but one conclusion which is adverse to the non-moving party. Wean v. Temple United, Inc. (1977), 50 Ohio St.2d 317, 327; Harless v. Willis Day Warehousing Co., (1978), 54 Ohio St. 2d 64, 66

### **DISCUSSION**

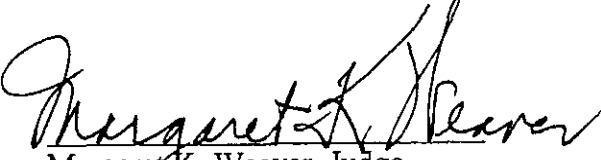
In consideration of the contracts, the memoranda, and the exhibits, the Court concludes that the plaintiffs' motion as to American should be granted, and that although there is an issue regarding whether there is a CIGNA policy that must be

exhausted before the Royal policy would be available, the Court concludes that if the pre-existing condition of exhaustion of named insurances is met, there would also be coverage under the Royal policy, and therefore the plaintiffs' motion as to Royal should also be granted. Each conclusion is predicated on *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* (1999), 85 Ohio St.3d 660.

The Ohio endorsement in Defendant American's policy, CA 21 33 03 98, contains the exact language as to who is insured as is in the policy in *Scott-Pontzer, supra*. Therefore, the Court concludes that by operation of law Plaintiff Michael Dukeshire, both individually and as administrator, is insured. And as to the non-covered vehicle exception, the Court finds that in *Bagnoli v. Northbrook Prop. & Cas. Ins. Co.* (1999), 86 Ohio St.3d 314, *Dillard v. Liberty Mut. Ins. Co.* (1999), 86 Ohio St.3d 316, and *Ezawa v. Yasuda Fire & Marine Ins. Co. of America* (1999), 86 Ohio St.3d 557, none of the injured parties were in a covered vehicle under the policies in question, and were found by operation of law to have coverage. Mr. Bagnoli was riding on a bike when he was injured. The Ezawa child was riding in a car that didn't belong to either the employer or his parents. All of these cases rest upon the premise that uninsured/underinsured motorist coverage is to protect persons, not vehicles. *Scott-Pontzer, supra*, 664; *Martin v. Midwestern Group Ins. Co.* (1994), Ohio St.3d 478. And if all the employees at Evergreen Plastics, Ltd. have uninsured/underinsured coverage by operation of law, the vehicle in which they are found is not relevant under the premise that the insurance protects persons and not vehicles

**CONCLUSION**

Plaintiffs' motion is GRANTED; defendants' motion is DENIED.

  
Margaret K. Weaver, Judge