

IN THE COMMON PLEAS COURT  
BUTLER COUNTY, OHIO

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BRIDGETTE A. HUMMEL : Case No. CV00-01-0170  
Individually and in her capacity as  
Administrator of the Estate of Paul  
Brown, Deceased, : Judge Crehan

Plaintiff,

vs.

MICHAEL L. HAMILTON, et al.,

Defendants.

Common Pleas Court  
BUTLER COUNTY, OHIO  
FEB 13 2002  
CINDY CARPENTER  
CLERK OF COURTS

DECISION DENYING  
DEFENDANT CINCINNATI  
INSURANCE COMPANY'S  
MOTION FOR SUMMARY  
JUDGMENT

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This case comes before the Court on a Motion for Summary Judgement filed by Defendant, Cincinnati Insurance Company (CIC). The Court has reviewed the record and renders the following decision.

This case arises from an automobile collision that occurred on January 25, 1999 in Butler County, Ohio. The collision occurred in Liberty Township at the intersection of State Route 4 and Kyles Station Road. Plaintiff's decedent, Paul Everett Brown, died as a result of injuries sustained when the vehicle operated by him was struck on the driver's side by a vehicle operated by the Defendant, Michael Hamilton (Defendant).

At all relevant times hereto, Paul E. Brown was employed by the Butler County Joint Vocational School District (BCJVSD). CIC issued to BCJVSD an automobile liability policy with an effective date of November 27, 1998. At the time of the January 25, 1999 accident, Mr. Brown was operating a 1988 Dodge Caravan owned by him. Mr. Brown's vehicle was not specifically identified in BCJVSD's policy and was not a newly acquired or a replacement motor vehicle.

Plaintiff claims she is entitled to UIM coverage from CIC, the insurer of Mr.

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Brown's employer, BCJVSD. Plaintiff is basing her claim on the Ohio Supreme Court's decision in Scott-Pontzer v. Liberty Mut. Fire Ins. Co. (1999), 85 Ohio St.3d 660. Scott-Pontzer held that employees of a corporate named insured are "insureds" under the corporations' commercial auto liability insurance policy and are entitled to UM/UIM coverage.

Defendant claims that Scott-Pontzer does not apply to this case since it did not address the "other owned vehicle" exclusion included in the CIC policy. In addition, Defendant claims that the Scott-Pontzer case does not apply to the liability policies of school districts which are governed by specific provisions of the Ohio Revised Code.

Summary judgment can only be granted when it appears from the evidence, construed most strongly in favor of the non-moving party, that there is no genuine issue of material fact; that reasonable minds can only come to one conclusion which is adverse to the non-moving party; and that as a matter of law the moving party is entitled to judgment.<sup>1</sup> The only evidence to be considered when ruling upon a motion for summary judgment are pleadings, depositions, affidavits, written discovery responses filed with the court, transcripts of evidence and written stipulations of fact.<sup>2</sup>

Where a motion for summary judgment is properly made and supported, the non-moving party may not rest upon its pleadings, but, instead, must produce evidence showing a genuine issue of fact as to issues upon which it has the burden of proof. Dresher v. Burt (1996), 75 Ohio St.3d 280.

Defendant's first argument is that a board of education cannot purchase insurance

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<sup>1</sup>Civ.R. 56(C).

<sup>2</sup>Civ.R. 56(C).

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in the same manner as a private corporation and therefore Scott-Pontzer does not apply to this case. CIC attempts to distinguish Scott-Pontzer from the present case by arguing that Scott-Pontzer involved a policy of insurance issued to a private corporation and not a board of education, which is a political subdivision of the State of Ohio. A board of education is a corporate body of a school district.<sup>3</sup> As such, a board of education is solely responsible for obtaining insurance coverage for the district and its employees.<sup>4</sup> CIC argues that since a board of education is created by statute, its powers and obligations are defined by statute. Wolf v. Cuyahoga Falls City School District Board of Education (1990), 52 Ohio St.3d 222.

The issue of whether school boards are limited in their authority to purchase UM/UIM coverage is a new one before the courts. The Eighth District Court of Appeals recently addressed the issue in Mizen v. UTICA National Insurance Group (2002), CITE, which this Court now follows.

In Mizen, the six-year-old son of the appellants was killed in an auto accident. The son was traveling in an automobile owned and operated by his grandmother. The parents of the boy were both employed by the Willoughby-Eastlake City School district. They attempted to recover UM/UIM coverage from their employer's insurance company. The insurance company presented arguments similar to those offered by CIC in the present case.

The Eight District Court found that R.C. 3313.203 merely provides that a board of education may purchase liability insurance for employees within the scope of their

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<sup>3</sup>R.C. 3313.17

<sup>4</sup>See R.C. 3313.201; R.C. 9.83; R.C. 3327.09.

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employment. The statute does not state that a board of education may not purchase insurance for reasons other than those contained in the statute.

The court further found that the definition of employee contained in R.C. Chapter 2744 is not useful in determining whether school districts are prohibited from purchasing insurance for employees who are not within the scope of their employment. The court cites to a Southern District of Ohio case for the proposition that a person is an employee in the terms ordinary meaning, at all times during the term of employment. The court finally held that "[b]ecause the law in Ohio does not clearly prohibit a school district from obtaining insurance for its employees who are acting outside the scope of their employment, we cannot conclude that Scott-Pontzer should not be applied."

By following Mizen, this Court finds the following.

1. Since the statutory language that applies to CIC when covering a political subdivision does not prevent it from purchasing UM/UIM coverage, it is not exempt from its obligations under said policy. The only way for an insured to avoid operation of the law with regard to UM/UIM coverage is to explicitly reject the coverage.
2. Pursuant to R.C. 3937.18, any automobile liability or motor vehicle liability policy of insurance must provide for UM/UIM coverage. Thus, where motor vehicle liability coverage is provided, as is the case with the CIC policy, UM/UIM coverage must be provided. Selander v. Erie Insurance Group (1999), 85 Ohio St.3d 660, 665.
3. R.C. 3313.203 does not limit school district's authority to purchase insurance coverage. The provision, instead provides that a board of education may purchase liability insurance for employees within the scope of employment. It does not state that a board of education may not purchase insurance for reasons other than those contained in the statute.
4. R.C. 2744.01(B) does not limit a school board's UM/UIM coverage to employees who are on-duty. Ohio law does not clearly prohibit a school district from obtaining insurance for its employees who are acting outside the scope of their employment.
5. Since, the school board is obligated to provide UM/UIM coverage to employees

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regardless of whether they are acting within the scope of employment, the holding of Scott-Pontzer applies in this case and Paul E. Brown is an insured.

Defendant argues that even if the decedent is an insured under the policy the "other owned vehicle" exclusion operates to exclude coverage. The Ohio Supreme Court has recognized that R.C. 3937.18 as amended by House Bill 261, superseded a previous Supreme Court holding and has made the "other owned vehicle" exclusion enforceable. However, the Court finds CIC's analysis of the "other owned vehicle" exclusion misplaced. The exclusion in question states that:

**C. Exclusions**

This insurance does not apply to:

5. "Bodily injury" sustained by an "insured" while the "insured" is operating or occupying a motor vehicle owned by, furnished to, or available for the regular use of a named insured, a spouse or a resident relative of a named insured, if the motor vehicle is not specifically identified in the policy under which a claim is made, or is not a newly acquired or replacement motor vehicle covered under the terms of the policy under which the uninsured and underinsured motorist coverages are provided

In the present case, the disputed exclusion requires one to refer back to the declarations page of the Business Automobile Liability Coverage policy to determine whether the vehicle in question is specifically identified as a covered automobile. The declaration page of the BCJVSD's Business Automobile Liability Coverage policy specifically stipulates that uninsured motorist coverage will be provided for "owned autos" only. Owned autos is designated with the number 2 and defined as:

Only those "autos" you own (and for liability coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.

To say, as CIC does, that the "other owned vehicle" exclusion precludes Mr.

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Brown from UM/UIM coverage, the Court must find that the vehicle Mr. Brown was operating at the time of the accident is not specifically identified as a covered automobile. To reach that conclusion, the Court must find that within the definition of owned automobiles that receive UM/UIM coverage, the "you" pertains only to Mr. Brown's employer BCJVSD, and not to Mr. Brown. Since the Court has already determined that Mr. Brown is an insured pursuant to the Scott-Pontzer decision, the autos he owns must be covered by UM/UIM insurance.

The language of the BCJVSD policy pertaining to the definition of "owned autos" can be subject to more than one interpretation. The definition of owned automobiles can reasonably be interpreted to pertain to those automobiles owned by Mr. Brown and those owned by BCJVSD as well. Where provisions of a contract of insurance are reasonably susceptible to more than one interpretation they will be construed strictly against the insurer and liberally in favor of the insured. Scott-Pontzer, 85 Ohio St.3d at 664.

The Ohio Supreme Court has stated that where exceptions, qualification or exemptions are introduced into an insurance contract, a general presumption arises that that which is not clearly excluded from the operations of such contract is included in the operation thereof. King v. Nationwide Ins. Co. 35 Ohio St.3d at 214. Since the term "you" necessarily includes Mr. Brown as an insured, the phrase "autos you own" can reasonably be interpreted to include automobiles owned by Mr. Brown.

#### CONCLUSION

The CIC policy is governed by R.C. 3937.18 rather than other provisions of the Ohio Revised Code regarding public entities. Mr. Brown, as an employee of the school board at issue here, is an insured under the CIC policy pursuant to Scott-Pontzer. Finally,

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since the CIC policy is ambiguous as to the "other owned vehicle" exclusion, the policy will be read to include Mr. Brown's automobile under the UM/UIM coverage.

For the foregoing reasons, Defendant's Motion for Summary Judgment is denied.

SO ORDERED

*Matthew J. Crehan*  
Matthew J. Crehan, Judge

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