

COPY

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

**Donna Case Lescher, Administratrix
for the estate of David R. Lescher,
Deceased,**

Case No. 97CV024

Plaintiff

-vs-

**Auto Owners Mutual Insurance Co.,
et al.,**

Judgment Entry

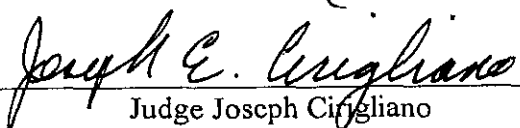
Defendants.

SEP 19 11:21 AM '97
BARBARA J. JOHNSON
CLERK OF COURTS
COMMON PLEAS COURT
ERIE COUNTY, OHIO

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Upon consideration of the Defendant, Auto-Owners Mut. Ins. Co.'s, second renewed motion for summary judgment and memorandum in support thereof, and Plaintiffs' memorandum in opposition thereto, said motion is overruled. The Defendant argues that commercial policies are excepted from the requirements of R.C. 3937.25 to R.C. 3937.27; however, the Supreme Court stated that the scope of R.C. 3937.30 to R.C. 3937.39 requires that every liability insurance policy have a minimum guaranteed two-year policy in Wolfe v. Wolfe, 88 Ohio St.3d 246 (2000), and does not limit the scope of the statute. It is well settled that uninsured/underinsurance coverage is for the benefit of, and follows, people, not vehicles. See Martin v. Midwestern Group Ins. Co. 70 Ohio At.3d 478 (1994). Moreover, a commercial insured is comprised of individuals since a corporation can act only by and through real live persons. See Scott Ponzer v. Liberty Mut. Fire Ins. Co. 85 Ohio St.3d 660 (1999).

IT IS SO ORDERED



Judge Joseph Cirigliano

cc:

IN THE COMMON PLEAS COURT OF ERIE COUNTY, OHIO

CLERK OF COURT
JUL 13 2019
11:00 AM

DONNA CASE LESCHER, ADMINISTRATRIX
FOR THE ESTATE OF DAVID R. LESCHER,-
DECEASED.

Plaintiff,

-vs-

AUTO OWNERS, et al.

Defendants.

CASE NO.: 97-CV-024

JUDGE ANN B. MASCHARI

**PLAINTIFF'S MEMORANDUM
CONTRA SECOND RENEWED
MOTION FOR SUMMARY
JUDGMENT BY
DEFENDANT AUTO OWNERS'
INSURANCE COMPANY**

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Auto Owners Mutual Insurance Company ("Auto Owners") has, for a second time, filed a renewed motion for summary judgment, the thrust of which is that the holding of Wolfe v. Wolfe (2000), 88 Ohio St.3d 246 and R.C. 3937.31¹ do not apply. Plaintiffs oppose Auto Owners' renewed motion for the reasons which follow.

First, the Supreme Court did not limit the scope of Wolfe v. Wolfe, *supra*, to consumer policies only, as Auto Owners suggests. Rather, "[e]very automobile insurance policy shall be issued for a policy period of not less than two years or guaranteed renewable for successive policy periods totaling not less than two years." Id at 249.

Second, although Auto Owners contends that R.C. 3937.30 to 3937.39 and the protection those statues collectively provide is only intended for individual consumers and not

¹ Requires that every automobile liability insurance policy have a minimum guaranteed two year policy period and that each two year period represents a new and successive policy.

for commercial policies, an examination of subsequent legislation, public policy, equity and common sense mandate that the statutory protection should and must extend to automobile insurance policies issued to commercial entities.

R.C. 3937.30 through 3937.39 is collectively entitled "Cancellation and Nonrenewal of **Automobile Insurance**." This section of the code was enacted in 1971, and last amended in 1980. Subsequently, in 1987, the General Assembly enacted R.C. 3937.25 through 3937.27, collectively entitled "Cancellation and Nonrenewal of **Commercial Insurance**." R.C. 3937.25(A) dealing with reasons for, and, notice of, cancellation provides:

(A) After a policy of commercial property insurance, commercial fire insurance, or commercial casualty insurance other than fidelity or surety bonds and **automobile insurance as defined in section 3937.30** of the Revised code has been in effect for more than ninety days, a notice of cancellation for such policy shall not be issued by a licensed insurer unless . . .

(emphasis added)

Note that in each section of 3937.25 through 3937.27, when there is a reference to the type of policy covered, specifically excepted out is "**automobile insurance** as defined in section 3937.30 of the Revised Code." See e.g. 3937.25(D), 3937.25(E), 3937.26(A), and 3937.27(A). Thus, specifically excluded from special statutory provisions governing **commercial insurance** policies of insurance on the subject of cancellation and renewal are **automobile insurance** policies. If R.C. 3937.30 through 3937.39 does not include automobile liability insurance policies issued to commercial entities, then there would be absolutely no reason to specifically address and exempt out from the code sections on commercial insurance, automobile insurance policies. The only logical conclusion that can be reached is that the legislature intended **all automobile insurance** policies - - whether issued to an individual or a commercial concern - - to be governed by R.C. 3937.30 through 3937.39. Otherwise, there would be statutory

cancellation and nonrenewal provisions for virtually all types of casualty insurance policies except automobile liability insurance policies issued to commercial insured. Such a result would be illogical and create a void in the law where none was intended.

More specific to the point in issue, R.C. 3937.25(D) provides in relevant part:

(D) Nothing in division (A) of this section shall be construed to prevent an insurer from writing a policy of commercial property insurance, commercial fire insurance, or commercial casualty insurance other than automobile insurance as defined in Section 3937.30 of the Revised Code for a period greater than one year and providing in such policy that the insurer may issue a notice of cancellation of such at least thirty days prior to an anniversary of such policy, with the effective date of cancellation being that anniversary.

(emphasis added)

Again, if as Auto Owners contends, R.C. 3937.30 through 3937.39 does not pertain to automobile liability insurance policies issued to commercial insured, the legislature would not in a section on commercial insurance have excepted out automobile policies defined in R.C. 3937.30 (which are policies issued to individual consumers.) By specifically exempting out automobile policies as defined in R.C. 3937.30 from the provision on commercial insurance, the legislature intended to have the provision relating to a minimum two year guarantee period apply to automobile insurance issued to a commercial insureds rather than the one year period provision found in R.C. 3937.25(D).

R.C. 3937.30 through 3937.39 provide other protections to the consuming public such as protection against cancellation without notice, procedures for cancellation, notice provisions on refusal to renew and prohibitions against failing to renew automobile insurance due to age, national origin, creed, or race of the applicant or insured. Under Auto Owners' construction, there's no statutory protection for automobile policies issued to commercial consumers. Thus, a minority business owner or senior citizen CEO procuring automobile

insurance for their companies could be denied coverage because of their race, creed or age and surely that is not the case! There is no “consumer protection” afforded an individual insured that isn’t intended to be provided to everyone. Otherwise stated, there is nothing different about a commercial insured than an individual insured in terms of the protections provided by the act of R.C. 3937.30 to 3937.39. There is nothing a commercial insured has which makes it better able to protect its own rights with respect to these protections than an individual insured. A commercial insured, just as much as an individual insured, needs protection against any potentially unscrupulous automobile insurer who would fail to renew based on age, national origin or race. A commercial insured needs proper notice of cancellation or non-renewal or attempts to unilaterally water down agreed upon coverage within two years of the issuance of the policy. There is nothing intrinsically different about a commercial insured than an individual insured which helps it fight such insurance practices. Clearly, the General Assembly didn’t intend to protect one class of insureds from such practices and not others. Such a construction would present serious equal protection problems.²

While there is no case law specifically addressing the issue of whether R.C. 3937.31 to 3937.39 applies to automobile insurance policies issued to commercial insureds, the few cases which cite these sections indicate that the statute is broadly construed to effectuate public policy. In Langston v. Progressive Cas Ins. Co. (1977), 56 Ohio App. 2d 17, the Franklin County Court of Appeals rejected the insurer’s argument that its automobile insurance policy did not include a motorcycle policy. After holding that a motorcycle may qualify as a private passenger vehicle, the Court went on to hold:

The intent of such statutory enactment is to cover those on our streets and highways who purchase such insurance coverage to be

² Statutes are to be construed so as to avoid unconstitutional application, not invite them.

protected in their damage and injury from those who are not covered by appropriate liability insurance . . .

A motorcycle policy issued for only one year without a guarantee of a renewal for a like period contravenes the requirements of R.C. 3937.31(A) . . .

Likewise, in DeBose v. Travelers Ins. Co. (1983), 6 Ohio St.3d 65, 67, the

Supreme Court observed:

It is beyond reasonable dispute that R.C. 3937.30 *et seq.* are primarily designed to protect the public from the dangers which uninsured motorists pose. R.C. 3937.30 *et seq.* are primarily designed to protect the public from the dangers which uninsured motorists pose. R.C. 3937.31(A) attempts to ameliorate this threat by mandating that insureds whose policies have been in effect for less than two years receive notice of any planned cancellation of their policies in time for them to secure new coverage. Appellee's interpretation of the subject code provisions would frustrate, rather than further, the statute's laudatory objective.

In Wolfe, *supra* at 249-50, the Supreme Court ruled:

One of the purposes behind R.C. 3937.31 is to ensure that consumers of automobile liability insurance are able to maintain the level of coverage and policy limits that they had originally contracted for . . . Second, the statute is intended to protect insureds from unilaterally being left without the protections that automobile insurance coverage affords by requiring that insurers provide an adequate method of notification when canceling insurance policies . . .

It is clear that the public policy of this state, as gleaned through the Acts of the General Assembly, is to ensure that all motorists maintain some form of liability coverage on motor vehicles operated within Ohio . . . R.C. 3937.31(A) attempts to ameliorate this threat (i.e. dangers posed by uninsured motorists) by mandating that insureds whose policies have been in effect for less than two years receive notice of any planned cancellation of their policies in time for them to secure new coverage.

It would be inconsistent with public policy to hold that these same protections didn't apply to automobile insurance policies issued to commercial insureds. The wholesale exemption of automobile insurance policies from these statutory protections would not minimize

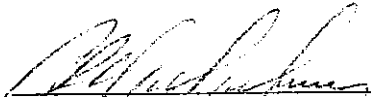
the dangers uninsured motorists pose; rather it would have the opposite effect, increasing the number of uninsured motorists. By way of example only, if these statutory protections didn't exist for automobile policies issued to commercial insureds, Ohio would not have any statutes governing notice, renewal or cancellation of insurance coverage and insurers could restrict, reduce and limit agreed upon coverage within two years of the policy's issuance. Auto Owners' interpretation does not further public policy, but undercuts it.

In analyzing R.C. 3937.31, the Supreme Court in Wolfe, *supra* at 251, held that the mandatory requirements of R.C. 3937.18 (mandatory offering of UM/UIM coverage) had to be considered. Every motor vehicle policy delivered or issued in Ohio must offer UM/UIM coverage. Ohio did not carve out a special exception for policies issued to commercial insureds. Moreover, it is well settled that such coverage is for the benefit of, and follows, people not vehicles. Martin v. Midwestern Group Ins. Co. (1994), 70 Ohio St.3d 478, ¶ one of the syllabus. A commercial insured is comprised of individuals. "Since a corporation can act only by and through real live persons, it would be nonsensical to limit protection solely to the corporate entity, since a corporation itself, cannot occupy an automobile, suffer bodily injury or death, or operate a motor vehicle." Scott Pontzer v. Liberty Mut. Fire Ins. Co. (1999), 85 Ohio St. 3d 660, 664. Thus, making a distinction between commercial insureds and individual insureds as urged by Auto Owners, with respect to the statutory protections intended to protect against the risks of damages and injuries inflicted by uninsured/underinsured motorists, would be contrary to public policy and illogical. In order to promote and protect the public, the persons insured by an automobile policy issued to a commercial insured need the statutory protections (adequate notice before non-renewal or cancellation, minimum two year guarantee period, mandatory offering of

UM/UIM coverage, prohibitions against non-renewal on the basis of age, race, creed or national origin) every bit as much as individual insureds.

Based upon the above, Auto Owners' interpretation must be rejected as it is inconsistent with, and contrary to, subsequent legislation, public policy, equity and common sense. Plaintiffs, therefore, respectfully urge this Court to once again, overrule Auto Owners' renewed motion for summary judgment.

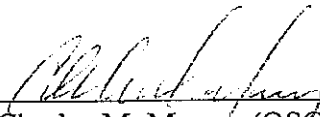
Respectfully submitted,



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CERTIFICATION

This is to certify that on this 25th day of July, 2000, a copy of the foregoing Plaintiff's Memorandum Contra Second Renewed Motion for Summary Judgment by Defendant Auto Owners' Insurance Company was served by regular U.S. mail, postage prepaid upon: John P. Gallagher, Fauver, Tattersall & Gallagher P.L.L., 5333 Meadow Lane Court, Elyria, Ohio 44035-1469; Larry C. Greathouse, Quandt, Giffels and Buck Co., L.P.A., 800 Leader Building, Cleveland, Ohio 44114; Office of the Attorney General, Betty Montgomery, State Office Tower, 30 East, Broad Street, Columbus, OH 43266-0410.



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