

December 2003

## Supreme Court of Ohio Limits Scott-Pontzer

### Ohio Supreme Court Reverses Direction on Uninsured/Underinsured Motorist Claims - Decision Affects All Ohio Employers With Business Auto Coverage in Ohio

On November 5, 2003, the Supreme Court of Ohio dramatically limited the infamous June 1999 *Scott-Pontzer* decision. *Scott-Pontzer* held that injured parties in motor vehicle accidents could seek uninsured/underinsured motorist (UM/UIM) coverage under their employer's automobile liability policies even though the injured parties were off work and not driving a company vehicle.

*Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, has changed *Scott-Pontzer* and its progeny. In *Galatis*, the Court held that:

Absent specific language to the contrary, a policy of insurance that names a corporation as an insured for uninsured or underinsured motorist coverage covers a loss sustained by an employee of the corporation only if the loss occurs within the course and scope of employment.

This decision might finally put an end to much of the four years of litigation across Ohio's state and federal courts resulting from *Scott-Pontzer*. After *Galatis*, only employees injured in the course and scope of their employment can bring claims for UM/UIM coverage under their employer's business automobile liability policies.

*Galatis* is a very good result for insurers and employers in Ohio - it substantially modifies the holding of *Scott-Pontzer*. In *Scott-Pontzer*, the Ohio Supreme Court held that the term "you" when referring to the corporate named insured was ambiguous. Because almost every business auto policy used the term "you" to refer to a corporate insured, most courts found those policies ambiguous. Using this "ambiguity," some

employees successfully argued they were entitled to UM/UIM coverage under their employers' business auto policies, even when the employees were injured off-duty and even when driving their personal vehicles. The *Scott-Pontzer* holding was further extended to family members of employees.

Insurance companies responded with numerous defenses. Some succeeded, but each defense was heavily litigated. *Galatis*, however, provides a simple solution. *Galatis* now limits *Scott-Pontzer* by providing that the term "you" is not ambiguous when referring to corporate insureds in UM/UIM endorsements. *Galatis* also eliminates the theory that an employee's family members were entitled to UM/UIM coverage under business auto policies provided to the employer. In this manner, *Galatis* ended the ability of injured parties to recover benefits under their employers' (or their family members' employers') business auto policies. Until Ohio's UM/UIM statute was amended on October 31, 2001, Ohio courts also could impose UM/UIM coverage on a policy, even where the insurer and employer did not intend such coverage, or even where the employer attempted to reject it. The effect of *Galatis* on such imposed coverage is unclear, although it seems likely that off-duty employees will be denied coverage under their employers' policies.

Joined in the judgment by Chief Justice Moyer, Justice Stratton and Judge DeGenaro (sitting by assignment to fill the seat of then-Justice Cook), Justice O'Connor wrote the opinion in *Galatis*. Justices Resnick, Sweeney and Pfeifer offered vigorous dissents in the case.

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The injured parties in *Galatis* and plaintiffs' attorney groups such as the Ohio Academy of Trial Lawyers have filed motions for reconsideration in the

*Galatis* case arguing that the Court's decision was procedurally improper. Although reconsideration motions of this sort rarely succeed, it is possible that *Galatis* could be vacated. Also, the Supreme Court of Ohio has other UM/UM cases pending before it that could affect Ohio employers' business auto policies regarding UM/UM coverage to off-duty employees.

*Galatis* was a close and contentious decision with strong dissents affecting all Ohio employers who have business automobile coverage in Ohio. Although Ohio's General Assembly "fixed" *Scott-Pontzer* by enacting legislation that affected all business auto policies issued after October 31, 2001, *Scott-Pontzer* applied to all business auto policies providing coverage in Ohio. Though *Galatis* appears to have solved *Scott-Pontzer* for those business auto policies issued prior to October 31, 2001, it is still possible the Ohio Supreme Court could change its mind - in the near future or a year from now when the Ohio Supreme Court could have up to four new faces. Also, other UM/UM cases remain pending before the Ohio Supreme Court, so the rule of law could be further modified.

Porter Wright regularly counsels its clients on issues concerning insurance coverage. If you need legal counsel on insurance coverage matters, please contact one of the attorneys listed below.

For questions or concerns specifically about the effect of *Galatis* or Ohio UM/UM law on your business, please call one of the listed Ohio attorneys, designated with an asterisk(\*).

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