



Weston Hurd Client Advisory - May 2013

Ohio Supreme Court Rules that an UM Claim Is Not Barred Even Though Plaintiff Was Not Legally Entitled to Recover Damages from Tortfeasor

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In *Marusa, et al. v. Erie Ins. Co.*, slip opinion 2013-Ohio-1957, decided on May 21, 2013, the Ohio Supreme Court clarified and distinguished its prior holding in *Snyder v. Am. Fam. Ins. Co.*, 114 Ohio St.3d 239, 2007-Ohio-4004.

Snyder's Statutory Definition of an Uninsured Motorist

In 2007, the Ohio Supreme Court in *Snyder* held that a "policy provision limiting the insured's recovery of uninsured or underinsured-motorist benefits to amounts which the insured is 'legally entitled to recover' is enforceable, and its effect will be to preclude recovery when the tortfeasor is immune from liability under R.C. Chapter 2744."

The *Snyder* Court went on to hold, however, that its decision did not prevent insurers from offering uninsured motorist coverage without precluding recovery because of a tortfeasor's immunity.

Background Facts

In November 2009, Maria Marusa and her daughter, Melanie, sustained bodily injuries as a result of a motor vehicle collision with Officer Michael Canda who was operating his police cruiser. At the conclusion of discovery, the parties stipulated that: (1) Officer Canda and his employer were immune from suit under the Ohio Political Subdivision Tort Liability Act; and (2) Officer Canda qualified as an "uninsured motorist" under the terms of the insurance policy Maria Marusa had with Erie Insurance.

Procedural History

In its answer to plaintiff's complaint, Erie Insurance claimed that it was not obligated to pay damages because, despite the policy language and despite the stipulations reached by the parties, the Marusas were not "legally entitled to recover" from the tortfeasor. Citing *Snyder v. Am. Fam. Ins. Co.*, 114 Ohio St.3d 239, 2007-Ohio-4004.

The trial court granted Erie Insurance Company's motion for summary judgment, holding that the Marusas were precluded from recovery under the terms of the policy. The Eighth District

Court of Appeals affirmed and concluded that the *Snyder* case controlled. The Ohio Supreme Court accepted the Marusa's discretionary appeal. 131 Ohio St.3d 1552, 2012-Ohio-2223.

Ohio Supreme Court Holdings

The *Marusa* Court made these rulings in its decision:

1. "Policy defining 'uninsured motor vehicle' as motor vehicle whose operator has immunity under the Ohio Political Subdivision Tort Liability Law" provides coverage for damages caused by tortfeasor who is immune under tort law.
2. "Specific definitional language prevails over general language in policy that insurer will pay damages that insured is legally entitled to recover."

Rationale

Erie Insurance Company argued that even though the policy contained uninsured motorist coverage and that Officer Canda was an insured motorist, the Marusas were not "legally entitled to recover" damages as a result of the officer's immunity, citing *Snyder v. Am. Fam. Ins. Co.* (2007), 114 Ohio St.3d 239.

The Ohio Supreme Court disagreed. The Court first explained that when interpreting an insurance contract, any ambiguities will be strictly construed against the insurer and liberally in favor of the insured. *Dominish v. Nationwide Ins. Co.* (2011), 129 Ohio St.3d 466.

The Court went on to note that based upon the language contained in Erie Insurance's policy, the only precedent the Court needed to consider was *Snyder*. The *Snyder* Court had previously ruled that a policy provision which limited an insured's recovery of uninsured or underinsured benefits to amounts the insured is legally entitled to recover is enforceable and precludes recovery when the tortfeasor is immune from liability. The *Snyder* Court, however, also stated that insurers could offer an endorsement for uninsured motorist coverage without precluding recovery because of tortfeasor immunity.

The Marusa's policy of insurance had that very type of uninsured motorist endorsement, and, in the definition section, an uninsured motor vehicle included a motor vehicle whose owner or operator has immunity under the Ohio Political Subdivision Tort Liability Law. Nevertheless, Erie maintained that additional language in the policy, which stated that Erie would pay damages that the insured is "legally entitled to recover," triggered the *Snyder* holding.

The Ohio Supreme Court noted that the critical difference between this case and *Snyder* is that, in *Snyder*, the plaintiff relied upon the statutory definition of an "uninsured motor vehicle," while in *Marusa*, the plaintiff relied on the contractual definition contained in the policy. As such, the Court found that *Snyder* did not control and remanded the case back to the trial court.

Assessment

This is an important decision that clarifies the holding in *Snyder* and affirms an insurer's ability to respond to market demands and to offer underinsured motorist coverage even though the tortfeasor is immune from suit. Insurers who elect to offer this coverage should be aware that the general limitation language of "legally entitled to recover" is subject to, and trumped by, the

specific definition of an uninsured vehicle as found in the policy. Three justices dissented and would have held that *Snyder* controls.

The question which remains is whether *Snyder* will be overruled in its entirety at some point, or whether the analysis simply comes down to a distinction between statutory and contractual definitions and the manner in which the claim is framed.

Please contact your Weston Hurd attorney if you have any questions about this decision.

Ohio Supreme Court Decision

[Marusa, et al. v. Erie Ins. Co.](#)



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