Ohio Tenth District Court of Appeals Favors the Insured in Interpretation of Uninsured Motorist Statute

Unanimous ruling limits insurance companies' statutory set-off rights solely to automobile insurance; also forbids the set-off of amounts received from subsequent torts directly and proximately caused by another's negligence

December 15, 2006 (Columbus, OH) - The Court of Appeals of Ohio, Tenth Appellate District, vindicated Antoinette Gray ("Gray") and her family earlier this month by reversing a ruling of the Franklin County Court of Common Pleas that granted summary judgment to Grange Mutual Casualty Company ("Grange"). The lower court opinion, granted on September 25, 2005, found that Grange was entitled to set off the insurance settlement from a medical malpractice insurance policy against the uninsured/underinsured motorist ("UM/UIM") coverage limits in plaintiffs' policies, resulting in no UM/UIM coverage being available to plaintiffs. The Court of Appeals reversed that judgment.

"We are extremely pleased with the decision of the Court of Appeals," said Keith Karr, lead trial counsel for the Gray family and the founding principal of the Columbus-based law firm Karr & Sherman, Co., LPA. "The court took the path that protects Ohio citizens; this was simply the right decision to make."

At the core of the decision was an interpretation of the UM/UIM statute, Ohio Revised Code section 3937.18(A)(2). Specifically, the court looked to the set off language: "The policy limits of the underinsured motorist coverage shall be reduced by those amounts available for payment under all applicable bodily injury liability bonds and insurance policies covering persons liable to the insured." Two portions of the statute were deemed ambiguous due to the possibility of dual interpretations. "The Court correctly held that Grange could only set off the amount recovered from the original tortfeasor, and not the doctors," remarked Rick Ashton, an associate attorney with Karr & Sherman. He further added that, "under Grange's expansive view of the statute, they would have been able to reduce their liability by the amount recovered by any conceivable tort claim and recovery—this view is beyond anything ever envisioned by the Ohio General Assembly when it drafted the statute at issue."

Judge McGrath, writing for the unanimous court, examined public policy and the intent of the drafters in finding a decision favorable to the plaintiffs. He wrote that "[i]f Grange is permitted to set off the medical malpractice in defendants' insurance settlement as well as [the tortfeasor's] insurance payment, it receives a windfall based solely upon the unfortunate circumstance that its insured was subjected to medical malpractice following the automobile accident." McGrath also looked to the statute, case law and Grange's own policy language in determining that set off is allowed only from automobile liability policies covering persons liable to the insured for original injuries sustained in the automobile accident.

"This decision should have a large impact on Ohio case law dealing with insurance conflicts," commented attorney Karr. "It was an issue of first impression, and the court got it right. Insurance companies surely should not be allowed to set off any and all plaintiff recoveries from their portion of the responsibility no matter the source."

No word has been given as to whether Grange will appeal the decision to the Ohio Supreme Court.

About Karr & Sherman Co. LPA

Karr & Sherman Co. is a Legal Professional Association located in Columbus, OH. The firm focuses on trial work and tax law. Through the work of four talented Attorneys, Karr & Sherman Co., L.P.A. treats their practice as a profession with their clients' interest coming first.