

IN RE UNINSURED AND UNDERINSURED MOTORIST COVERAGE CASES.

[Cite as *In re Uninsured & Underinsured Motorist Coverage Cases*, 100 Ohio St.3d 302, 2003-Ohio-5888.]

Motor vehicles — Automobile liability insurance — Uninsured/underinsured motorist coverage — Employer’s commercial automobile liability policy covers loss sustained by employee only if loss occurs within the course and scope of employment — Scott-Pontzer v. Liberty Mut. Fire Ins. Co., limited — Designation of “family members” of the named insured as other insureds does not extend coverage to a family member of an employee of a corporation.

(Submitted November 3, 2003 — Decided November 5, 2003.)

{¶1} The following dispositions of currently pending appeals, certified conflicts, and certified questions of state law are hereby entered based on our decision in *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256.

Moyer, C.J., Lundberg Stratton, O’Connor and O’Donnell, JJ., concur.
Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

I

{¶2} The judgments of the courts of appeals in the following cases are affirmed:

{¶3} 2002-1122 and 2002-1459. *Alatsis v. Nationwide Ins. Ent.*, Franklin App. No. 01AP-1038, 2002-Ohio-2906, 2002 WL 1275521.

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{¶4} 2002-1245 and 2002-1271. *Estate of Houser v. Motorists Ins. Co.*, Auglaize App. No. 2-02-02, 2002-Ohio-2845, 2002 WL 1299778.

{¶5} 2002-1336. *Withem v. Cincinnati Ins. Co.*, Franklin App. No. 01AP-1286, 2002-Ohio-3067, 2002 WL 1339062.

{¶6} 2002-1925 and 2002-2121. *Skala v. Grange Ins. Co.*, Summit App. No. 20941, 2002-Ohio-5040, 2002 WL 31115067.

{¶7} 2002-1989. *Addie v. Linville*, Cuyahoga App. Nos. 80547 and 80916, 2002-Ohio-5333, 2002 WL 31195177.

{¶8} 2002-2066 and 2002-2188. *Miller v. Grange Mut. Cas. Co.*, Stark App. No. 2002CA00058, 2002-Ohio-5763, 2002 WL 31386738.

{¶9} 2002-2139. *Szekeres v. State Farm Fire & Cas. Co.*, Licking App. No. 02CA00004, 2002-Ohio-5989, 2002 WL 31439821.

{¶10} 2002-2158. *Thorne v. Amerisure Ins. Co.*, Summit App. No. 21137, 2002-Ohio-6123, 2002 WL 31513632.

{¶11} 2003-0074. *Knox v. Travelers Ins. Co.*, Franklin App. No. 02AP-28, 2002-Ohio-6958, 2002 WL 31819651.

{¶12} 2003-0153. *Niese v. Maag*, Putnam App. No. 12-02-06, 2002-Ohio-6986, 2002 WL 31778046.

{¶13} 2003-0239. *Mlecik v. Farmers Ins. Co.*, Cuyahoga App. No. 81110, 2002-Ohio-6222, 2002 WL 31528752.

{¶14} 2003-0353. *Bergmeyer v. Auto Owners Ins. Co.*, Stark App. No. 2002CA00228, 2003-Ohio-133, 2003 WL 124254.

{¶15} 2003-0391 and 2003-0535. *Wilke v. Montes*, Ottawa App. No. OT-02-003, 2003-Ohio-217, 2003 WL 139751.

{¶16} 2003-0492 and 2003-0493. *Rice v. Buckeye State Mut. Ins. Co.*, Logan App. No. 8-02-24, 2003-Ohio-390, 2003 WL 193472.

{¶17} 2003-0500. *Jones v. Gue*, Summit App. Nos. 21118 and 21136, 2003-Ohio-358, 2003 WL 187574.

{¶18} 2003-0510. *Mazza v. Am. Continental Ins. Co.*, Summit App. No. 21192, 2003-Ohio-360, 2003 WL 187580.

{¶19} 2003-0524. *Wiley v. Grange Mut. Cas. Co.*, Summit App. No. 21145, 2003-Ohio-539 2003 WL 246009.

{¶20} 2003-0641. *Buckley v. Wintering*, Franklin App. No. 02AP-511, 2003-Ohio-824, 2003 WL 462476.

{¶21} 2003-0778 and 2003-0780. *Musser v. Musser*, Adams App. No. 02CA750, 2003-Ohio-1440, 2003 WL 1463141.

{¶22} 2003-0794. *Heath v. Fid. & Cas. Co. of New York*, Summit App. No. 21221, 2003-Ohio-1303, 2003 WL 1240384.

{¶23} 2003-0805. *Adams v. Fink*, Ross App. No. 02CA2660, 2003-Ohio-1457, 2003 WL 1494982.

{¶24} 2003-0840 and 2003-0981. *Frisch v. CNA Commercial Ins.*, Seneca App. Nos. 13-02-36 and 13-02-40, 2003-Ohio-1574, 2003 WL 1617968.

{¶25} 2003-0938. *Wheeler v. W. Res. Mut. Cas. Co.*, Wayne App. No. 02CA0043, 2003-Ohio-1806, 2003 WL 1825031.

{¶26} 2003-0972. *Shanabarger v. Hartford Ins. Co.*, Hancock App. No. 5-02-61, 2003-Ohio-1912, 2003 WL 1878770.

{¶27} 2003-1065. *Kohntopp v. Hamilton Mut. Ins. Co.*, Wood App. No. WD-02-033, 2003-Ohio-2793, 2003 WL 21255940.

{¶28} 2003-1107. *Davis v. Westfield Cos.*, Lorain App. No. 02CA008114, 2003-Ohio-2339, 2003 WL 21040395.

{¶29} 2003-1122 and 2003-1159. *Universal Underwriters Ins. Co. v. Estate of Miller*, Stark App. No. 2002CA00225, 2003-Ohio-2489, 2003 WL 21101080.

{¶30} 2003-1181. *Landers v. Lucent Technologies, Inc.*, Cuyahoga App. Nos. 81506 and 81531, 2003-Ohio-3326, 2003 WL 21468908.

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{¶31} 2003-1183. *Rosenberry v. Morris*, Stark App. No. 2002-CA-00399, 2003-Ohio-2743, 2003 WL 21234586.

{¶32} 2003-1205. *DeLong v. Myers*, Knox App. No. 02CA000035, 2003-Ohio-2702, 2003 WL 21213465.

{¶33} 2003-1268. *Jones v. Morehart*, Seneca App. No. 13-03-06, 2003-Ohio-2995, 2003 WL 21354786.

{¶34} 2003-1271. *Hans v. Hartford Ins. Co.*, Hamilton App. No. C-020500, 2003-Ohio-3045, 2003 WL 21360402.

{¶35} 2003-1277. *Radwandky v. Hartford Ins. Co.*, Cuyahoga App. No. 82249, 2003-Ohio-3029, 2003 WL 21360792.

{¶36} 2003-1307. *Young v. Plageman*, Hancock App. No. 5-02-66, 2003-Ohio-2996, 2003 WL 21354792.

{¶37} 2003-1327. *Rucker v. Davis*, Ross App. No. 02CA2673, 2003-Ohio-3191, 2003 WL 21404101.

{¶38} 2003-1328. *Rucker v. Davis*, Ross App. No. 02CA2677, 2003-Ohio-3189, 20023WL 21404343.

{¶39} 2003-1360. *Smith v. Liberty Mut. Ins. Co.*, Summit App. No. 21311, 2003-Ohio-3160, 2003 WL 21396779.

{¶40} 2003-1375 and 2003-1433. *Westfield Ins. Co. v. Metzler*, Summit App. No. 21517, 2003-Ohio-3788, 2003 WL 21658412.

{¶41} 2003-1470 and 2003-1471. *Hoop v. Nationwide Mut. Fire Ins. Co.*, Montgomery App. No. 19686, 2003-Ohio-3772, 2003 WL 21658596. Discretionary appeal and certified conflict accepted, motion to consolidate granted, and judgment affirmed.

{¶42} 2003-1477. *Cincinnati Ins. Co. v. Perkins*, Paulding App. No. 11-03-04, 2003-Ohio-3586, 2003 WL 21537634. Discretionary appeal allowed and judgment affirmed.

{¶43} The judgments of the court of appeals in the following cases are reversed:

{¶44} 2002-0803 and 2002-0837. *German v. Therm-O-Disc, Inc.* (Mar. 28, 2002), Richland App. No. 01CA51-2, 2002-Ohio-1848, 2002 WL 553155.

{¶45} 2002-1854. *Roberts v. Wausau Business Ins. Co.*, 149 Ohio App.3d 612, 2002-Ohio-4734, 778 N.E.2d 594.

{¶46} 2002-1986. *Shaw v. State Farm Ins. Co.*, Cuyahoga App. No. 80471, 2002-Ohio-5330, 2002 WL 31195404.

{¶47} 2002-2123. *Kekic v. Royal & SunAlliance Ins. Co.*, Cuyahoga App. No. 80693, 2002-Ohio-5563, 2002 WL 31320296.

{¶48} 2002-2198. *Vicars v. McCray*, Summit App. No. 21087, 2002-Ohio-6033, 31465792.

{¶49} 2002-2214. *Greene v. Westfield Ins. Co.*, Stark App. No. 2002CA00114, 2002-Ohio-6179, 2002 WL 31521451.

{¶50} 2002-2228. *Nationwide Agribusiness Ins. Co. v. Wagner*, Summit App. No. 21013, 2002-Ohio-6119.

{¶51} 2003-0195 and 2003-0430. *Greene v. Westfield Ins. Co.*, Stark App. No. 2002CA00126, 2002-Ohio-7210, 2002 WL 31883437.

{¶52} 2003-0213. *Monroe Guar. Ins. Co. v. Kuba*, Stark App. No. 2002CA00175, 2002-Ohio-7010, 2002 WL 31831412. Proposition of Law No. III is dismissed as having been improvidently allowed.

{¶53} 2003-0232. *Warren v. Hartford Ins. Co.*, Cuyahoga App. No. 81139, 2002-Ohio-7067, 2002 WL 31839170.

{¶54} 2003-0301. *Westfield Ins. Co. v. Wausau Business Ins. Co.*, Stark App. Nos. 2002CA00138 and 2002CA00150, 2002-Ohio-7391, 2002 WL 32098117.

{¶55} 2003-0522. *Congrove v. Wausau Ins. Cos.*, Pickaway App. No. 02CA8, 2003-Ohio-1083, 2003 WL 928485.

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{¶56} 2003-0523. *Carle v. Stumbo*, Pickaway App. No. 02CA2, 2003-Ohio-1084, 2003 WL 929217.

{¶57} 2003-0525 and 2003-0603. *Brozovic v. St. Paul Fire & Marine Ins. Co.*, Cuyahoga App. No. 80868, 2003-Ohio-554, 2003 WL 252483.

{¶58} 2003-0532. *Pilo v. Liberty Mut. Fire Ins. Co.*, Ashland App. No. 02-COA-038, 2003-Ohio-662, 2003 WL 302405.

{¶59} 2003-0561. *Dimalanta v. Travelers Ins. Co.*, Cuyahoga App. No. 81445, 2003-Ohio-562, 2003 WL 253749.

{¶60} 2003-0729. *Sekula v. Hartford Ins. Co.*, Cuyahoga App. No. 81295, 2003-Ohio-1160, 2003 WL 1090649.

{¶61} 2003-0844. *Taylor v. Universal Underwriters Ins. Co.*, Franklin App. No. 01AP-922, 2003-Ohio-1446, 2003 WL 1495561.

{¶62} 2003-0845. *Grubb v. Michigan Mut. Ins. Co.*, Montgomery App. No. 19575, 2003-Ohio-1558, 2003 WL 1595175.

{¶63} 2003-0872 and 2003-0983. *Stout v. Travelers Prop. Cas. Ins. Co.*, 152 Ohio App.3d 355, 2003-Ohio-1643, 787 N.E.2d 725.

{¶64} 2003-0896. *Wilson v. Haimerl*, Madison App. No. CA2002-08-017, 2003-Ohio-1774, 1795600.

{¶65} 2003-0923 and 2003-1068. *Archer v. ACE, USA*, 152 Ohio App.3d 455, 2003-Ohio-1790, 788 N.E.2d 662.

{¶66} 2003-0942. *Gates v. Nationwide Ins. Co.*, Clermont App. No. CA2002-10-086, 2003-Ohio-1773, 2003 WL 1795595.

{¶67} 2003-0957. *Lipstreu v. The Hartford*, Cuyahoga App. No. 81515, 2003-Ohio-1729 and 2003-Ohio-1955, 2003 WL 1759608.

{¶68} 2003-1114. *Repl v. Jones*, Summit App. No. 21299, 2003-Ohio-2350, 2003 WL 21041231.

{¶69} 2003-1250. *Hughes v. Nationwide Mut. Ins. Co.*, Franklin App. Nos. 02AP-1254 and 02AP-1256.

{¶70} 2003-1254. *Hartfield v. Toys “R” Us*, Lucas App. Nos. L-02-1218 and L-02-1228, 2003-Ohio-2905, 2003 WL 21299928.

{¶71} 2003-1319 and 2003-1426. *Tulak v. Meridian Ins. Co.*, Tuscarawas App. No. 2002-AP-11-0088, 2003-Ohio-3290 and 2003-Ohio-4139, 2003 WL 21452666.

{¶72} 2003-1394. *Pratt v. Safe Auto Ins. Co.*, Cuyahoga App. No. 81741, 2003-Ohio-3350, 2003 WL 21469172. Discretionary appeal allowed and judgment reversed.

{¶73} 2003-1400. *Stubbins v. Nationwide Agribusiness Ins. Co.*, Fulton App. No. F-02-031, 2003-Ohio-3456, 2003 WL 21500198. Discretionary appeal accepted on Propositions of Law Nos. I, II, and III.

III

{¶74} The judgments of the courts of appeals in the following cases are reversed in part:

{¶75} 2003-0258 and 2003-0415. *Poulton v. Am. Economy Ins. Co.*, Stark App. Nos. 2002-CA-00038 and 2002-CA-00061, 2002-Ohio-7214, 2002 WL 31883646. The judgment against Indiana Insurance Company is reversed.

{¶76} 2003-0825. *Edgell v. Monroe Guar. Ins. Co.*, Muskingum App. No. CT2002-0008, 2003-Ohio-1666, 2003 WL 1702993. The finding of coverage under the business automobile liability policy is reversed.

{¶77} 2003-0882. *Riggs v. Motorists Mut. Ins. Co.*, Franklin App. No. 02AP-876, 2003-Ohio-1657, 2003 WL 1701453. The finding of coverage under the business automobile liability policy is reversed.

{¶78} 2003-1086. *Morrison v. Emerson*, Stark App. No. 2002CA00414, 2003-Ohio-2708, 2003 WL 21213659. The judgment against Truck Insurance Exchange is reversed.

{¶79} 2003-1090. *Sagar v. Nationwide Mut. Fire Ins. Co.*, Franklin App. No. 02AP-1104, 2003-Ohio-2268, 2003 WL 21007127. The judgment against

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Nationwide Mutual Fire Insurance Company and Continental Insurance Company is reversed.

{¶80} 2003-1180. *Blake v. Midwestern Indemn. Co.*, Tuscarawas App. No. 2002AP060049, 2003-Ohio-2698, 2003 WL 21213430. The finding of coverage under the business automobile liability policy is reversed.

{¶81} 2003-1182. *Walker v. Hartford Fire Ins. Co.*, Butler App. No. CA2002-09-219, 2003-Ohio-2545, 2003 WL 21135333. The finding of coverage under the business automobile liability policy is reversed.

{¶82} 2003-1240. *Dalton v. Lumbermens Mut. Ins. Co.*, Stark App. No. 2002CA00198, 2003-Ohio-2897, 2003 WL 21290930. The finding of coverage under the business automobile liability policy is reversed.

{¶83} 2003-1343. *Ryan v. Dolin*, Cuyahoga App. No. 81689, 2003-Ohio-2738, 2003 WL 21234924. The finding of coverage under the business automobile liability policy is reversed.

{¶84} 2003-1396. *Haney v. Motorists Mut. Ins. Co.*, Tuscarawas App. No. 2002AP110093, 2003-Ohio-3412, 2003 WL 21489933. The judgment against Globe American Casualty Company is reversed.

IV

{¶85} The judgments of the courts of appeals in the following cases are affirmed in part and reversed in part:

{¶86} 2002-0740. *Purvis v. Cincinnati Ins. Co.* (Apr. 12, 2002), Greene App. No. 2001-CA-104, 2002 WL 538926. Appellants' third proposition of law is dismissed as having been improvidently allowed. The finding of coverage under the business automobile liability policy is reversed. The judgment of no coverage under the umbrella policy is affirmed.

{¶87} 2002-2075. *Pahler v. Motorists Mut. Ins. Co.*, Stark App. No. 2002CA00022, 2002-Ohio-5762, 2002 WL 31386706. The judgment in favor of

Continental Casualty Insurance Company is affirmed. The judgment in favor of Laura A. Pahler is reversed.

{¶88} 2003-0270. *Dalton v. Travelers Ins. Co.*, Stark App. Nos. 2001CA00380, 2001CA00393, 2001CA00407, and 2001CA00409, 2002-Ohio-7369, 2002 WL 32082856. The judgments in favor of Travelers Insurance Company, Grange Mutual Casualty Company, National Union Fire Insurance Company, and Federal Insurance Company are affirmed. The judgment against Grange Mutual Casualty Company under the umbrella policy is reversed.

{¶89} 2003-0827 and 2003-0867. *Akron Gen. Med. Ctr. v. James, Holmes* App. No. 2002 CA 009, 2003-Ohio-4931, 2003 WL 22144270. The determination of coverage under the business automobile liability policy is reversed. The determination of no coverage under the commercial liability insurance policy is affirmed.

{¶90} 2003-0886. *Franklin v. Am. Mfrs. Mut. Ins. Co.*, Cuyahoga App. No. 81197, 2003-Ohio-1340, 2003 WL 1356016. The determination of no coverage under *Ezawa v. Yasuda Fire & Marine Ins. Co. of Am.* (1999), 86 Ohio St.3d 557, 715 N.E.2d 1142, is affirmed. The finding of coverage under *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.* (1999), 85 Ohio St.3d 660, 710 N.E.2d 1116, is reversed.

{¶91} 2003-0925 and 2003-1028. *Heidt v. Fed. Ins. Co.*, Stark App. No. 2002CA00314, 2003-Ohio-1785, 2003 WL 1818205. The finding of coverage under the business automobile liability policy is reversed. The determination of no coverage under the commercial liability insurance policy is affirmed.

{¶92} 2003-1330 and 2003-1331. *Amore v. Grange Ins. Co.*, Richland App. No. 02CA76, 2003-Ohio-3202, 2003 WL 21419164. Motion to consolidate with case No. 2003-1329, *Amore v. Grange Ins. Co.*, granted. The judgment in favor of Tokio Marine and Fire Insurance Company, Ltd., is affirmed. The judgment against CNA Insurance Companies is reversed.

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{¶93} 2003-1384 and 2003-1714. *Cincinnati Ins. Co. v. Lang*, Lake App. No. 2002-L-063, 2003-Ohio-3267, 2003 WL 21434782. Discretionary appeal and certified conflict accepted. The judgment in favor of Federal Insurance Company and TIG Insurance Company is affirmed. The judgment against Continental Casualty Company is reversed.

V

{¶94} The judgment of the court of appeals in the following case is vacated:

{¶95} 2003-0427. *Grulich v. The Hartford*, Cuyahoga App. No. 80987, 2003-Ohio-652, 2003 WL 302412. The final order of the appellate court is vacated. The December 26, 2002 order, 2002-Ohio-7229, 2002 WL 31883335, is reinstated.

VI

{¶96} The following stays on briefing are removed:

{¶97} 2002-1742 and 2002-1783. *Wentling v. Motorists Ins. Cos.*, Stark App. No. 2002 CA 00027, 2002-Ohio-4672, 2002 WL 31002825.

{¶98} 2003-1081 and 2003-1092. *Gilchrist v. Gonsor*, Cuyahoga App. No. 80944, 2003-Ohio-2297, 2003 WL 21027290.

VII

{¶99} Certified Questions of State Law from the United States District Court, Northern District of Ohio, Western Division:

{¶100} 2003-0597. *Williams v. Zurich Am. Ins. Co.* (Mar. 26, 2003), No. 3:02CV7300.

{¶101} The following questions of law are moot:

{¶102} “1. Was the reduction in UM/UIM coverage executed on January 27, 2000, valid where the insured, a purchaser of a commercial automobile policy, received orally, rather than in writing, information about the availability of

UM/UIM coverage, the limits of and premium for such coverage, and a brief description of the coverage?”

{¶103} “2. Was coverage provided under a commercial automobile policy for injuries incurred by a passenger in a vehicle not owned or operated by a member of the passenger’s family, where ‘covered autos’ is defined as ‘only those “autos” you own’?”

{¶104} “3. If UM/UIM coverage is provided under the commercial automobile policy, is plaintiff required to pay the deductible under that policy?”

{¶105} The following question is answered in the negative:

{¶106} “4. Is a daughter of an employee of a company that purchased a commercial umbrella policy an insured under that policy, where that policy does not expressly provide coverage to employees’ family members?”

{¶107} 2003-0406. *Keegan v. Am. Internatl. Group, Inc.* (Feb. 25, 2003), No. 3:02CV7127.

{¶108} Both questions of law, quoted below, are moot and will not be answered:

{¶109} “A. Is the Whirlpool Corporation ‘self insured in the practical sense,’ so as to be exempt from R.C. 3937.18?”

{¶110} “B. If so, is the applicability of R.C. § 3937.18 affected by any noncompliance with R.C. § 4509.72 & Ohio Admin.Code § 4501:1-2-05?”