SUPREME COURT OF OHIO

# Granger v. Auto-Owners Ins.

2015-Ohio-3279 (Ohio 2015) · No. 2013-1527 · Decided August 18, 2015

## SUMMARY

The Supreme Court of Ohio held that an umbrella insurance policy arguably covered emotional-distress damages arising from alleged pre-leasing housing discrimination because emotional distress could encompass humiliation, a covered personal injury. The court further held that the inferred-intent doctrine did not apply because emotional distress is not inherently tied to housing discrimination. The court affirmed the appellate judgment recognizing the insurer's duty to defend.

## CASE DETAILS

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| COURT | Supreme Court of Ohio |
| WRITING FOR THE COURT | Pfeifer, J.; O'Connor, C.J.; Lanzinger, J.; French, J.; O'Neill, J.; O'Donnell, J.; Kennedy, J. |
| JURISDICTION | Ohio |
| DECIDED | August 18, 2015 |
| DOCKET | 2013-1527 |
| DISPOSITION | affirmed |
| PROCEDURAL POSTURE | Discretionary appeal from the Ninth District Court of Appeals' reversal of summary judgment for Auto-Owners on the insurer's duty to defend under an umbrella policy. |
| STANDARD OF REVIEW | De novo review of summary judgment and interpretation of the insurance policy; the court considered whether the pleadings arguably alleged a covered claim and whether the intentional-acts exclusion plainly applied. |
| PRECEDENTIAL VALUE | Published Ohio Supreme Court opinion; binding precedent in Ohio. |
| PARTIES | Auto Owners (Mutual) Insurance Company, Owners Insurance Company v. Steve Granger, Paul Steigerwald |

## TOPICS

duty to defend · insurance coverage · insurance · contract interpretation

## PRACTICE AREAS

insurance coverage | civil rights | contracts

## QUESTIONS PRESENTED

1. Whether the umbrella policy's coverage for humiliation and other specified harms arguably covered Kozera's allegation of emotional distress, thereby triggering a duty to defend.
2. Whether the umbrella policy's intentional-acts exclusion and Ohio's inferred-intent doctrine eliminated the duty to defend as a matter of law because the underlying claim involved pre-leasing housing discrimination.

## HOLDINGS

1. An allegation of emotional distress arguably invoked coverage under an umbrella policy that defined personal injury to include humiliation, because humiliation falls within the ordinary meaning of emotional distress and is a recognized injury in housing-discrimination cases.
2. The inferred-intent doctrine did not apply because emotional distress or humiliation is not an inherent or necessary result of pre-leasing housing discrimination. The intentional-acts exclusion therefore did not eliminate the insurer's duty to defend as a matter of law.

## KEY QUOTATIONS

> *"We hold that Kozera's claim of emotional distress invoked coverage under the policy."* (¶ 27)

> *"Humiliation is included within the ordinary meaning of "emotional distress." Kozera alleged emotional distress. That was enough to establish that Kozera's allegation could be covered under the policy."* (¶ 31)

> *"the doctrine of inferred intent applies only in cases in which the insured's intentional act and the harm caused are intrinsically tied so that the act has necessarily resulted in the harm."* (¶ 34)

> *"We cannot say that the personal injury was intended in this case, nor can we say that emotional distress is inherent in the very nature of housing discrimination."* (¶ 40)

## FACTUAL BACKGROUND

Steve Granger and Paul Steigerwald owned and rented an Akron property. Valerie Kozera alleged that Granger refused to rent to her because she had a child and that Granger made racially and familiarly discriminatory statements to housing testers. Kozera and the Fair Housing Contact Service sued the owners under federal and Ohio fair-housing laws, alleging out-of-pocket costs, emotional distress, and organizational harm, and later settled for $32,500. Auto-Owners denied coverage under the dwelling policy and did not provide a defense under the umbrella policy.

## PROCEDURAL HISTORY

After a federal housing-discrimination action against the insureds was settled, the insureds sued Auto-Owners and others concerning the insurers' failure to provide coverage. The trial court denied the insureds' summary-judgment motion and granted Auto-Owners' motion on the duty to defend and indemnify. The Ninth District reversed as to the umbrella policy's duty to defend, and the Supreme Court of Ohio allowed Auto-Owners' discretionary appeal and affirmed.

### DISPOSITION

affirmed

### CASES CITED

- Cincinnati Ins. Co. v. CPS Holdings, Inc., 115 Ohio St. 3d 306, 2007-Ohio-4917, 875 N.E.2d 31, ¶ 7
- Sharonville v. Am. Emps. Ins. Co., 109 Ohio St. 3d 186, 2006-Ohio-2180, 846 N.E.2d 833, ¶¶ 6, 13
- Cincinnati Indemn. Co. v. Martin, 85 Ohio St. 3d 604, 605, 710 N.E.2d 677 (1999)
- Westfield Ins. Co. v. Hunter, 128 Ohio St. 3d 540, 2011-Ohio-1818, 948 N.E.2d 931, ¶ 11
- Hybud Equip. Corp. v. Sphere Drake Ins. Co., Ltd., 64 Ohio St. 3d 657, 665, 597 N.E.2d 1096 (1992)
- Midwestern Indemn. Co. v. Craig, 106 Ohio App. 3d 158, 164, 665 N.E.2d 712 (1995)
- Cleveland Builders Supply Co. v. Farmers Ins. Group of Cos., 102 Ohio App. 3d 708, 657 N.E.2d 851 (1995)
- Am. Special Risk Ins. Co. v. A-Best Prods., Inc., 975 F. Supp. 1019, 1022 (S.D. Ohio 1997)
- Byrd v. Brandeburg, 932 F. Supp. 198, 200 (N.D. Ohio 1996)
- Bishop v. Pecsok, 431 F. Supp. 34, 38 (N.D. Ohio 1976)
- Keys v. U.S. Welding, Fabricating & Mfg., Inc., N.D. Ohio No. CV91-0113, 1992 WL 218302, at *9 (Aug. 26, 1992)
- Allstate Ins. Co. v. Campbell, 128 Ohio St. 3d 186, 2010-Ohio-6312, 942 N.E.2d 1090
- Preferred Risk Ins. Co. v. Gill, 30 Ohio St. 3d 108, 507 N.E.2d 1118 (1987)
- Gearing v. Nationwide Ins. Co., 76 Ohio St. 3d 34, 665 N.E.2d 1115 (1996)
- Physicians Ins. Co. of Ohio v. Swanson, 58 Ohio St. 3d 189, 569 N.E.2d 906 (1991)
- Seaton v. Sky Realty Co., 491 F.2d 634, 636-38 (7th Cir. 1974)
- United States v. Balistrieri, 981 F.2d 916, 931 (7th Cir. 1992)
- Carey v. Piphus, 435 U.S. 247, 263-64 (1978)
- Spence v. Board of Education, 806 F.2d 1198, 1200-01 (3d Cir. 1986)
- Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 292 (1964) (Goldberg, J., concurring)
- Ward v. United Foundries, Inc., 129 Ohio St. 3d 292, 2011-Ohio-3176, 951 N.E.2d 770, ¶ 19
- Ohio Govt. Risk Mgt. Plan v. Harrison, 115 Ohio St. 3d 241, 2007-Ohio-4948, 874 N.E.2d 1155, ¶ 19

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