

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
OHIO, EASTERN DIVISION

Everett Cash Insurance Co. v. Lora Howell, et al.

Everett Cash · No. 2:24-cv-4227 · Decided March 16, 2026

SUMMARY

The United States District Court for the Southern District of Ohio addresses Third-Party Defendants Jacobs Vanaman Agency Inc. and David Fitch’s motion for judgment on the pleadings and Lora and Justin Howell’s motion for leave to amend. The court dismisses the Howells’ negligent procurement claim under Ohio’s economic loss doctrine but allows their negligent misrepresentation claim to proceed. The court also determines that amendment may be permitted under the Federal Rules, although the proposed amendment would be futile in part.

CASE DETAILS

COURT	United States District Court for the Southern District of Ohio, Eastern Division
WRITING FOR THE COURT	Kimberly A. Jolson
JURISDICTION	United States District Court for the Southern District of Ohio, Eastern Division
DECIDED	March 16, 2026
DOCKET	2:24-cv-4227
DISPOSITION	other
PROCEDURAL POSTURE	Third-party defendants moved for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) seeking dismissal of negligent procurement and negligent misrepresentation claims. The Howell defendants moved for leave to amend their third-party complaint to clarify their claims and add an alternative breach of contract or quasi-contract claim.
STANDARD OF REVIEW	A Rule 12(c) motion is reviewed under the same standard as a Rule 12(b)(6) motion: the court construes the complaint in the plaintiffs' favor, accepts well-pleaded factual allegations as true, and determines whether the complaint contains sufficient factual matter to state a plausible claim. Leave to amend is governed by Rules 15(a)(2) and, when a scheduling-order deadline has passed, Rule 16(b); amendment

may be denied as futile if the amended claim could not survive a Rule 12(b)(6) motion.

PRECEDENTIAL VALUE

unpublished

TOPICS

motion for judgment on the pleadings

motion to amend

insurance

professional negligence

contracts

PRACTICE AREAS

civil procedure

insurance

negligence

contracts

QUESTIONS PRESENTED

1. Whether the Howells' negligent procurement claim is barred by Ohio's economic loss doctrine when the alleged damages consist solely of inadequate insurance coverage and financial loss.
2. Whether the Howells sufficiently pleaded negligent misrepresentation by alleging who supplied false information, what was represented, when it was represented, reliance, lack of reasonable care, and resulting pecuniary loss.
3. Whether the Howells were required at the pleading stage to allege a special relationship with the insurance agency and agent to proceed on negligent misrepresentation.
4. Whether the Howells showed good cause and diligence under Rule 16 and whether their proposed amended negligent misrepresentation and breach of contract or quasi-contract claims were futile under Rule 15.

HOLDINGS

1. Under the circumstances alleged, Ohio's economic loss doctrine bars the Howells' negligent procurement claim because the claim seeks recovery for purely economic losses arising from inadequate insurance coverage and financial loss, without alleging tangible physical harm to persons or property caused by the defendants' negligence.
2. The Howells sufficiently pleaded negligent misrepresentation by alleging that JVA and Fitch supplied false information concerning the comparative coverage and premium of the proposed policy, that the information was supplied to guide Lora's insurance decision, that she relied on it, that the defendants failed to exercise reasonable care, and that she suffered pecuniary loss.
3. At the pleading stage, the court declined to dismiss the negligent misrepresentation claim for failure to plead a special relationship because Ohio law was unsettled and the allegations sufficiently indicated that the defendants supplied information in the course of their insurance business to guide Lora's specific insurance decision.
4. The Howells demonstrated sufficient diligence and lack of undue prejudice to satisfy Rule 16, and their proposed negligent misrepresentation and alternative breach of contract or quasi-contract claims were

adequately pleaded at the amendment stage. Leave to amend was denied only as to the negligent procurement claim because that claim remained barred by the economic loss doctrine.

KEY QUOTATIONS

“The economic loss doctrine holds that absent tangible physical harm to persons or tangible things there is generally no duty to exercise reasonable care to avoid economic losses to others . . . These economic losses may be recovered in contract only.” (Section III.A.1)

“They give the Third-Party Defendants notice of who, what, and (roughly) when.” (Section III.A.2.a)

“the touchstone of the good cause inquiry under Rule 16(b) is whether the moving party acted diligently in attempting to meet the deadline set forth in the pretrial order.” (Section III.B.1)

FACTUAL BACKGROUND

Everett Cash issued Lora Howell a farmowners insurance policy covering an endorsed Polaris Ranger ATV under specified conditions and exclusions. On February 10, 2024, Justin Howell drove the ATV on a public road, lost control, and injured Lauren Ellis, who later sued the Howells in state court. The Howells alleged that insurance agency Jacobs Vanaman and agent David Fitch represented that the Everett policy would provide the same coverage as Lora's prior policies at a lower premium, but that the new policy was materially inferior and more expensive. They asserted negligent procurement, negligent misrepresentation, and proposed an alternative breach of contract or quasi-contract claim.

PROCEDURAL HISTORY

Everett Cash Insurance Co. filed a federal declaratory judgment action concerning its duty to defend and indemnify the Howells after an ATV accident. After the court denied the Howells' motion to dismiss, they filed an answer, counterclaim, and third-party complaint against insurers, an insurance agency, and an insurance agent. Jacobs Vanaman Agency Inc. and David Fitch moved for judgment on the pleadings, and the Howells sought leave to amend. The court dismissed the negligent procurement claim, allowed the negligent misrepresentation claim to proceed, and granted leave to add an alternative breach of contract or quasi-contract claim while denying leave to amend the negligent procurement claim as futile.

DISPOSITION

other

CASES CITED

- Williamson v. Recovery Ltd. P'ship, No. 2:06-cv-292, 2010 WL 3769136, at *2 (S.D. Ohio Sept. 24, 2010)
- Mixon v. State of Ohio, 193 F.3d 389, 399–400 (6th Cir. 1999)
- Bishop v. Lucent Tech., Inc., 520 F.3d 516, 519 (6th Cir. 2008)
- Harbin-Bey v. Rutter, 420 F.3d 571, 575 (6th Cir. 2005)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Bates v. Green Farms Condo. Ass'n, 958 F.3d 470, 483 (6th Cir. 2020)

- Smith v. City of Barberton, No. 1:20-cv-584, 2021 WL 752595, at *3 (N.D. Ohio Feb. 26, 2021)
- Inge v. Rock Finan. Corp., 388 F.3d 930, 936 (6th Cir. 2004)
- Moore v. City of Paducah, 790 F.2d 557, 559 (6th Cir. 1986)
- Parchman v. SLM Corp., 896 F.3d 728, 736 (6th Cir. 2018)
- Pittman v. Experian Info. Sols., Inc., 901 F.3d 619, 640–41 (6th Cir. 2018)
- Foman v. Davis, 371 U.S. 178, 182 (1962)
- Gen. Elec. Co. v. Sargent & Lundy, 916 F.2d 1119, 1130 (6th Cir. 1990)
- Shane v. Bunzl Distribution USA, Inc., 275 F. App'x 535, 536 (6th Cir. 2008)
- Leary v. Daeschner, 349 F.3d 888, 906–07, 909 (6th Cir. 2003)
- Permasteelisa CS Corp. v. Airolite Co., LLC, No. 2:06-cv-0569, 2007 WL 1683668, at *2 (S.D. Ohio June 8, 2007)
- Emahiser v. Complete Coverage Ins., LLP, 53 F. Supp. 3d 1025 (N.D. Ohio 2014)
- Robson v. Quentin E. Cadd Agency, 901 N.E.2d 835, 841 (Ohio Ct. App. 2008)
- Corporex Dev. & Constr. Mgt., Inc. v. Shook, Inc., 835 N.E.2d 701, 704 (Ohio 2005)
- Chemtrol Adhesives, Inc. v. Am. Mfrs. Mut. Ins. Co., 537 N.E.2d 624 (Ohio 1989)
- Long v. Time Ins. Co., 572 F. Supp. 2d 907, 911 (S.D. Ohio 2008)
- Minor v. Allstate Insurance Company, 675 N.E.2d 550, 554 (Ohio Ct. App. 1996)
- Kunz v. Buckeye Union Ins. Co., 437 N.E.2d 1194, 1196 (Ohio 1982)
- Mafcote, Inc. v. Genatt Assocs., Inc., No. 104-CV-853, 2007 WL 527870, at *6 (S.D. Ohio Feb. 14, 2007)
- J.F. Meskill Enters., LLC v. Acuity, No. 05-CV-2955, 2006 WL 903207, at *5 (N.D. Ohio Apr. 7, 2006)
- Burke v. Time Ins. Co., No. 3:10-CV-00478, 2011 WL 2600673, at *3 (S.D. Ohio June 9, 2011)
- Momentive Speciality Chems., Inc. v. Chartis Speciality Ins. Co., No. 2:11-CV-00583, 2012 WL 832288, at *4 (S.D. Ohio Mar. 12, 2012)
- Oro Cap. Advisors, LLC v. Borror Constr. Co., LLC, No. 2:19-CV-5087, 2021 WL 2457989, at *7–8 (S.D. Ohio June 16, 2021)
- MV Cir. Design, Inc. v. Omnicell, Inc., No. 1:14 CV 2028, 2015 WL 1321743, at *12 (N.D. Ohio Mar. 24, 2015)
- Palmer-Donavin Mfg. Co. v. Rheem Sales Co., 2014 WL 2767665, at *8 (S.D. Ohio June 18, 2014)
- National Mulch and Seed, Inc. v. Rexius Forest By-Products, Inc., 2007 WL 894833, at *9–12 (S.D. Ohio Mar. 22, 2007)
- Stickney v. United Ins. Grp. Agency, Inc., No. 3:13-CV-235, 2015 WL 11176515 (S.D. Ohio Aug. 11, 2015)
- Rover Pipeline LLC v. Zwick, No. 2:19-CV-4698, 2021 WL 2665502 (S.D. Ohio 2021)
- Aldridge v. Ohio Dep't of Rehab. & Correction, No. 2:20-CV-6357, 2021 WL 5299845 (S.D. Ohio 2021)
- Myers v. Vill. of New Holland, No. 2:19-CV-1458, 2020 WL 7767622 (S.D. Ohio 2020)
- Pough v. DeWine, No. 2:21-CV-880, 2024 WL 4284649, at *4 (S.D. Ohio Sept. 25, 2024)
- Green v. Mason, 504 F. Supp. 3d 813, 826 (S.D. Ohio 2020)
- Ashcroft v. Iqbal, 556 U.S. 662, 663–64, 678 (2009)
- Thomas v. Publishers Clearing House, Inc., 29 F. App'x 319, 322 (6th Cir. 2002)

- *Doner v. Snapp*, 649 N.E.2d 42, 44 (Ohio 1994)
- *Melher Transp., Inc. v. Westfall Towing LLC*, No. 2:21-CV-1293, 2021 WL 3860190, at *3 (S.D. Ohio Aug. 30, 2021)
- *Nationwide Children's Hosp. v. Raymath Co.*, No. 3:23-CV-044, 2025 WL 27163, at *2 (S.D. Ohio Jan. 3, 2025)
- *Byler v. Air Methods Corp.*, 823 F. App'x 356 (6th Cir. 2020)
- *Real Estate Bank v. Society Nat'l Bank*, 729 N.E.2d 1259, 1263–64 (Ohio 1999)
- *Randleman v. Fid. Nat. Title Ins. Co.*, 465 F. Supp. 2d 812 (N.D. Ohio 2006)
- *Gean v. Hattaway*, 330 F.3d 758, 765 (6th Cir. 2003)
- *Gerling & Assocs., Inc. v. Odulair, LLC*, No. 2:16-CV-1000, 2017 WL 2790669, at *8 (S.D. Ohio June 28, 2017)
- *Momentive Specialty Chems., Inc. v. Chartis Specialty Ins. Co.*, No. 2:11-CV-583, 2012 WL 6593891, at *3 (S.D. Ohio Dec. 18, 2012)

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