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Holt v. Grange Mut. Cas. Co. Children Not "Insureds" Under Policy are Entitled to Death

Barbara Tyler
Cleveland State University, b.tyler@csuohio.edu

Thomas S. Tyler

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HOLT v. GRANGE MUTUAL CASUALTY CO.: CHILDREN NOT "INSUREDS" UNDER POLICY ARE ENTITLED TO DEATH BENEFITS

BARBARA J. TYLER[1]
THOMAS S. TYLER[2]

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The automobile insurance industry is up in arms after a decade of consumer friendly Ohio Supreme Court decisions. The insurance industry and commentators have noted the trend of judicial activism in interpreting insurance contracts. These decisions have been overwhelmingly in favor of consumers and against insurance companies. The court has been faced with a Hobson's choice.[3] Stare decisis has been replaced by the court because of the dilemma the court faced between diverging public policies and private interests. The 90's have been a hallmark decade of decisions liberally enabling consumers to share in proceeds of their insurance policies in spite of well-crafted clauses and exclusions in uninsured/underinsured contracts of personal automobile insurance providers.[4]

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[1]Professor Legal Writing, Research and Appellate Advocacy, Cleveland Marshall College of Law, Cleveland State University; R.N., MetroHealth Medical Center; B.A., Baldwin Wallace College; J.D., Cleveland Marshall College of Law.

[2]Assistant Counsel, United States Department of Defense, Defense Contract Management Command, Cleveland, B.A., Bowling Green University; J.D., Cleveland Marshall College of Law, former Senior Editor, Cleveland State Law Review.

[3]Hobson's choice is no choice at all. Liveryman Thomas Hobson (1544-1631) was known for his rule of giving customers the choice of any horse to rent as long as they took "the horse which stood near the stable door." Richard Steele, *The Spectator*, No. 509, Oct. 14, 1712 (quoted from JOHN BARTLETT, BARTLETT'S FAMILIAR QUOTATIONS, (Emily Morrison Beck ed., 15th ed. Little Brown Co. 1980)).

[4]In response to the case law, articles in law reviews in the 90's have chronicled, with much interest, the resulting changes made by the court in uninsured/underinsured motorist protection. *See, eg.*, Dominick Cirelli, Jr., Note, Girgis v. State Farm Mut. Auto. Ins. Co., *Rescinding the Physical Contact Requirement in Ohio Uninsured Motorist Claims*, 30 AKRON L. REV. 153 (1996); Matthew Devery McCormack, Comment, *Tracking Ohio Insurance Coverage: The Genesis and Demise of Savoie*, 20 U. DAYTON L. REV. 293 (1994); Shawn Gordon Lisle, Comment, *The Impact of State Farm v. Alexander on Uninsured and*

The recent Ohio Supreme Court decision of *Holt v. Grange Mutual Casualty Co.*,[5] is another consumer friendly decision and represents both an equitable and sound interpretation and application of Ohio law to consumer insurance contracts. In *Holt*, the court chastised the insurer for its use of restrictive policy language to define who was an "insured," under its policy. *Holt* held such exclusionary language ineffectual as an impermissible attempt to exclude the adult sons of a decedent from coverage for wrongful death benefits, for their father who was killed by an underinsured motorist. The Holts' two adult sons were valid statutory claimants in his wrongful death but simply did not meet the Grange policy definition of an "insured" or "family member" because they did not reside in the family home.[6]

The plain truth is that insurers have fought tirelessly throughout the last decade to craft the policies in clear language to limit or exclude those defined as "insureds" who are entitled to bring claims under the uninsured/underinsured motorist provisions of their policies.[7] Insurers have argued that decisions such as that in *Holt* will increase consumer's premiums. Yet, when questioned about the purported increase in payment of uninsured/underinsured claims, the insurance industry is unable to project the actual increased costs of such decisions.[8] While consumers have been the beneficiaries of a liberal Ohio Supreme Court, some state legislators have vilified the court for "writing law instead of interpreting it."[9] Indeed, insurance

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Underinsured Motorist Coverage Generally, and in Relation to the Owned-But-Not-Insured Exclusion, 26 AKRON L. REV. 557 (1993); Gary D. Plunkett, *Note, Unknown Effects of Wood v. Shepard on Uninsured and Underinsured Motorist Coverage in Ohio*, 39 CLEVE. ST. L. REV. 49 (1991).

[5]683 N.E.2d 1080 (1997).

[6]*Id.*

[7]*See* State Farm Auto Ins. Co. v. Alexander, 583 N.E.2d 309 (Ohio 1992)(holding in syllabus, that "an automobile insurance policy may not eliminate or reduce uninsured or underinsured motorist coverage . . . where the claim or claims of such persons arise from causes of action that are recognized by Ohio tort law."). *But see* Hedrick v. Motorists Mut. Ins. Co., 488 N.E.2d 840 (Ohio 1986)(overruled by Alexander). *See also* Martin v. Midwestern Group Ins. Co., 639 N.E.2d 438 (Ohio 1994)(holding that a motorcycle rider who was badly injured when hit by a drunk uninsured motorist can collect from the uninsured/underinsured motorist clause of his own automobile policy even though the rider carried no insurance on the motorcycle). This case was tried by co-author, Thomas S. Tyler, counsel for Mr. Martin, in the Ohio Supreme Court in 1994.

[8]*See* J. Thomas Henrietta & Thomas H. Bainbridge, *Editorial & Comment, Court Acts to Uphold Uninsured-Motorist Law*, THE COLUMBUS DISPATCH, Dec. 3, 1994, in which the authors, the secretary and president of the Ohio Academy of Trial Lawyers, respectively present a pro-consumer view of the case law. *See also* Daniel J. Ryan, *Auto Profits Weather Intense Competition*, 97 BEST'S REVIEW 32, Oct. 1996 for a comprehensive discussion of the economic success of the 1990's personal automobile insurance market and the most improved profits since the 1970's.

[9]*See* James Bradshaw, *Insurance Ruling May Raise Prices*, THE COLUMBUS DISPATCH, Oct. 6, 1994, at 1A, in which the author quotes the sentiments of State Senator, Roy L. Ray, R-Akron, who complains of the decision above in *Martin v. Midwestern* in this

industry spokesmen have characterized this line of decisions as consumers getting "something for nothing."[10] A result of this perceived judicial activism by the Ohio Supreme Court has been a backlash in the Ohio General Assembly in the form of statutes countermanding these decisions.

Historically, since 1965, the state of Ohio has required insurance companies, that sell automobile insurance to motorists in this state, to offer uninsured/underinsured motorist coverage to consumers.[11] As the name of the insurance benefits suggest, uninsured/underinsured motorist coverage has, as its purpose, the protection of persons from losses resulting from other drivers who cause automobile accidents and who do not have insurance.[12] While it is difficult to estimate how many uninsured motorists are on the road in Ohio, statistics indicate that uninsured motorists make up about one-half of one percent of all drivers involved in automobile accidents in Ohio.[13] A greater population of Ohio drivers is surely without any automobile insurance at all.

The decision in *Holt* favors insurance consumers but has alarmed the insurance industry. The industry perceives the decision as bringing into question what language of an insurance policy will be upheld under the freedom of contract and what will be stricken as against public policy. First, the industry would argue that *Holt* seems to denigrate and abrogate the rights of an uninsurance/underinsurance provider to craft its policies according to basic clear unambiguous language and contract principles. Second, the decision could be viewed as creating confusion and instability regarding what provisions insurers may rightfully include in their policies in order to limit their liability to the public in general. Third, insurance actuaries would state they have uncertainty in calculating how much an average car owner will need to pay to take into account these perceived abrogations of the right to contract.

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article. State Senator Ray subsequently favored a bill to require Ohio motorists to purchase uninsured/underinsured coverage on each vehicle they own. This bill was passed by the General Assembly on June 4, 1997. *See* H.B. 261, 122nd Leg., Reg. Sess. (Ohio 1997). It amended former OHIO REV. CODE ANN. § 3937.18 (Anderson 1996) (amended June 4, 1997). Thus, the case law cited herein deals with the "former" § 3937.18 for analytical purposes.

[10] *See* Bradshaw, *supra* note 9. Both insurance spokesman Bradshaw and Justice Wright, the dissenting judge in *Martin v. Midwestern*, were credited with expressing the same views. This case was followed by the subsequent article. *Eg.*, Alan E. Mazur, Note, *Martin v. Midwestern Group Ins. Co: Something for Nothing*, 24 CAP. U. L. REV. 667 (1995).

[11] *See* OHIO REV. CODE ANN. § 3937.18 (Anderson 1997)(as amended) (requiring the mandatory offering of uninsured and underinsured motorist coverage to consumers in Ohio).

[12] *See id.* The General Assembly designed uninsured motorist coverage to protect persons, not vehicles. Thus the court must liberally construe the uninsured motorist statute in order to effectuate the legislative purpose.

[13] *See* Jodi Nirode, *Lawmaker Tries to Ease Liability Law/ Provisional License Mulled*, THE COLUMBUS DISPATCH, May 1, 1997. The statistical figures regarding the number of uninsured/underinsured motorists causing accidents on Ohio highways were stated by Leo Skinner, a spokesman for the Ohio Department of Public Safety.

Lastly, the decision in *Holt* sends a message to consumers that they may challenge a policy's plain language and may recover for losses under public policy principles, even if the strict letter of the insurance policy would prohibit recovery.

Thus, insurers and insureds will continue to be impacted by future decisions dealing with uninsured/underinsured motorist protection because this protection requires the balancing of contract law with the public policy of protecting "persons from losses which, because of the tortfeasor's lack of liability coverage would otherwise go uncompensated." [14]

I. FACTS AND TRIAL COURT DECISION

Gawain and Ingrid Holt were insured under a motorist insurance policy issued to them by Grange Mutual Insurance Company.[15] On August 20, 1993, Gawain Holt was killed in a motor vehicle accident with an underinsured motorist.[16] The uninsured/underinsured motorist provision in the Holt policy provided coverage with limits of $250,000 per person and $500,000 per accident.[17] Subsequently, Grange paid $250,000 to the estate of Gawain Holt.[18] Ingrid Holt, as the executor of the estate, sought additional recovery under the same underinsured motorist policy provision on behalf of the families' two adult sons, Daniel E. Holt and David W. Holt.[19] Mrs. Holt, as decedent's personal representative, submitted a claim to Grange on behalf of her two sons.[20] Grange denied the claim because neither adult son was named as an "insured" under the insurance company's definition contained in the policy.[21]

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[14] *See* Martin v. Midwestern, 639 N.E.2d 438 (Ohio 1994)(citing Abate v. Pioneer Mut. Cas. Co., 258 N.E.2d 429, 432 (Ohio 1970)(other citations excluded).

[15] Holt v. Grange Mut. Cas. Co., No. CA95-11-192, 1996 WL 88542, at *1 (Butler County Ct. App. March 4, 1996). This intermediate appellate opinion was written by Judge Walsh who was joined in this majority opinion by both other judges on the panel, Judges Koehler and Powell.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Holt*, 1996 WL 88542, at *1.

[21] *Holt*, 683 N.E.2d at 1082. The Supreme Court opinion cited the relevant section, Part C-- of the Grange policy which stated:

> We will pay damages which an insured is legally entitled to recover from the owner or operator of an uninsured[/underinsured] motor vehicle because of bodily injury caused by an accident.

The definition of "insured" was set out by the Company as:

> "You or any family member . . . . "

Family member is defined as:

This denial was based on the undisputed fact that neither adult son made his principal residence at the home of the named insureds, the parents.[22]

Mrs. Holt, the plaintiff-appellee then filed a complaint for a declaratory judgment and damages in the Court of Common Pleas of Butler County on September 15, 1994.[23] After both parties filed motions for summary judgment, the trial court entered summary judgment in favor of Mrs. Holt as the personal representative of the estate on November 2, 1995.[24] Thus, the trial court held that the insurer was obligated to pay the wrongful death benefits to the other rightful beneficiaries, the sons.[25] Grange timely appealed this decision to the Twelfth District Court of Appeals, Butler County.[26]

II. THE APPELLATE DECISION

The intermediate appellate court affirmed the decision of the trial court, focusing on both the public policy behind Ohio's wrongful death statute and its own binding case law.[27] The Butler County appellate court first cited to its decision in *Lynch v. State Farm*[28] for the proposition that, based upon nearly identical facts, the decedent's father and administrator of the insured decedent's estate was entitled to bring a wrongful death claim on behalf of himself, as well as decedent's mother and child, who did not reside with decedent and thus, did not meet State Farm's definition of an "insured." Lynch's claim was allowed based on the claimants' status as statutory beneficiaries "regardless of whether [the administrator] or the other wrongful death statutory beneficiaries themselves qualify as insureds under the policy."[29]

> "[A] person related to you by blood, marriage or adoption and whose principal residence is at the location shown in the Declarations."

Id.

[22] *Id.* Again, "Family member" was defined above in the Grange policy as "a person related to you by blood, marriage or adoption and whose principal residence is at the location shown in the Declarations."

[23] *Id.*

[24] *Holt*, 1996 WL 88542, at *1.

[25] 683 N.E.2d at 1082.

[26] *Id.* The trial court found the underinsured motorist coverage was available for the wrongful death claims of the two sons, because "the aforementioned contractual provision is an impermissible restriction on the insurance coverage which is mandated by R.C. 3937.18."

[27] *Holt*, 1996 WL 88542, at *1.

[28] Lynch v. State Farm Mut. Auto. Ins. Co., No. CA93-06-099, 1994 WL 93163 (Butler County Ct. App. March 21, 1994).

[29] *Id.* at *1. Mr. Lynch was killed by an uninsured motorist while driving his girlfriend's car and State Farm stipulated that he was an insured under the policy. However, although he was survived by his mother, father, and a minor child, none of them resided with Lynch at the time of the accident. The court held they indeed could recover under the policy based on their status as statutory beneficiaries.

In citing its own recent decision in *Lynch*, the appellate court relied to a great extent upon the language of the Ohio wrongful death statute.[30] The Butler County Court of Appeals affirmed the trial court and certified its judgment as in conflict with the decisions of certain other district appellate courts.[31] Thereafter, the Ohio Supreme Court allowed a discretionary appeal.[32]

III. THE OHIO SUPREME COURT MAJORITY OPINION

Justice Alice Robie Resnick, writing for the majority in this 4-3 decision examined the interplay between the purposes of the uninsured/underinsured motorist statute[33] and the wrongful death statutes.[34] The majority affirmed the court of appeals and characterized the issue as investigating the "effectiveness of a provider of uninsured/underinsured coverage utilizing a restrictive policy definition of who is an 'insured' in excluding from coverage the claim of an uncompensated wrongful death statutory beneficiary."[35]

In the analysis provided, Justice Resnick begins by citing to the Ohio statute requiring insurance providers to offer uninsured/underinsured motorist protection to automobile drivers.[36] The clear legislative purpose of requiring providers to offer uninsured/underinsured protection under Ohio law, she writes, is to "provide protection for an insured against loss for bodily injury, sickness, or disease, including death . . ." due to the collision with an uninsured/underinsured motorist.[37] Conceivably, since the death of the insured is contemplated in the legislative policy which requires the insurance companies to offer uninsured/underinsured benefits to consumers, the

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[30] *See id.* (citing OHIO REV. CODE ANN. § 2125.02 (A)(1)(publisher and date unknown in this 1996 case as cited by the court) which stated in part as follows:

> An action for wrongful death shall be brought in the name of the personal representative of the decedent for the exclusive benefit of the surviving spouse, [and] the children . . . all of whom are rebuttably presumed to have suffered damages by reason of the wrongful death . . . .

Id. at *2.
Note this statute has been amended in 1997 and is also referred to as "former" § 2125.02 in the *Holt* court's opinion.

[31] *See* Berleman v. State Farm Mut. Auto. Ins. Co., 600 N.E.2d 1145 (Ohio Ct. App. 1992); Thompson v. Utomo, No. L-95-034, 1995 WL 628242 (Lucas County Ct. App. Oct. 27, 1995); Estate of Simone v. Nationwide Ins. Co., No. 67081, 1994 WL 613876 (Cuyahoga Ct. App. Nov. 3, 1994).

[32] *See Holt*, 683 N.E.2d at 1083.

[33] OHIO REV. CODE ANN. § 3927.18(A)(as amended June 4, 1997 by H.B. 261) (Anderson 1997).

[34] 683 N.E.2d at 1083.

[35] *Id.*

[36] *Id.* (citing OHIO REV. CODE ANN. § 3937.18(A)(1)).

[37] *Id.*

benefits would ultimately go to those who have a right to claim under the insured as beneficiaries.

Ohio law, Resnick points out, provides additional statutory protection for those beneficiaries of wrongful death claims.[38] This statute clearly allows the personal representative of an estate to bring claims on behalf of "the surviving spouse, the children, and the parents of the decedent."[39] There is no limitation based upon the age or residence of the statutory beneficiaries of a decedent. In fact, the wrongful death statute contains mandatory language stating that a decedent's representative "shall" equitably distribute any settlements or other benefits between the beneficiaries.[40]

Relying on the statutes, as well as case law,[41] as the basis for her reasoning, Resnick concluded with strong language, saying it was "incongruous" for Grange to attempt to exclude the sons of Gawain Holt from the definition of "insureds" in the policy when they are statutory beneficiaries under Ohio law. The attempt by the insurance company to limit by contract who is an insured must bow to the public policies embodied in the uninsured/underinsured and wrongful death statutes.

In *Lynch*[42] and *Dion*[43], two appellate cases cited extensively by Resnick, there were no surviving relatives who fell within the policy definitions of "insureds." Resnick noted that in both cases, the insurer attempted to avoid paying valid wrongful death claims by narrowly defining and excluding one who could be considered an "insured" under its policy.[44]

In the majority opinion, the Supreme Court recognized the inequity of writing an insurance policy which would allow recovery in the event of injury, but which effectively precluded recovery in the event of the insured's death. Resnick cited with approval the language in *Dion* as follows:

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[38] *Id.* (citing OHIO REV. CODE ANN. § 2125.02(A)(1)).

[39] 683 N.E.2d at 1084 (citing § 2125.02(A)(1)).

[40] *Id.* (citing § 2125.03(A)(1)).

[41] *See* Lynch v. State Farm Mut. Auto. Ins. Co., No. CA93-060099, 1994 WL 93163 (Butler County Ct. App. March 21, 1994); Dion v. State Farm Mut. Auto. Ins. Co., No. 4-91-14, 1992 WL 63281 (Defiance County Ct. App. Mar. 24, 1992). Both cases were cited extensively in *Holt* and held that uninsured/underinsured coverage was available to wrongful death claimants who did not qualify as "insureds" in the relevant automobile policies.

[42] 1994 WL 93163.

[43] 1992 WL 63281. In *Dion*, the executrix of the insured decedent's estate brought a uninsured motorist claim for the wrongful death of the decedent under the decedent's policy. However, the decedent's children did not qualify as insureds under the policy due to an endorsement similar to the one in the policy in *Lynch*. The Third District Court of Defiance County held precluding such benefits violated Ohio law based on the wrongful death statute.

[44] *See* 683 N.E.2d at 1080. *See also* cases cited *supra* notes 42 & 43.

> The death of a motorist protected by uninsured/underinsured motorist coverage was intended to be covered under both the statute and [the] policy. By purchasing [the] policy, [the decedent] was an insured even though the accident with the underinsured tortfeasor claimed his life. To hold otherwise would be to prevent recovery simply because the nature of his injuries was so severe as to cause his death. This would have the effect of altering [the] policy to only provide coverage for injuries.[45]

Resnick decried the Grange argument that there need be privity of contract with the statutory beneficiaries (the sons) saying that due to the sons' status as beneficiaries of the insured-the decedent, the sons need not be in privity with the insurance carrier.[46] Justice Resnick opined that the reasoning cited by Grange in *Wood v. Shepard*[47] which mandated that some privity of contract exist between the carrier and the claimant was inapplicable to the *Holt* claimants due to the special nature of their claim.[48] Thus, focusing on the significant public policy of protecting those citizens who do purchase insurance, as required by Ohio law, from those tortfeasors who do not, Justice Resnick again used strong language and characterized the Grange position as "absurd" in its attempt to exclude the sons of Gawain Holt from coverage for the wrongful death claim.[49] The decision in *Holt* abrogates all prior decisions of the various Ohio District Courts which held otherwise.[50]

IV. THE DISSENT

Justice Cook wrote for the dissent, in which he was joined by Chief Justice Moyer and Justice Lundberg Stratton.[51] Justice Cook maintained in the dissent that the law of Ohio dictates that a wrongful death beneficiary cannot recover under the policy unless he or she qualifies as an "insured" by the policy definition.[52] Cook based his dissent on the fact that only "insureds" as defined in the policy are in contractual privity with the insurer.[53] Furthermore, Cook

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[45] *Dion*, 1992 WL 63281, at *3.

[46] 683 N.E.2d at 1087.

[47] 526 N.E.2d 1089, 1093 (Ohio 1988)(holding that only those wrongful death claimants in contractual privity with the underinsurance provider can be considered to be covered by the policy).

[48] 683 N.E.2d at 1087.

[49] *Id.* at 1086.

[50] *See* cases cited *supra* note 31.

[51] 683 N.E.2d at 1088.

[52] *Id.*

[53] *Id.* In supporting his reasoning, Cook argues that two cases cited by the majority, Wood v. Shepard, 526 N.E.2d 1089 (Ohio 1988) and In re Estate of Reeck, 488 N.E.2d 195 (Ohio 1986) compel a result opposed to the majority. Cook distinguishes both of those

indicates, that the majority's conclusion that contractual privity is not required because the beneficiaries "step into the shoes" of the decedent is flawed.[54]

In his dissent, Justice Cook correctly notes that Ingrid Holt and her sons could have shared the "per person" recovery of $250,000 paid to the estate.[55] He stated that Ohio law does not demand that there be more than one payment of the "per person" limits on a policy.[56] Justice Cook wrote that "Ohio law requires only that uninsured/underinsured motorist coverage be offered. It does not mandate compensation from a decedent's automobile insurer for all wrongful death statutory beneficiaries."[57] Finally, Justice Cook defended the insurer. He opined that an insurer does not act in an inequitable manner toward an insured by refusing to pay and the fact that an insured suffered compensable damages, even death, is not sufficient reason to mandate an insurance company to pay compensation.[58]

V. ANALYSIS

The margin of victory for the Holts was slim. The decision was 4 to 3. It causes one to ponder whether the strictures of *Holt* will withstand later judicial scrutiny or the powerful insurance lobby whose efforts to change this decision in any way possible will inexorably follow. The Ohio legislature responded quickly and decisively in the 90's to negate the effects of prior Ohio Supreme Court decisions that have favored the insurance consumer based on public policy.[59] The General Assembly enacted legislation that effectively overruled the case law to force a strict interpretation of insurance contract language.[60]

Automobile insurance is mandatory in the State of Ohio and those law-abiding citizens who purchase it are entitled to the benefit of their bargain. The Holts purchased their insurance to obtain benefits for themselves and their family in the event of their injury or their death. It would be unconscionable to extrapolate, as the dissent would, that if Ingrid Holt had also died in the tragic accident with Gawain, no one would have been an "insured" under the definition in the policy since the adult children did not live in the family home. Had the decision gone the other way and had both Ingrid and Gawain died in

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cases by postulating that they each dealt with claimants who were actually "insureds" under the policy definitions and thus entitled to recover the benefits.

[54] *Id.*

[55] *Id.* at 1089.

[56] 683 N.E.2d at 1089.

[57] *Id.*

[58] *Id.*

[59] *See* discussion and cases of Savoie v. Grange Mut. Ins. Co. 620 N.E.2d 809 (Ohio 1993) and Martin v. Midwestern Group Ins. Co., 639 N.E.2d 438 (Ohio 1994).

[60] *Id.*

the accident, the Holts, through their heirs, would have received nothing for their years of paying insurance premiums.

A trend to judicial activism on the part of the appellate courts has caused the automobile insurance industry and consumers to be unclear regarding which contractual provisions will be upheld by courts and which provisions will not.[61] Additionally, the Ohio Supreme Court decisions in this area have spawned reactive legislation designed to overrule opinions which have found insurance coverage through valid public policy concerns, where none would exist under the specific terms or exclusions contained in the motorist insurance contract. One commentator included figures obtained from the Ohio Insurance Institute to show that in the last decade nearly 900 appellate court decisions including 75 by the Ohio Supreme Court have involved uninsured/ underinsured motorist protection.[62] Two such uninsured/ underinsured decisions which have been legislatively overruled are *Savoie v. Grange Mutual Insurance Co.* [63] and *Martin v. Midwestern Group Insurance Co.*[64] Both cases apparently were considered by the Ohio General Assembly to erode the freedom to contract and give the insured "something for nothing."[65]

Personal automobile insurance is the most profitable sector in the burgeoning 1990's property/casualty insurance industry.[66] Profit margins

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[61] *See* Alan E. Mazur, Note, *Martin v. Midwestern Group Insurance Co.: Something for Nothing*, 24 CAP. U.L. REV. 667 (1995), for a comprehensive view of the cases in the 90's which have altered insurance law as well as a critical view of *Martin* and its reasoning.

[62] *See id.*

[63] 620 N.E.2d 809.

[64] 639 N.E.2d 438.

[65] *See* Bradshaw, *supra* note 9 as the origin of the quote. *See also* Savoie v. Grange Mut. Ins. Co., 620 N.E.2d 809 (Ohio 1993)(overruling State Farm Auto. Ins. Co. v. Rose, 575 N.E.2d 459 (Ohio 1991)) and paragraphs one and two of the syllabus of Burris v. Grange Mut. Cas., 545 N.E.2d 83 (Ohio 1989). In *Savoie*, the court held, among other things, that policies which limited the wrongful death damages suffered by individuals into one "per person" policy limit were unenforceable. Thus, when there is more than one family member, each member can make a claim for the entire "per person" policy amount until the maximum "per accident" limit was satisfied. The legislature returned the state of the law prior to *Savoie* in Senate Bill 20 in 1994 which amended OHIO REV. CODE ANN. § 3937.02 (Anderson 1997).

See Martin v. Midwestern Group Ins. Co., 639 N.E.2d 438 (Ohio 1994)(overruling Hedrick v. Motorists Mutual Ins. Co., 448 N.E.2d 840 (Ohio 1986)). *Martin* held that purchasing uninsured motorist coverage on only one vehicle would extend ones uninsured motorist protection to all owned vehicles. *Id.* The General Assembly moved quickly to enact legislation to overrule *Martin* and effectively did so in 1997 with more additions to § 3937.02.

[66] *See* Daniel J. Ryan, *Automobile Profits Weather Intense Competition*, 97 BEST'S REVIEW 32, Oct. 1996 *available in* 1996 WL 8643263 ALLNEWS. "Improved auto-safety features, a maturing baby-boomer population, a general improvement in driver behavior, slower growth in medical costs and stricter enforcement of drunken-driving laws have contributed to a favorable trend in claims frequency and severity." *Id.*

have reached their highest level since the 1970's.[67] Interestingly, the angst of the insurers regarding *Martin* which held that uninsured motorist protection followed the "person" not the vehicle was all smoke and mirrors.[68] While insurance companies alleged they would have to raise premiums to plan for unknown vehicle coverage, they actually charged customers more money to drop uninsured motorist coverage on other owned vehicles than to carry it.[69] More importantly, however, insurance premiums should be based upon the risk that they are designed and intended to protect against. Consequently, they should rise in proportion to the increased risk of paying more claims. Uninsured/underinsured motorist protection is related to the risk of being hit by an uninsured/underinsured motorist. This risk is nearly constant since it relates to the number of uninsured/underinsured drivers on Ohio highways on any given day. It does not increase based upon the number of cars someone owns or number of beneficiaries that someone has.

Holt extends uninsured/underinsured motorist protection to the legitimate beneficiaries accorded the wrongful death benefits by Ohio statute. Gawain Holt, like most of us, likely paid insurance premiums for many decades to ensure that he and his family would be taken care of in the event he was injured or killed. The insurance company would have denied his lawful heirs, his own two children, benefits because they no longer lived in the same home as he. In *Holt*, accepting the argument of the insurance company and that of the dissent, the beneficiaries would receive "nothing for something."[70] Consequently, the premiums paid by Gawain Holt for uninsured/underinsured motorist protection would garner nothing in the way of rightful compensation for his wrongful death for his two adult children.

Insurance companies are in the business of actuarial prediction and can compute premiums based on the numbers of uninsured/underinsured motorists within a state. *Holt* is, therefore, unlike the above line of cases found to be providing unanticipated and unplanned for protection, allegedly contrary to the contract terms. In addition, the Grange policy has, not only a

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[67] *Id. See also* N.K. Chidambaran et al., *An Investigation of the Performance of the U.S. Property-Liability Insurance Industry*, 64 J. RISK & INS. 371 (1997), *available in* 1997 WL 10879312. This article discusses the over $235 Billion of consumer premiums written per year and analyzes the intensity of competition for the insurance dollar.

[68] Articles in the press and law reviews followed predicting dire consequences for automobile insurance rates, yet rates are stable and profits in the industry seem to be better than ever.

[69] Underinsured/uninsured coverage is a great bargain compared to liability and collision expense. Our personal experience, following *Martin*, was that a quote to drop our uninsured motorist coverage on two of three owned vehicles would cost significantly more than what paying for the uninsured motorist coverage cost. This quote was per our Farmer insurance representative. It was explained to us that this was so because the exclusion of the coverage would require a non-standard policy which cost more to write than including the insurance itself.

[70] *See* Bradshaw, *supra* note 9 for the origin of the quote "something for nothing" based on the decision in *Martin*.

"per person" limit, but a "per accident" limit built in to it which can provide the insurer with a predictable maximum payout.

Response to the decision in *Holt* may be swift. It will undoubtedly be fought on either of two fronts. The first is that similar cases may be accepted by the Ohio Supreme Court to test the efficacy and stability of *Holt*. *Holt* may be upheld, reversed, or modified, depending on whether there are changes in the Justices on the court. The fact that *Holt* is a closely decided 4-3 decision makes the decision tenuous and highly susceptible to modification or overruling with even one new member of the Ohio Supreme Court.

A second, and more likely possibility, is that the General Assembly may again enact legislation to uphold the insurance companies' right to enforce carefully drafted exclusions in its contracts. This response would be similar to the actions taken by the General Assembly in response to both *Savoie* and *Martin*.[71] The industry will certainly not remain sanguine regarding this latest decision by the Ohio Supreme Court.

VI. CONCLUSION

The Ohio Supreme Court has taken a significant and laudable step to support the public policy considerations embodied in the uninsured/underinsured insurance statute and wrongful death statute at the expense of the narrowly drafted language imposed upon consumers in contracts crafted by insurance companies. The court has expressed an interest in encouraging the citizens of this state to be financially responsible and to purchase insurance when they operate vehicles. Gawain and Ingrid Holt did just that when they purchased the Grange policy.[72] Under the wrongful death statute, the Holts' sons were entitled to recover damages for the death of their father regardless of the fact that they did not live in the family home. The Ohio Supreme Court blended the public policies of two statutes to reach a decision that is both equitable and just.

Any other decision on the part of this court would send a message to the insurance consumer that would indicate an insurer may withhold rightfully earned wrongful death benefits from legitimate statutory beneficiaries by fashioning clever language in contracts that too many of us do not take the time to read or understand. Moreover, despite the insurance industry's cry that insurance premiums will skyrocket, the impact on benefits paid out will be negligible. Actuaries can anticipate and provide for this risk. It is more important to protect persons who obey the law, buy insurance and intend to obtain protection from accidents caused by uninsured motorists by responsibly paying premiums, than to protect the insurer's right to contract.

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[71] *See* cases and discussion cited *supra* notes 62-65.

[72] *Holt*, 683 N.E.2d at 1082.