

LEGISLATIVE UPDATE – Toledo Claims Association

September, 2008

LEGISLATION:

Amen. Sub. H.B. 404 – Anti-Stranger-Originated Life Insurance Legislation (STOLI). The STOLI bill was signed by the governor on June 11, 2008 and takes effect on September 11, 2008. Amongst many other changes to current laws, the bill defines and prohibits STOLI transactions in Ohio and prevents the settlement of a life insurance policy that contains certain STOLI characteristics until five years after issuance of the policy (a change from the current two year requirement). Essentially the goal of the legislation is to prevent strangers from taking out life insurance policies on an insured with a potential expectation that the “insured” is close to death. The bill also includes several requirements of life insurance providers that must be included in a policy application to aid in detection of STOLI contracts.

Ohio Healthy Families Act: The Ohio Healthy Families Act was an act that was being placed on the ballot as a voter initiative. The Act would have required various employers (primarily those with over 25 employees) to provide any employee that worked 30 hours or more per week, a total of 7 days paid sick leave over the course of a year. Fearing opposition by the governor, supporters/organizers of the initiative recently agreed to remove the Act from the November ballot, with the expectation that the issue will be looked at through the legislature.

H.B. 46 – Credit Report Freeze. House Bill 46, effective in total September 1, 2008, permits a consumer to request a consumer credit reporting agency place a security freeze on the consumer’s credit report. The freeze essentially prevents the disclosure of a credit report or the changing of certain information (name, address, social security number etc.) while a freeze is imposed without complying with certain security procedures. The act also specifies numerous persons or entities that can still access a consumer’s credit report that has been frozen.

H.B. 150 – Retail Establishment Private Restroom Access. House Bill 150, has reached concurrence with the Senate and was signed by Governor Strickland on June 12, 2008, but still has no effective date. The bill encourages (but does not mandate) that retail establishments allow customers with specified medical conditions (Crohn’s disease, ulcerative colitis, irritable bowel disease, etc.) to use facilities not normally available to the public. For the act to apply the customer must have an eligible medical condition, the private restroom must not be located in an area where access would create an obvious health or safety risk and a public restroom or employee restroom normally available to the public must not be immediately available to the customer. In “exchange” for permitting such use of private restrooms, the restroom is exempt from some of the requirements normally applicable to public restrooms. More importantly, under the act neither a retail establishment nor an employee of the retail establishment is liable in any civil action for injury or death of a customer from any act or omission in allowing the customer to use the private restroom, provided the act or omission is not willful or grossly negligent.

RECENT DECISIONS/JUDICIAL DEVELOPMENTS:

Rogers v. City of Dayton (2008), 118 Ohio St.3d 299. The Ohio Supreme Court ruled that a political subdivision is self-insured for purposes of former R.C. 3937.18(K)(3) if it qualifies as a self-insurer under R.C. Chapter 4509, although it is not required to obtain a certificate of insurance. Prior to this decision, many cities whose employees caused an accident in which the Plaintiff had UM/UIM coverage, would claim that the anti-government clause was unenforceable and that because they were not technically “certified” as self-insured (the code exempts them from the need to obtain such certification) the Plaintiff’s UM/UIM policy applied. Essentially this would provide a source of recovery prior to the municipality making payment and allow the municipality to get off without payment in many cases. This decision recognized that most municipalities are not certified as self-insured, but are realistically self-insured and meet all the requirements for certification should the municipality seek it. Thus, it had the effect to make such municipalities self-insureds, thereby allowing exclusion of UM/UIM coverage through the self-insured provision.

Howard v. Miami Twp. Fire Div. (2008), 119 Ohio St.3d 1 – The Ohio Supreme Court held that in a case where the township’s immunity rested on a determination of whether it had been negligent in failing to keep public roads in repair or negligently failed to remove obstructions from public roads, ice did not qualify as an “obstruction.” While somewhat unique in circumstances (a fire department had theoretically created the ice through use of fire hoses) the decision seems to preclude a theory whereby Plaintiffs can sue municipalities/townships for negligent failure to salt or remove ice.

Wohl v. Slattery (2008), 118 Ohio St.3d 277 – The Ohio Supreme Court resolved a certified conflict holding that the term “insured” defined as including, “any other person occupying your covered auto who is not a named insured or insured family member for uninsured motorists coverage under another policy” by holding the definition was not ambiguous. By recognizing the definition as unambiguous, the Court essentially upheld exclusion of a person under the automobile involved in the accident’s UM/UIM coverage, where that person was a named insured with UM/UIM coverage through his own policy. This decision is of particular significance in a scenario where the vehicle in which the injured person is riding has UM/UIM limits significantly higher than the UM/UIM limits of the injured person’s personal policy because the holding does not simply provide for a setoff, but excludes the injured person from qualifying as an insured at all.

Ohio Civil Rights Commission et al. v. Akron Metropolitan Housing Authority et al (2008), 119 Ohio St.3d 77 – A landlord may not be held liable under R.C. 4112.02(H)(4) for failing to take corrective action against a tenant whose racial harassment of another tenant created a hostile housing environment.

Ahmad v. AK Steel, Slip Opinion No. 2008-Ohio-4082; Lang v. Holly Hill The issue in both of these cases was whether a violation of an administrative code provision prohibits the application of the open and obvious doctrine and precludes summary judgment on a negligence claim. The Ahmad case had been argued and was decisional when the Ohio Supreme Court issued its slip opinion in August, 2008 holding that the case was improvidently allowed. Ironically, the Court issued an entry stating that the parties in Lang should brief the issue listed above. Thus, provided a decision is made, the issue of using a local building or zoning technicality to prevent summary judgment in an open and obvious scenario should be finally be clarified by the Ohio Supreme Court.

Should you have any questions or have a topic of interest that you would like discussed in the legislative update, do not hesitate to contact me directly at (419) 248-2613 or tzimmerman@rcmtz.com. I will be glad to either provide you with the information you need or include something in the next monthly legislative update.