COURT OF APPEALS OF OHIO, EIGHTH DISTRICT
COUNTY OF CUYAHOGA
No. 82171

EMMETT TOLBERT, Individually   :
and as Administrator of the
Estate of Steffon Tolbert,   :
Deceased,   JOURNAL ENTRY
                                      :
RAMONA TOLBERT, Individually   AND
and Parent and Natural   :
Guardian of STEFANI TOLBERT,   OPINION
a minor,   :

    Plaintiffs-Appellants   :

        vs.   :

GENESIS INSURANCE COMPANY,   :
et al.,

    Defendants-Appellees   :

DATE OF ANNOUNCEMENT   NOVEMBER 20, 2003
OF DECISION

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                                   :

CHARACTER OF PROCEEDING   :   Civil appeal from
                                     Common Pleas Court
                                     Case No. CV-430004

JUDGMENT   :   AFFIRMED

DATE OF JOURNALIZATION   :

APPEARANCES:

     For Plaintiffs-Appellants: STEPHEN S. VANEK
                                     Friedman, Domiano & Smith Co.
                                     1370 Ontario Street
                                     600 Standard Building
                                     Cleveland, Ohio 44113-1701

     For Defendants-Appellees:

     Genesis ins. Co., et al.   GARY R. WINTERS
                                     IAN R. SMITH
                                     McCaslin, Imbus & McCaslin
                                     900 Provident Bank Building
                                     632 Vine Street
                                     Cincinnati, Ohio 45202-2442

     American States Ins. Co.   TIMOTHY J. FITZGERALD
                                     COLLEEN A. MOUNTCASTLE
                                     LARRY C. GREATHOUSE
                                     1501 Euclid Avenue
                                     Bulkley Building - 7th Floor
                                     Cleveland, Ohio 44115

     National Union Fire Ins. Co.   DALE D. COOK
                                     Wiles, Boyle, Burkholder &
                                     Bringardner Co.
                                     300 Spruce Street

Floor One
Columbus, Ohio 43215

National Union Fire Ins.,   STEVEN G. JANIK
 Co. Of PA   Janik & Dorman, L.L.P.
                                9200 South Hills Boulevard
                                Suite 300
                                Cleveland, Ohio 44147

ANNE L. KILBANE, J.

{¶1}   This is an appeal from an order of Visiting Judge Ralph McAllister that granted summary judgment to Genesis Insurance Company ("Genesis"), American States Insurance Company ("American") and National Union Fire Insurance Company of Pittsburgh, PA ("National Union") on underinsured motorist ("UIM") claims under policies issued to the employers of appellants Emmett and Ramona Tolbert. We affirm.

{¶2}   On October 26, 2000, Mrs. Tolbert and her minor

children, Steffon and Stefani, were passengers in a car owned
by Mr. Tolbert and driven by Joicelyn Miley. While on
Interstate 65, in Smiths Grove, Kentucky, Ms. Miley lost
control of the car and collided with a tree which resulted in
personal injuries to Stefani and Mrs. Tolbert and death to
Steffon. Ms. Miley had no personal automobile liability
insurance and the Tolberts' automobile insurer, Liberty
Mutual, tendered its $100,000 UM/UIM policy limits to Mrs.
Tolbert, Stefani Tolbert, and the Estate of Steffon Tolbert.

{¶3} In October of 2000, Mr. Tolbert was employed by
Giant Eagle, Inc., which was insured under a commercial
automobile liability policy and a commercial general liability
policy issued by Genesis and a commercial umbrella excess
insurance policy issued by National Union. Mrs. Tolbert was
employed by the Cuyahoga County Department of Children and
Family Services, which employment was approved by the Board of
Commissioners of Cuyahoga County ("Board"). In effect at that
time was an American business automobile issuance policy under
which the Board was the named insured. Mr. Tolbert, as
administrator of his son's estate, and Mrs. Tolbert, as an
individual and as parent and natural guardian of her daughter,
filed a declaratory judgment action against the three carriers
seeking a determination of their rights as *Scott-Pontzer*

insureds[1] and monetary compensation.

{¶4} All parties moved for summary judgment, and the judge ruled that each defendant insurer had obtained a valid written rejection of UM/UIM coverage from each named insured and that the Tolberts had presented no evidence to rebut the presumption of the required offer and rejection of UM/UIM coverage afforded by R.C.3937.18(C). He denied the Tolberts' motions for summary judgment and granted summary judgments to Genesis, National Union, and American.

{¶5} The Tolberts' sole issue on appeal is that the purported UM/UIM rejection forms were insufficient as a matter of law, and they request that we find coverage in their favor and remand the case back for a determination of their damages.

{¶6} We need not reach this issue of valid rejections because, under the newly released opinion *Westfield Ins. Co. v. Galatis*[2] "a policy of insurance that names a corporation as an insured for uninsured or underinsured motorist coverage covers a loss sustained by an employee of the corporation only if the loss occurs within the course and scope of

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[1] *Scott-Pontzer v. Liberty Mut. Fire Ins. Co.*, 85 Ohio St.3d 660, 1999-Ohio-292, 710 N.E.2d 1116.

[2] 100 Ohio St.3d 216, 2003-Ohio-5849.

employment."[3] Neither of the Tolberts sustained a loss while within the course and scope of their employment. Therefore, had each of the above policies provided UM/UIM coverage to each named insured/corporation by operation of law or otherwise, Mr. and Mrs. Tolbert would not be insureds thereunder. We, therefore, affirm the judgment, albeit for another reason.[4] The assignment of error is overruled.

Judgment affirmed.

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[3]*Id.*, paragraph two of the syllabus.

[4]*Joyce v. Gen. Motors Corp.* (1990), 49 Ohio St.3d 93, 96, 551 N.E.2d 172.

It is ordered that appellee shall recover of appellant costs herein taxed.

The court finds that there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Common Pleas Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

PATRICIA A. BLACKMON, P.J.,   And

SEAN C. GALLAGHER, J.,   CONCUR

ANNE L. KILBANE
JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc. App.R.22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E), unless a motion for reconsideration with supporting brief, per App.R. 26(A) is filed within ten (10) days of

the announcement of the court's decision. The time period for
review by the Supreme Court of Ohio shall begin to run upon the
journalization of this court's announcement of decision by the
clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section
2(A)(1).
KEYWORDS: