[Cite as *Robinson v. Ohio Mut. Ins. Group*, 2004-Ohio-7313.]

COURT OF APPEALS
FAIRFIELD COUNTY, OHIO
FIFTH APPELLATE DISTRICT

		JUDGES:
LARRY ROBINSON, ET AL	:	Hon: W. Scott Gwin, P.J.
	:	Hon: Julie A. Edwards, J.
Plaintiff-Appellee	:	Hon: John F. Boggins, J.
	:	
-vs-	:	
	:	Case No. 2004-CA-13
OHIO MUTUAL INSURANCE	:	
GROUP	:	
	:	OPINION
Defendant-Appellant		

CHARACTER OF PROCEEDING:	Civil appeal from the Fairfield County Court of Common Pleas, Case No. 02CV258
JUDGMENT:	Reversed and Remanded
DATE OF JUDGMENT ENTRY:	November 3, 2004
APPEARANCES:	

For Plaintiff-Appellant	For Defendant-Appellee
GERALD L. STEBELTON 109 North Broad Street Box 130 Lancaster, OH 43130-0130	RAY C. FREUDIGER JAMEY T. PREGON One Dayton Centre, Ste 1800 Dayton, OH 45402

Gwin, P.J.

{¶1} Defendant Ohio Mutual Insurance Group appeals a summary judgment of the Court of Common Pleas of Fairfield County, Ohio, entered in favor of plaintiffs-appellees Larry and Sharon Robinson. Appellant assigns a single error to the trial court:

{¶2} "I. THE TRIAL COURT ERRED AS A MATTER OF LAW IN FINDING UNINSURED/UNDERINSURED MOTORIST ("UM/UIM") COVERAGE UNDER OHIO MUTUAL'S COMMERCIAL GENERAL LIABILITY ("CGL") INSURANCE CONTRACT."

{¶3} The record indicates appellees filed a declaratory judgment action alleging they were insured under a commercial general liability insurance contract issued by appellant insurance group, for the purposes uninsured/underinsured motorist benefits. Appellees also sought monetary damages for bad faith and punitive damages. Appellant insurance group filed a counterclaim for declaratory judgment. The trial court granted summary judgment in favor of appellant with respect to the bad faith and punitive damages issues, but found appellees had UM/UIM coverage under the commercial general liability contract.

{¶4} On May 25, 1996, appellee Larry Robinson was involved in a motor vehicle accident in Fairfield County, Ohio. Robinson's vehicle was hit by a vehicle driven by one Virginia Bussert. Appellees settled for the full policy limits of $100,000 from Bussert's insurance carrier.

{¶5} Robinson owned a business called Rainbow Spouting, on which he carried a commercial general liability policy. The policy was issued to Larry Robinson, dba, Rainbow Spouting. Appellees argued this policy provided underinsured motorist

coverage for the May 25th accident. Larry Robinson was not on Rainbow Spouting business at the time of the accident.

{¶6} Appellant's brief argues the trial court's entry of summary judgment was incorrect as a matter of law on the undisputed facts.

{¶7} This court reviews a motion for summary judgment de novo, applying the same standard the trial court did, see, e.g. *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St. 3d 35.

{¶8} The commercial general liability policy contained a supplemental coverages section, which provided what is commonly referred to as a "mobile equipment" provision. This section provided coverage for bodily injury or property damage resulting from the use of mobile equipment, including attached equipment and machinery. It applied only to land motor vehicles meeting one or more listed criteria: "a. those which are used only on premises owned or rented to you. (premises includes adjoining ways). b. those which are designed primarily for use off public roads. c. those which travel on crawler treads. d. those which are self-propelled and designed or used only to afford mobility to following types of equipment, which must be a part of or permanently attached to such vehicle: 1. power cranes, shovels, loaders, diggers, or drills; 2. concrete mixers (this does not include the mix-in-transit type); and 3. graders, scrappers, rollers, and other road construction or repair equipment. e. those which are not self-propelled, but are used primarily to afford mobility to the following types of equipment permanently attached thereto: 1. air compressors, pumps, and generators (this includes spraying, welding, and building cleaning equipment); 2. geophysical

exploration, lighting, and well servicing equipment; and 3. cherry pickers and similar devices used to raise or lower workers."

{¶9} The policy excluded from coverage certain types of self-propelled vehicles with permanently attached equipment.

{¶10} The mobile equipment provision also stated: "we will provide any liability, uninsured motorist, no-fault, or other coverages required by any motor vehicle insurance law. We will provide the required limits for such coverage."

{¶11} The commercial general liability policy also contained a provision commonly referred to as a "valet parking" provision. The valet parking provision provided there was no coverage for bodily injury or property damage arising out of transporting mobile equipment with an auto, nor for any injury or damage arising out of the use of an auto. The exclusion does not apply to the parking of an auto on the insured premises or on the ways immediately adjoining, if the auto is not owned by, rented to, or loaned to the insured.

{¶12} The trial court's judgment entry found the clause in the mobile equipment section providing for any liability, uninsured motorist, no-fault or other coverages required by any motor vehicle insurance law was sufficient to make the policy one for automobile insurance, and subject to the terms of R.C. 3937.18.

{¶13} The original judgment entry finding coverage was filed March 20, 2003. The judgment entry did not carry a certification pursuant to Civ. R. 54 (B), which would have made a final appealable order. Consequently, this court dismissed appellant's first appeal, finding lack of jurisdiction. Appellant then filed a motion for reconsideration with the trial court on September 5, 2003. On January 29, 2004, the court overruled the

motion for reconsideration and expressly found there was no cause for delay pursuant to Civ. 54 (B).

{¶14} During the long pendency of this appeal, the law regarding uninsured/underinsured motorist coverage was in a considerable state of flux. This court had originally held clauses such as the mobile equipment and valet parking clauses did constitute automobile insurance. We based our decision on the cases of *Selander v. Erie Insurance Group* (1999), 85 Ohio St. 3d 541, and *Linko v. Indemnity Insurance Company* (2000), 90 Ohio St. 3d 445.

{¶15} In *Selander,* supra, the Ohio Supreme Court held when an insurance policy provides motor vehicle liability coverage in any form, the policy must be treated as an automobile liability policy, and is subject to R.C. 3937.18, the uninsured/underinsured motorist statute. In *Linko,* supra, the Ohio Supreme Court found R.C. 3937.18 required insurers to offer UM/UIM coverage when issuing an automobile liability policy, and if the insurer does not, then UM/UIM coverage arises as a matter of law.

{¶16} Thereafter, the Supreme Court decided *Davidson v. Motorists Mutual Insurance Company* (2001), 91 Ohio St. 3d 262. In *Davidson,* the Ohio Supreme Court explained *Selander* by stating a homeowner's policy which provided incidental coverage to a narrow class of motorized vehicles that are not subject to motor vehicle registration, and are designed for off-road use or around the insured's property does not subject the policy to the requirements of R.C. 3937.18. In *Hillyer v. State Farm Fire & Casualty Company* (2002), 97 Ohio St. 3d 411, the Ohio State Supreme Court re-affirmed and explained *Davidson*, and held incidental coverage means coverage remote from and insignificant to the type of overall coverage provided by the policy.

{¶17} After *Davidson,* supra, and *Hillyer,* supra, this court determined Ohio law required us to find mobile equipment and valet parking clauses are incidental to the type of overall coverage provided in a commercial general liability policy, and thus, do not trigger the requirements of RC. 3937.18 and *Linko,* supra.

{¶18} We find, again, neither the mobile equipment clause, nor the valet parking clause is sufficient to trigger UM/UIM coverage by operation of law in this policy. However, appellees argue the insurance policy provides express UM/UIM coverage because it states it will provide any liability, uninsured motorist, no-fault, or other coverages required by any motor vehicle insurance law.

{¶19} We find this argument is not well taken. The language upon which appellees rely is contained in the mobile equipment endorsement. We read this language to refer to the mobile equipment listed in the endorsement. Thus, any coverage required by motor vehicle insurance law for the mobile equipment is expressly provided. Automobiles and self-propelled vehicles are excluded from coverage, and thus, the policy does not provide liability, uninsured motorist, no-fault or other coverages required by motor vehicle insurance law in this case.

{¶20} In conclusion, we find none of the subject language, i.e., the mobile equipment clause, the valet parking clause, and the conformity to statute clause extend coverage either expressly or by action of law to appellee under the facts of this case.

{¶21} The assignment of error is sustained.

{¶22} For the foregoing reasons, the judgment of the Court of Common Pleas of Fairfield County, Ohio, is reversed, and the cause is remanded to that court for further proceedings in accord with law and consistent with this opinion.

By Gwin, P. J.,

Edwards, J., and

Boggins, J., concur

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JUDGES

WSG:clw 0930

[Cite as *Robinson v. Ohio Mut. Ins. Group*, 2004-Ohio-7313.]

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO

FIFTH APPELLATE DISTRICT

LARRY ROBINSON, ET AL	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
OHIO MUTUAL INSURANCE GROUP	:	
Defendant-Appellant	:	CASE NO. 2004-CA-13

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Fairfield County, Ohio, is reversed, and the cause is remanded to that court for further proceedings in accord with law and consistent with this opinion. Costs to appellee.

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JUDGES