[Cite as *SeaBright v. Euro Paint, L.L.C.*, 2017-Ohio-1263.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

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| SEABRIGHT INSURANCE COMPANY<br><br>PLAINTIFF-APPELLANT<br><br>VS.<br><br>EURO PAINT, LLC<br><br>DEFENDANT/THIRD-PARTY PLAINTIFF-APPELLEE<br><br>AND<br><br>TROY PAINTING, INC.<br><br>DEFENDANT/THIRD-PARTY PLAINTIFF-APPELLEE<br><br>AND<br><br>VIMAS PAINTING CO., INC.<br><br>DEFENDANT-THIRD PARTY PLAINTIFF-APPELLEE CROSS-APPELLANT<br><br>VS.<br><br>KERNAN INSURANCE AGENCY, INC., et al.<br><br>THIRD-PARTY DEFENDANTS CROSS-APPELLEES | CASE NOS. 15 MA 0088<br>15 MA 0106<br>15 MA 0125<br><br><br><br>OPINION |

[Cite as **_SeaBright v. Euro Paint, L.L.C._**, 2017-Ohio-1263.]

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| CHARACTER OF PROCEEDINGS: | Civil Appeals from the Court of Common Pleas of Mahoning County, Ohio<br>Case Nos. 12 CV 3023; 12 CV 3389; 12 CV 3024 |
| JUDGMENT: | Affirmed.<br>Cross-Appeal Reversed. |

APPEARANCES:

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|---|---|
| For SeaBright Insurance Co.: | Atty. Katheryn M. Lloyd<br>Carpenter Lipps & Leland LLP<br>280 Plaza, Suite 1300<br>280 North High Street<br>Columbus, Ohio 43215 |
| For Euro Paint, LLC, Troy Painting, Inc. & Vimas Painting Co., Inc.: | Atty. Stuart A. Strasfeld<br>Atty. David S. Barbee<br>Roth Blair LPA<br>100 E. Federal Street, Suite 600<br>Youngstown, Ohio 44503 |
| For Kernan Insurance Agency & Gerald Kernan: | Atty. Thomas P. Mannion<br>Atty. Allison E. Hayes<br>Mannion, Gray, Uhl & Hill Co., LPA<br>1375 E. 9th St., Suite 1600<br>Cleveland, Ohio 44114 |
| For State of Ohio: | Atty. Mike DeWine<br>Attorney General of Ohio<br>Atty. Eric E. Murphy<br>State Solicitor<br>Michael J. Hendershot<br>Chief Deputy Solicitor<br>30 East Broad Street, 17th Floor<br>Columbus, Ohio 43215 |

JUDGES:

Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Carol Ann Robb

Dated: March 28, 2017

[Cite as *SeaBright v. Euro Paint, L.L.C.*, 2017-Ohio-1263.]

WAITE, J.

**{¶1}** In this consolidated matter, Appellant SeaBright Insurance Company ("SeaBright") appeals three separate judgment entries from three different Mahoning County Common Pleas Courts. In all of these, the trial court judges granted summary judgment in favor of three separate bridge painting companies. Each of the three were engaged to paint different bridges in the State of Kentucky. The three bridge painting companies are Appellees in this appeal: Euro Paint, LLC ("Euro Paint"); Troy Painting, Inc. ("Troy"); and Vimas Painting Company, Inc. ("Vimas"). In their respective cases, each bridge painting company filed a third party complaint against their insurance agency and agent, Kernan Insurance Agency and Gerald Kernan ("Kernan Defendants"). *Amicus curiae* briefs were filed by both the Kernan Defendants as well as the State of Ohio.

**{¶2}** It should be noted at the outset that each of these cases consist of substantially similar fact issues. In addition to each bridge painting company's business principal's deposition obtained in the respective cases, the depositions from Kernan Defendants (Gerald Kernan and Scott Joseph) as well as depositions of SeaBright auditors (Frank Robinson and Thomas Ward) were used and filed of record in all three cases. In addition, for clarity, each case will be nominally referred to by the name of the respective bridge painting company: (1) "the Euro Paint appeal" (15 MA 0088); (2) "the Troy appeal" (15 MA 0106); and (3) "the Vimas appeal" (15 MA 0125). As a final preliminary note, although the Kernan Defendants are third party defendants in each case and filed their own motions for summary judgment in each case, only the Vimas trial court granted this motion. The Kernan Defendants'

motions for summary judgment in the other two cases were denied as moot. Vimas has filed a cross-appeal in this matter directed towards the Kernan Defendants.

**{¶3}** The central legal issue in this consolidated matter is whether Ohio Bureau of Workers' Compensation Form C-110 signed by Appellees' workers qualifies as proof of "other insurance" as defined in the SeaBright policies, precluding SeaBright from recovering additional post-audit premiums from each Appellee. SeaBright contends the workers' compensation insurance coverage provided by them to Appellees enabled Appellees to obtain the bridge painting contracts with the Kentucky Transportation Cabinet. SeaBright argues, then, that Appellees owe the additional premiums based on employee audits conducted after the projects were complete. SeaBright contends that they bore all of the risk for all of Appellees' employees while they performed work in Kentucky, because Kentucky does not recognize the Ohio C-110 forms as providing proof of workers' compensation coverage. On the other hand, Appellees contend they obtained minimal coverage in Kentucky only in the event they hired Kentucky residents on the jobs and that the C-110 forms completed by their employees evinced "other insurance" coverage as defined by the SeaBright policy because they operated as a contract between Appellees and their employees to agree that Ohio had jurisdiction over any claim for workers' compensation coverage. Further, Appellees contend this has been standard practice in the industry and that the premiums sought by SeaBright total nearly as much, and sometimes more than, the total amount of the project contract. In the Kernan Defendants' *amicus curiae* brief they make similar arguments and also

contend that claims from Appellees' out-of-state workers based on C-110 forms have been recognized and paid by the Ohio Bureau of Workers Compensation ("BWC") in the past. The State of Ohio has filed an *amicus curiae* brief only to raise the issue that, although several appellate districts have stated mere signing of a C-110 form creates a binding contract and provides Ohio workers' compensation coverage, courts must still take into consideration whether the employer and employee at issue have sufficient contacts within Ohio to permit workers' compensation coverage utilizing the C-110 form. If the C-110 forms executed by Appellees' employees constitute valid binding contracts for workers' compensation coverage in Ohio, they would qualify as "other coverage" under the SeaBright policy language and preclude recovery of the additional premiums sought by SeaBright.

**{¶4}** For the reasons discussed below, Appellees paid $15,000 each to SeaBright with their initial applications to obtain Kentucky workers' compensation coverage. The unrebutted testimony shows that it was Appellees' understanding that this was the minimal amount necessary in order to obtain private workers' compensation coverage for any employees Appellees might hire who were Kentucky residents. Ultimately, Appellees never hired any Kentucky residents. Most of Appellees' employees executed C-110 forms at the time they were hired, agreeing to be bound by Ohio's workers' compensation statutes and Ohio coverage. The record shows Appellees and their employees have sufficient localized contact with Ohio, pursuant to current caselaw, to render the C-110s valid. Workers with signed C-110 forms have "other insurance" pursuant to the SeaBright contract. As SeaBright failed

to demonstrate a genuine issue of material fact exists regarding their breach of contract, action on account and unjust enrichment claims, the three trial courts properly denied SeaBright's motions for summary judgment. SeaBright's assignments of error are without merit. Vimas' cross-appeal regarding summary judgment in favor of Kernan Defendants is correct only to the extent that the trial court in the Vimas case should also have denied Kernan Defendants' motion for summary judgment against Vimas as moot.

## Procedural History

### SeaBright v. Euro Paint

**{¶5}** On September 27, 2012, SeaBright filed a complaint against Euro Paint for breach of contract. An amended complaint was filed on January 17, 2013, alleging breach of contract, action on account, and unjust enrichment. The claims related to a private workers' compensation insurance policy issued to Euro Paint from SeaBright for the policy periods August 13, 2010 through August 12, 2011 and August 13, 2011 through August 12, 2012. SeaBright filed a second amended complaint on February 27, 2013, attaching as exhibits and incorporating copies of the written policies at issue. On May 6, 2013, Euro Paint filed an answer to the amended complaint. Euro Paint sought leave to file a third-party complaint against its insurance agent and agency, the Kernan Defendants. On August 28, 2013, the third-party complaint was filed.

**{¶6}** On October 29, 2014, the Kernan Defendants filed a motion for summary judgment directed at Euro Paint ("Kernan Defendants' first motion for

summary judgment")  On November 18, 2014, Kernan Defendants filed a second motion for summary judgment directed at SeaBright's claims against Euro Paint ("Kernan Defendants' second motion for summary judgment").  On December 2, 2014, SeaBright filed a combined motion to strike Kernan Defendants' second motion for summary judgment, and a motion for summary judgment regarding its own claims against Euro Paint.  On December 12, 2014, Euro Paint filed a motion for summary judgment against SeaBright combined with its opposition to the Kernan Defendants' first motion for summary judgment.  On January 15, 2015, SeaBright filed in opposition to Euro Paint's motion for summary judgment.

**{¶7}** On April 3, 3015, the magistrate issued a decision:  (1) denying SeaBright's motion for summary judgment; (2) granting Euro Paint's motion for summary judgment; (3) granting SeaBright's motion to strike Kernan Defendants' second motion for summary judgment; (4) dismissing Euro Paint's third-party complaint against Kernan Defendants; and (5) denying Kernan Defendants' first motion for summary judgment as moot.  SeaBright filed timely objections to the magistrate's decision on April 17, 2015.  On April 27, 2015, Euro Paint filed its own objections to the magistrate's decision.  Euro Paint also filed its response to SeaBright's objections to the magistrate's decision on April 30, 2015.  On May 12, 2015, the trial court affirmed the magistrate's decision.  This timely appeal followed.

<u>SeaBright v. Troy</u>

**{¶8}** On November 1, 2012, SeaBright filed a complaint against Troy alleging breach of contract, action on account, unjust enrichment and quantum meruit.  The

complaint related to private workers' compensation insurance for the policy period June 7, 2011 through June 7, 2012.

**{¶9}** On December 18, 2012, Troy filed an answer. On March 12, 2013, SeaBright filed a motion for summary judgment, alleging that because Troy failed to respond to SeaBright's request for admissions they should be deemed admitted. On April 25, 2013, Troy filed a response to SeaBright's motion for summary judgment. On May 9, 2013, the trial court issued a judgment entry denying SeaBright's motion for summary judgment. SeaBright did not appeal.

**{¶10}** On November 14, 2013, after seeking leave from the trial court, Troy filed a third-party complaint against the Kernan Defendants, alleging they failed to secure the appropriate workers' compensation coverage and seeking indemnification for any damages awarded to SeaBright. The Kernan Defendants filed their answer on December 5, 2013.

**{¶11}** On October 29, 2014, the Kernan Defendants filed a motion for summary judgment directed at Troy on the third-party claims ("Kernan Defendants' first motion for summary judgment"). On December 4, 2014, the Kernan Defendants filed a motion for summary judgment on SeaBright's claims against Troy ("Kernan Defendants' second motion for summary judgment"). On December 1, 2014, SeaBright filed a combined motion for summary judgment for its own claims against Troy and to strike Kernan Defendants' second motion for summary judgment. On December 12, 2014, Troy filed a combined motion for summary judgment on

SeaBright's claims and a response to the Kernan Defendants' first motion for summary judgment.

**{¶12}** On April 16, 2015, the magistrate issued a decision: (1) denying SeaBright's motion for summary judgment; (2) granting Troy's motion for summary judgment; (3) granting SeaBright's motion to strike Kernan Defendants' second motion for summary judgment; (4) dismissing Euro Paint's third-party complaint against Kernan Defendants; and (5) denying Kernan Defendants' first motion for summary judgment as moot.

**{¶13}** On May 15, 2015, SeaBright timely filed objections to the magistrate's decision after receiving an extension from the court. Troy filed its own objections to the magistrate's decision on May 27, 2015 as well as a response to SeaBright's objections. Kernan Defendants filed a response to SeaBright's objections on May 29, 2015. On June 2, 2015, the trial court adopted the magistrate's decision and this timely appeal followed.

<u>SeaBright v. Vimas</u>

**{¶14}** On September 27, 2012, SeaBright filed a complaint against Vimas seeking judgment in the amount of $2,321,408, with a copy of an invoice attached. On December 17, 2012, Vimas filed a motion to dismiss pursuant to Civ.R. 12(B)(6), asserting SeaBright failed to allege there was any contract of insurance nor did SeaBright raise any allegations of breach of contract. In a judgment entry dated May 15, 2013, the trial court denied Vimas' motion to dismiss and granted SeaBright's motion for leave to file an amended complaint. On December 24, 2012, SeaBright

filed an amended complaint alleging breach of contract, action on account and unjust enrichment. On May 23, 2013, Vimas filed its answer and a counterclaim against SeaBright, seeking a refund on its premium. SeaBright replied to the counterclaim.

**{¶15}** On November 14, 2013, after seeking leave of the trial court, Vimas filed a third-party complaint against the Kernan Defendants, alleging they had failed to secure the appropriate workers' compensation coverage and seeking indemnification for any damages awarded to SeaBright.

**{¶16}** On October 28, 2014, the Kernan Defendants filed a motion for summary judgment on the claims raised by Vimas ("Kernan Defendants' first motion for summary judgment"). On November 18, 2014, the Kernan Defendants filed a motion for summary judgment on SeaBright's claims against Vimas ("Kernan Defendants' second motion for summary judgment"). SeaBright filed a combined motion for summary judgment on its claims against Vimas and a motion to strike the summary judgment motion filed by the Kernan Defendants with respect to SeaBright's claims against Vimas.

**{¶17}** On December 12, 2014 Vimas filed a combined motion for summary judgment on SeaBright's claims and a response to the Kernan Defendants' first motion for summary judgment. On January 16, 2015, SeaBright filed its opposition to Vimas' motion for summary judgment. On March 30, 2015, Vimas filed a combined motion in opposition to SeaBright's motion for summary judgment and a reply, defending its own motion for summary judgment.

**{¶18}** On April 3, 2015, the magistrate issued a decision: (1) denying SeaBright's motion for summary judgment; (2) granting Vimas' motion for summary judgment; (3) denying SeaBright's motion to strike Kernan Defendants' second motion for summary judgment; (4) dismissing Euro Paint's third-party complaint against Kernan Defendants; and (5) granting Kernan Defendants' first motion for summary judgment.

**{¶19}** On April 17, 2015, SeaBright filed objections to the magistrate's decision. On April 27, 2015, Vimas filed objections to the magistrate's decision as well as a response to SeaBright's objections. Kernan Defendants filed a response to SeaBright's objections on May 22, 2015.

**{¶20}** On July 10, 2015, the trial court overruled the objections and adopted the decision of the magistrate. This timely appeal followed. We consolidated the three appeals in a judgment entry dated September 23, 2015.

Factual History

**{¶21}** The record reveals the following facts. Each of the three Appellees has operated as an Ohio entity, with their principal places of businesses located in Mahoning County, Ohio. Evelyn Klimis ("Klimis") is the sole owner of Euro Paint, LLC, an Ohio limited liability company. Troy was an Ohio corporation with four shareholders. Michael Xipolitas was the principal officer and, although no longer operating, Troy was an active corporation during the policy period in question. Vimas is an Ohio corporation in operation since 1996. Nick Frangopoulos is a principal officer.

**{¶22}** The companies bid for bridge painting contracts throughout the United States. From their inception, Euro Paint and Troy have included C-110 forms in the pre-employment packets they provided to prospective employees. If an opportunity to work outside of Ohio arises, the companies have signed C-110 forms from their employees on file, in which both the employees and companies agree to be bound by the Ohio workers' compensation system. Vimas does not require execution of a C-110 form as a condition of employment, but a majority of their employees do sign C-110 forms rather than obtaining separate workers' compensation insurance on their own. Most of Appellees' employees are local union members and are hired based on word of mouth.

**{¶23}** Each of the three lawsuits are the result of bridge painting contracts obtained by each company in Kentucky after they won bids on three separate projects awarded by the Kentucky Transportation Cabinet ("KYTC"). Euro Paint was awarded a bridge painting contract in Hopkins County, Kentucky. Troy was awarded a bridge painting job in Hazard, Kentucky. Vimas was awarded a bridge painting contract for the Roebling Bridge which crosses the Ohio River, connecting Ohio and Kentucky.

**{¶24}** The principals from Euro Paint and Troy stated in their deposition testimony that, after the bids were awarded but before work commenced, KYTC informed them that they would need to obtain private workers' compensation coverage for any employees they hired who may be Kentucky residents. Each company was utilizing the Kernan Defendants for their insurance needs and

contacted them to obtain the requisite insurance. Scott Joseph ("Joseph") was responsible for the workers' compensation business at Kernan and, by means of an insurance wholesaler, LIG, obtained the requisite insurance with SeaBright. In order to secure minimum coverage, Joseph estimated a payroll of $15,000. Appellees completed the applications and each paid a premium of approximately $15,000.

**{¶25}** After each of Appellees' SeaBright policies expired, SeaBright conducted an audit payroll review in accordance with the terms of their policy. SeaBright requested copies of all payroll information, including the names and payroll figures for those employees who had executed C-110 forms.

**{¶26}** After a lengthy audit process, each company was sent a final audit report. SeaBright submitted an audited premium total of $507,368.00 for Euro Paint. The total project for Euro Paint's bridge painting project at issue in Kentucky was $306,000.00. SeaBright submitted an audited premium total of $777,751.00 for Troy. The total project for Troy's Kentucky project was approximately $1 million. SeaBright submitted an audited premium total of $2,244,249.00 for Vimas. The total project for Vimas' Kentucky contract was $2 million.

**{¶27}** Following receipt of the post-audit premium statements, Appellees contacted Kernan Defendants to inquire about the unexpected premiums. The record does not reveal any further attempt by SeaBright to contact Appellees directly until the instant actions were filed.

## Standard and Scope of Review

**{¶28}** These consolidated appeals arise from three trial court judgment entries resolving motions for summary judgment. An appellate court conducts a *de novo* review of a trial court's decision to grant summary judgment, using the same standards as the trial court set forth in Civ.R. 56(C). *Grafton v. Ohio Edison Co.,* 77 Ohio St.3d 102, 105, 671 N.E.2d 241 (1996). Before summary judgment can be granted, the trial court must determine that: (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most favorably in favor of the party against whom the motion for summary judgment is made, the conclusion is adverse to that party. *Temple v. Wean United, Inc.,* 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977). Whether a fact is "material" depends on the substantive law of the claim being litigated. *Hoyt, Inc. v. Gordon & Assoc., Inc.*, 104 Ohio App.3d 598, 603, 662 N.E.2d 1088 (1995).

**{¶29}** "[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." (Emphasis deleted.) *Dresher v. Burt*, 75 Ohio St.3d 280, 296, 662 N.E. 2d 264 (1996). If the moving party carries its burden, the nonmoving party has a reciprocal burden of setting forth specific facts showing that there is a genuine issue for trial. *Id.* at 293. In other words, when presented with a properly supported motion for summary judgment, the nonmoving party must produce some

evidence to suggest that a reasonable factfinder could rule in that party's favor. *Brewer v. Cleveland Bd. of Edn.,* 122 Ohio App.3d 378, 386, 701 N.E.2d 1023 (8th Dist.1997).

**{¶30}** The evidentiary materials to support a motion for summary judgment are listed in Civ.R. 56(C) and include the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact that have been filed in the case. In resolving the motion, the court views the evidence in a light most favorable to the nonmoving party. *Temple*, 50 Ohio St.2d at 327.

**{¶31}** The Ohio General Assembly has imbued the Ohio Bureau of Workers Compensation ("BWC") with the administration of Ohio's workers' compensation program. Although most states allow for private workers' compensation insurance coverage, Ohio is one of a handful of states that are monopolistic, meaning that the Ohio state government provides workers' compensation insurance through a state insurance fund. Only if the employer has the financial resources to do so, and is approved by the state, can they self-insure their workers' compensation coverage. Every employer in Ohio must have workers' compensation insurance regardless of the type of work or how many hours an employee may work.

**{¶32}** Chapter 4123 of the Ohio Revised Code governs Ohio workers' compensation law administered by the BWC. At issue in the instant case is the statutory choice of law provision, R.C. 4123.54(H)(1) which reads:

Whenever, with respect to an employee of an employer who is subject to and has complied with this chapter, there is possibility of conflict with respect to the application of workers' compensation laws because the contract of employment is entered into and all or some portion of the work is or is to be performed in a state or states other than Ohio, the employer and the employee may agree to be bound by the laws of this state or by the laws of some other state in which all or some portion of the work of the employee is to be performed. The agreement shall be in writing and shall be filed with the bureau of workers' compensation within ten days after it is executed and shall remain in force until terminated or modified by agreement of the parties similarly filed. If the agreement is to be bound by the laws of this state and the employer has complied with this chapter, then the employee is entitled to compensation and benefits regardless of where the injury occurs or the disease is contracted and the rights of the employee and the employee's dependents under the laws of this state are the exclusive remedy against the employer on account of injury, disease, or death in the course of and arising out of the employee's employment. If the agreement is to be bound by the laws of another state and the employer has complied with the laws of that state, the rights of the employee and the employee's dependents under the laws of that state are the exclusive remedy against the employer on account of injury,

> disease, or death in the course of and arising out of the employee's employment without regard to the place where the injury was sustained or the disease contracted. If an employer and an employee enter into an agreement under this division, the fact that the employer and the employee entered into that agreement shall not be construed to change the status of an employee whose continued employment is subject to the will of the employer or the employee, unless the agreement contains a provision that expressly changes that status.

**{¶33}** This choice of law provision allows an employer with employees who will work entirely or partially out of the state to commit in writing their agreement to be bound either by the Ohio workers' compensation program or to the laws of another state where the employee will be working. The BWC has drafted two forms for that purpose. The form which provides that the employer and employee will be bound by Ohio workers' compensation laws is form C-110 (form C-112 is utilized when selecting another state). Form C-110 provides a written contract between the Ohio employer and employee agreeing to comply with Ohio's workers' compensation law and agreeing that Ohio law provides the exclusive remedy for an employee and that employee's dependents against any workplace related injury or disease. See R.C. 4123.54(H); *Travelers Indemn. Co. v. Zumstein Mgt. Co.,* 12th Dist. No. CA2008-06-010, 2009-Ohio-789, ¶ 40.

**{¶34}** The Ohio Administrative Code codifies the result of formal rulemaking regarding the ability to select Ohio law and forum:

> When an Ohio employer hires an employee to perform transitory work outside of Ohio and the employee is not covered by the workers' compensation laws of the state of residence for claims arising outside that state because the contract of employment was not entered into in the state of residence, the employer and his employee, if the employment relationship maintains sufficient contacts with the Ohio location to be covered by Ohio workers' compensation law, may mutually agree to be bound by the workers' compensation laws of the state of Ohio by executing form C-110, or mutually agree to be bound by the workers' compensation law of some other state by executing form C-112, such forms to be obtained from and filed with the bureau of workers' compensation within ten days after execution.

Ohio Adm.Code 4123-17-23(E).

**{¶35}** The crux of the matter before us is whether the C-110 forms executed by Appellees and their employees fall properly under the purview of the Ohio choice of law provision and provide proof of “other insurance,” precluding SeaBright from recovering the post-audit premiums they seek.

ASSIGNMENT OF ERROR NO. 1

> The trial courts erred in granting summary judgment to the defendant bridge-painting companies. (Reflected in trial courts' summary judgment entries).

**{¶36}** SeaBright argues that the trial courts erred in concluding the C-110 forms constituted "other insurance" under the SeaBright policies held by Appellees. In the General Section portion of the policy entitled, "Locations," the Appellees' policies state:

> This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

(SeaBright Insurance Policies Appellate Exhibits M, N, O).

**{¶37}** Thus, according to the SeaBright policy, SeaBright's coverage exists in all of the workplaces and states specifically mentioned in the policy unless other insurance exists. The only workplaces listed in Items 1 or 4 of the policies' Information Page are the Appellees' places of businesses in Mahoning County and their contract locations in Kentucky. There is also a location in Wisconsin listed for Troy. This is not an issue, here. SeaBright argues that no other insurance existed for Appellees' employees.

**{¶38}** SeaBright insists there is no Ohio jurisdiction for workers' compensation for out-of-state employees who perform no Ohio work, citing *Indus. Comm. of Ohio v. Gardinio*, 119 Ohio St. 539, 164 N.E. 758 (1929). In *Gardinio*, the Court, interpreting predecessor statutes to R.C. 4123.54, held that an employee was not entitled to coverage under Ohio workers' compensation benefits when that employee worked entirely outside the State of Ohio. *Id.* at 543. In *Krull v. Industrial Comm.,* 68 Ohio

App. 203, 39 N.E.2d 883 (1940) this Court held that Ohio workers' compensation coverage did not apply to a worker who performed work "in Pennsylvania and was not a part of the duties and service contemplated to be performed in Ohio, or incident to such employment, nor was [the worker] sent beyond the borders of this state to discharge work contemplated to be performed in Ohio." *Id*. at 214. Again, these cases predated changes to Ohio's workers' compensation laws.

**{¶39}** The *Gardinio* rule regarding coverage has since been distinguished. In *Prendergast v. Indus. Comm.,* 136 Ohio St. 535, 27 N.E.2d 235 (1940), the Ohio Supreme Court held that an employee working outside of Ohio was entitled to Ohio workers' compensation benefits. The employee was hired in Ohio but eventually transferred to Missouri. The Court reasoned that because the matter involved an Ohio "employment relationship" and the employee sought coverage for an employment related injury, that employee was entitled to Ohio workers' compensation benefits. *Id.* at paragraph one of the syllabus. The Court ruled that "an employee injured outside the state may recover under the Ohio act if the employing industry and his relationship thereto are localized in Ohio." *Id.* at 543. The *Prendergast* Court considered a number of factors when determining whether the relationship between the employer and employee was "localized in Ohio" and, thus, whether the employee was entitled to receive benefits under Ohio workers' compensation law. *Id*.

**{¶40}** Ohio caselaw has evolved to include these factors to be considered in determining whether the employment relationship was localized in Ohio. Courts are

specifically to look at: (1) where the employment contract was executed; (2) where the employee's name is included on the payroll reports; (3) where the injury occurred; (4) the employee's residence; (5) where the employee works; (6) whether the employee can receive workers' compensation benefits elsewhere; (7) the relationship between the employee's work and the employer's place of business; and (8) which state has the primary interest in the employee. *Linden v. Cincinnati Cyclones Hockey Club, L.P.,* 138 Ohio App.3d 634, 643 742 N.E.2d 150 (2000).

**{¶41}** Again, *Gardinio* was decided under an earlier statute and long before the Ohio Administrative Code specifically allowed for Ohio coverage for out-of-state work and for the use of form C-110. While *Gardinio* has been distinguished many times, the case most directly on point relative to the issue before us is *Zumstein*, *supra*, in which the Twelfth District held the C-110 form created a contract between the employer and employee to be bound by Ohio workers' compensation law. In *Zumstein*, a Michigan workers' compensation insurer filed an action against its insured, an Ohio employer, arguing breach of contract and alleging the Ohio employer owed premiums for its employees who were residents of Michigan even though these employees had executed C-110 forms. The Twelfth District held that the Michigan policy did not provide workers' compensation coverage for those employees who had signed the C-110 forms, as those employees had elected to be covered by the Ohio workers' compensation system. Those workers had "other insurance" under the policy terms. *Id.* at ¶ 51. In its holding, the *Zumstein* court

stopped short of looking beyond the existence of the valid C-110 forms executed between the employer and employee and did not delve into whether the employer was localized in Ohio, holding those factors "need to be considered only when the employer and employee have not reached an agreement as to whether the employee's workers' compensation rights will be determined according to the law of Ohio or another state." *Id.* at ¶ 44.

**{¶42}** In its *amicus* brief, the State of Ohio cautions that courts must not focus solely on the existence of a signed C-110 form, but must also determine whether there is "more of a nexus to Ohio than that agreement" to decide whether Ohio workers' compensation law should apply. (State's *Amicus* Brf., p. 1.) As noted, if no party to the agreement had a connection to Ohio beyond the execution of a C-110 form, there would exist the absurd result of an out-of-state employer and out-of-state employee agreeing to a choice of Ohio law for workers' compensation benefits. Jurisdiction for Ohio benefits would not exist.

**{¶43}** Moreover, the language contained within R.C. 4123.54 itself requires the employer in question to be "subject to" the laws of this chapter. "Employer" is defined as:

> (1) The state, including state hospitals, each county, municipal corporation, township, school district, and hospital owned by a political subdivision or subdivisions other than the state;
>
> (2) Every person, firm, professional employer organization, and private corporation, including any public service corporation, that (a) has in

> service one or more employees or shared employees regularly in the same business or in or about the same establishment under any contract of hire, express or implied, oral or written, or (b) is bound by any such contract of hire or by any other written contract, to pay into the insurance fund the premiums provided by this chapter.
>
> All such employers are subject to this chapter. Any member of a firm or association, who regularly performs manual labor in or about a mine, factory, or other establishment, including a household establishment, shall be considered an employee in determining whether such person, firm, or private corporation, or public service corporation, has in its service, one or more employees and the employer shall report the income derived from such labor to the bureau as part of the payroll of such employer, and such member shall thereupon be entitled to all the benefits of an employee.

R.C. 4123.01(B).

**{¶44}** Thus, in the case *sub judice,* in order to determine whether the signed C-110 forms validly bound Appellees and their employees to Ohio workers' compensation coverage, we must conduct a *de novo* review into whether the C-110 forms were properly executed and whether Appellees and their employees were sufficiently localized to Ohio. If so, these C-110 agreements are enforceable under Ohio workers' compensation law and would provide the employees "other insurance"

under the terms of the SeaBright policies at issue. Validly signed C-110 forms would be proof of such "other insurance" under the policies.

**{¶45}** Again, there is no question that Appellees are Ohio companies with their primary place of business in Ohio. The C-110 forms were made part of the hiring process by Euro Paint and Troy. Included in their hiring packet, prospective employees executed the form, agreeing to be bound by Ohio workers' compensation law if and when they performed work for Appellees outside of the State of Ohio. Vimas did not make the C-110 a condition of employment. However, Frangopoulos testified at deposition that he believed most of his employees signed the C-110 form. (Frangopoulos Depo., pp. 25-26.) The C-110 form states in relevant part:

> An employee who enters into an employment contract outside of Ohio may work in another state some or all of the time. This leads to the possibility that Ohio's workers' compensation laws may conflict with those of the other state. In these cases, Ohio law allows employers and employees to choose workers' compensation coverage from Ohio or from the other state.
>
> **Use this form to choose Ohio coverage.** By signing this form, both the employee and employer agree to be bound exclusively by the workers' compensation laws of Ohio.
>
> * * *

> **Important notes:** (1) Neither form C-110 nor C-112 can create jurisdiction where none exists. The forms merely clarify which state's laws will apply in the event of a conflict between states having jurisdiction over an employer and employee. (2) Although BWC honors a valid C-110 in Ohio, the laws of another state might not recognize the terms of the agreement. Consult the workers' compensation agency in the other state(s) or private counsel to verify the validity of this agreement outside Ohio.
>
> * * *
>
> The parties to this agreement represent to BWC that there is a possibility of a conflict between the workers' compensation laws of Ohio and those of another state, because the employee entered into the contract of employment and will perform all or some of the work in a state or states other than Ohio.

(BWC Form C-110.)

**{¶46}** SeaBright contends the signed C-110 forms do not provide Ohio with jurisdiction over any workers' compensation claims that may have been filed by Appellees' employees as there was no evidence the forms were filed with the BWC. They also argue that these forms are "not recognized" under Kentucky workers' compensation law. A similar argument was made by the Travelers Insurance Company in *Zumstein. Id.* at ¶ 36. The court in *Zumstein* concluded that the C-110s were valid contracts executed by the employer and employees evincing the parties'

intent to be bound by Ohio law and jurisdiction. In short, the signed forms are "recognized" as providing workers' compensation coverage in Ohio. As such, whether or not they are so "recognized" by the State of Kentucky, they sufficiently serve to provide proof of other insurance pursuant to the SeaBright policy.

**{¶47}** In the instant matter, by executing the C-110 forms, Appellees and their employees agreed in writing that they would be bound by the Ohio workers' compensation system. Contrary to SeaBright's assertion, there is evidence in the record that the forms were filed with the BWC along with Appellees' regular payroll filings. (Klimis Depo., pp. 35, 37; Frangopoulos Depo., pp., 25-26; Xipolitas Depo., p. 36.)

**{¶48}** The *Zumstein* court did not analyze whether localized Ohio contacts supported recognition of the forms as valid contracts. Because we recognize that the language of the form itself and the State of Ohio require a localized nexus in order to allow coverage, and to further address SeaBright's concerns about Kentucky's "recognition" of these forms, we will undertake such an analysis.

**{¶49}** As noted earlier, a number of factors are involved when determining whether the employer and employee have a sufficient nexus with Ohio to warrant coverage under the Ohio workers' compensation system. Courts should consider whether these are supported by sufficient contacts with Ohio on a case-by-case basis. *Linden v. Cincinnati Cyclones Hockey Club, L.P.,* 138 Ohio App.3d 634, 643, 742 N.E.2d 150 (2000).

**{¶50}** The first factor is the place of contract of employment. An employer is specifically defined for workers' compensation purposes pursuant to R.C. 4123.01(B). Each Appellee in this matter is an Ohio entity and, with the exception of Troy (which has since closed) is actively doing business in Ohio. (Klimis Depo., p. 5; Frangopoulos Depo., p. 7; Xipolitas Depo., p. 7.) Moreover, Appellees' principal places of business are all in Mahoning County, Ohio. Each business has paid into the Ohio workers' compensation system and has done so for a sustained period of time. Each Appellee was paying into the system at all times relevant to this case. Appellees' principals testified at deposition that their employees were typically union members, but could be hired from any number of locations around the United States. Importantly, they all testified that prospective employees were interviewed, received health screening, safety training and were offered employment at Appellees' principal places of business in Mahoning County, Ohio. (Frangopoulos Depo., pp. 26-30; Klimis Depo., p. 38; Xipolitas Depo., p. 34.) The record also contains evidence by way of deposition testimony that the Ohio BWC has paid claims in the past for each of Appellees' out-of-state projects pursuant to signed C-110 forms. Moreover, William Hager, an expert hired by Euro Paint and former President and C.E.O. of the National Council on Compensation Insurance, testified in his deposition that it has long been industry custom and practice to utilize C-110 forms when an Ohio employer hires employees to perform work in other states. The record contains a plethora of evidence to support the proposition that the place of contract of

employment is here in Ohio. Moreover here, as in *Prendergast*, the employment relationship is an Ohio one.

**{¶51}** Next we consider where the employee's name is included on the payroll reports. This record reveals that most employees were listed on the payrolls according to the particular job to which they were assigned. Payroll reports were generated at Appellees' Ohio businesses but sent to an outside payroll processing firm. Payroll checks were typically mailed directly to the employees at the jobsite.

**{¶52}** The third factor for whether localized Ohio contact exists between employer and employee is where the injury occurred. The record is devoid of any evidence of any injury occurring during the policy period in question.

**{¶53}** The fourth factor is the employee's residence. The record reveals that none of the employees at issue were permanent Kentucky residents. In fact, Appellees believed that the premium balance owed would be zero, as they were informed by Kentucky officials and representatives of the insurance agencies that the purpose of obtaining SeaBright private workers' compensation coverage was to provide coverage in the event they hired Kentucky residents to work on the Kentucky jobs. (Klimis Depo., p. 20; Xipolitas Depo., pp. 52-53.) This testimony has gone unrebutted by SeaBright. Each principal for Appellees testified that they hired employees from several states. SeaBright argues in its brief that Ohio residents were not calculated in its payroll audit. However, the record reveals that the post-audit premium calculations include both employees who signed C-110 forms as well as other employees. Therefore, we can conclusively state only that Appellees'

workforce was derived from residents of many states, but no employees were from Kentucky.

**{¶54}** The fifth factor in determining whether there were localized contacts with Ohio is where the employees work. The record is clear that all the employees in question worked on job sites in Kentucky for Appellees on a temporary basis for the duration of the respective projects.

**{¶55}** The sixth factor in the analysis is whether the employee can receive workers' compensation benefits elsewhere. SeaBright contends any of Appellees' employees injured on the job could have filed a workers' compensation claim in Kentucky and expect to be covered by the SeaBright policy. This rationale simply begs the question. If an employee has executed a C-110 form with his or her Ohio employer, agreeing to be bound by Ohio law and forum, that employee is free to file a claim in Ohio, just as that employee may file in Kentucky or in the employee's state of residence if it is not Ohio. There is no mechanism that exists to prevent an employee from filing a claim elsewhere. Whether that claim will be dismissed based on a valid existing contract to be bound by Ohio workers' compensation law and jurisdiction is the very question before us. Simply arguing that an employee "might" file for recovery in a state where that employee has no entitlement to obtain recovery is not a valid basis for claiming that the employee is not bound to the agreement he or she signed to submit to Ohio's law and jurisdiction. *Zumstein* dealt with this same argument and determined that, while nothing can prevent an employee bound by a C-110 form from filing for recovery outside of Ohio, insurance companies were free to

seek reimbursement for claims paid under their workers' compensation policies if a claimant seeks to obtain double recovery under two jurisdictions. *Zumstein, supra.* As there were no claims for employee injuries during the policy periods, this argument is speculative on SeaBright's part. SeaBright spends a large part of its brief discussing that Kentucky law does not "recognize" C-110 forms. This has little bearing on the issue, other than to reinforce the importance of the forms in ensuring that Appellees' employees have willingly and validly selected Ohio's laws and forum. While Kentucky courts may not automatically "recognize" signed C-110 forms as proof of other insurance (and we understand that this is no longer the case), these forms do provide evidence of a valid, binding contract to be bound to the Ohio system of workers' compensation in the event an employee would attempt to recover in Kentucky. Thus, it is the recognition of these forms in Ohio that is important in this case. And while the Kentucky statute on which SeaBright relies to ground its argument that it was providing primary coverage for all of Appellees' workers does not limit itself only to workers who might be residents of Kentucky, as Appellees believed, it is plain that the Kentucky statute was broadly written so that no contractor would be able to work in Kentucky without having workers' compensation coverage for that contractor's employees. Obviously, the purpose for the Kentucky law is twofold – protect people working in Kentucky and protect the coffers of the state from claims of injured employees. Both of these goals are more than adequately protected by means of valid and enforceable C-110 forms.

**{¶56}** Also of note, none of Appellees were forbidden from proceeding with their respective projects for lack of workers' compensation coverage despite initially demonstrating only $15,000 in estimated payroll coverage through SeaBright. Again, these projects totaled anywhere from $300,000 to $2 million in total value.

**{¶57}** The seventh factor is the relationship between the employee's work and the employer's place of business. As discussed above, the employees were hired, trained and tested at Appellees' Mahoning County locations even though all of the work of these employees was conducted on the project sites in Kentucky.

**{¶58}** The eighth factor in the analysis is which state has the primary interest in the employee. There is no evidence in the record that the work performed by Appellees' employees in Kentucky was anything other than temporary, for the sole purpose of completing each respective Appellee's project. The projects lasted for no more than a few months at most and, although it appears the employees resided in hotels located in Kentucky during their work on the projects, there is no evidence they intended to be bound to Kentucky for the long term. SeaBright presents no evidence to the contrary. On the other hand, many of Appellees' were local union hires. Some of these were from states other than Ohio. Presumably, these employees intended to return to those states of residence after finishing their job assignments with Appellees.

**{¶59}** A majority of the factors, then, weigh in favor of an Ohio nexus. Additionally, the Ohio Workers Compensation Act should be "liberally construed in favor of employees and the dependents of deceased employees." R.C. 4123.95.

There clearly were sufficient localized Ohio contacts to support the executed C-110 forms. Thus, this record reflects that Appellees had "other insurance" coverage under the language of the SeaBright policies. There is no evidence to support that employees working for Appellees who executed the C-110 forms ever intended to be bound by any other law or forum with regard to workers' compensation coverage and SeaBright's arguments are unpersuasive. Beyond the fact that no employee was a Kentucky resident, it is readily apparent that there was no objection, interruption or rejection of the awarded projects by the KYTC for lack of workers' compensation coverage or insufficient coverage. Importantly, the interviews, health screenings, training and contracts for employment were predominately held or executed in Ohio and, most telling of all, the companies are all Ohio entities with a long history of paying into the Ohio workers' compensation system. Evidence of past payment of claims for these Appellees' employees working out-of-state based on C-110 forms is in the record and SeaBright has excluded employees who have executed C-110 forms from post-audit calculations in the past. For all of these reasons, SeaBright's first assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 2

> The trial courts erred in not, at a minimum, finding triable issues of fact as to SeaBright's claims for unjust enrichment. (Reflected in trial courts' summary judgment entries).

**{¶60}** In its second assignment of error, SeaBright contends the trial courts erred because factual evidence existed in the record to support its claim of unjust

enrichment. In its appellate brief, SeaBright argues only that Appellees were able to obtain the Kentucky contracts and those "lucrative" contracts were secured due to SeaBright's policies; policies which SeaBright insists were intended to provide coverage for every worker on each project. SeaBright does not cite to any specific portion of the record or any evidence in support of this contention and, as such, it remains only unsupported argument.

**{¶61}** Unjust enrichment exists when the plaintiff can demonstrate: (1) a benefit to the defendant conferred by the plaintiff; (2) knowledge by the defendant of the benefit; and (3) retention of the benefit by the defendant under circumstances where it would be unjust to do so without payment. *Hambleton v. R.G. Barry Corp.,* 12 Ohio St.3d 179, 183, 465 N.E.2d 1298 (1984). When determining whether there is sufficient evidence to support a claim for unjust enrichment, a reviewing court will not reverse a judgment "supported by some competent, credible evidence going to all the essential elements of the case." *Dixon v. Smith*, 119 Ohio App.3d 308, 318, 695 N.E.2d 284 (1997), quoting *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, 376 N.E.2d 578 (1978), at syllabus.

**{¶62}** Contrary to SeaBright's assertion, there is evidence on the record to dispute SeaBright's contention that its interpretation of the policy at issue (requiring SeaBright coverage for each and every worker on the three projects) enabled Appellees to obtain their respective Kentucky contracts. In fact, principals for each of the Appellees testified in their depositions that their understanding of the purpose of the SeaBright insurance coverage was solely in case they hired any Kentucky

residents as workers' on their Kentucky projects. (Klimis Depo., p. 20; Xipolitas Depo., pp. 52-53.) Despite the governmental contracts at issue, ranging in value from approximately $300,000 to $2 million, none of the Appellees were ever notified by KYTC that they were underinsured nor did they receive any warning or indication that their contracts were in jeopardy as a result of only carrying a private workers' compensation policy based on an estimated payroll of only $15,000 for such large projects. Lastly, we note that SeaBright's arguments are entirely speculative. No evidence was introduced to support these contentions.

**{¶63}** Although the brief before us does not provide evidentiary support of SeaBright's contention that its interpretation of these policies was necessary to enable Appellees to obtain their Kentucky public bridge contracts, the record does contain evidence that Appellees have extensive experience in public bidding and were aware of the requirements prior to receiving the notice to commence on their respective projects in question. Appellees purchased only the minimum amount of coverage for Kentucky workers' compensation insurance, demonstrating their intent to be bound by Ohio workers' compensation law under the C-110 forms for the vast majority of the employees working in Kentucky. We find that SeaBright's second assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 3

> The trial courts erred in denying SeaBright's motions for summary judgment. (Reflected in trial courts' summary judgment entries).

**{¶64}** In its third assignment of error, SeaBright contends the trial courts erred in denying their three motions for summary judgment against these three Appellees based on the evidence presented. As earlier discussed, when reviewing whether a motion for summary judgment was improvidently denied we must conduct a *de novo* review of a trial court's decision, using the same standards as the trial court set forth in Civ.R. 56(C).

**{¶65}** SeaBright argues the trial courts all decided to grant summary judgment in favor of Appellees based on the "mistaken conclusion" that Appellees had valid Ohio workers' compensation coverage based on the C-110 forms. In their judgment entries, the trial courts each ultimately granted summary judgement in favor of Appellees finding that the C-110s provided proof of "other insurance" as set forth in the policies, thereby precluding additional premium recovery by SeaBright. In the Vimas case the trial court held:

> The applicable policy excludes coverage where Vismas [sic] has "other insurance." The Vismas [sic] workers in dispute signed Ohio BWC Form C-110, thereby entering into an agreement with Vismas [sic] to be bound exclusively by the workers' compensation laws of Ohio. See R.C.4123.54. Vismas [sic] paid the premiums for the disputed workers to Ohio BWC. Therefore, these workers had other insurance and were not covered by the Seabright policy. See *Travelers Indemnity Co. v. Zumstein Mgt. Co.* 2009 Ohio 789, (12 App. Dist. Preble Co. February 23 2009).

(4/3/15 Magistrate's Decision.)

**{¶66}** The trial court in the Euro Paint case held:

> [The court] concludes that the coverage afforded the employees of Defendant, Euro Paint by virtue of their election to be covered for workplace injuries by Ohio's workers' compensation system constitutes "other insurance" pursuant to the terms of Plaintiff's policy. Therefore, Plaintiff's policy did not provide insurance coverage to those employees audited and, as such, Plaintiff is not entitled to the additional premiums they seek from Defendant, Euro Paint, LLC as a matter of law.

(5/12/15 J.E.)

**{¶67}** The trial court in the Troy case held:

> In this case, construing the evidence in a light most favorable to Seabright, reasonable minds can come to but one conclusion and that is Seabright's policy with Troy did not provide workers compensation coverage to Troy's employees who executed C-110 forms. Troy had "other insurance" and as such, Seabright is not entitled to the premiums it seeks from Troy in the complaint.

(6/2/15 J.E.)

**{¶68}** Thus, each trial court concluded Appellees had coverage under Ohio workers' compensation law and provided proof of coverage through the executed C-110 forms. The trial courts, utilizing the rationale in *Zumstein,* admittedly did not go a step further as the State of Ohio urges is necessary in its *amicus* brief and undertake

an analysis of whether Appellees had sufficient localized contacts to provide a nexus for determining these C-110s were validly executed. Based on the record, we have undertaken such a review. We have determined that the evidentiary record supports the various trial courts' decisions to grant summary judgment in favor of Appellees. SeaBright's third assignment of error is without merit and is overruled.

APPELLEE VIMAS' CROSS-ASSIGNMENT OF ERROR

> The trial court erred in granting summary judgment to KIA and Mr. Kernan with respect to Vimas' Third Party Complaint.

**{¶69}** In its cross-assignment of error, Appellee Vimas contends the trial court erred in granting summary judgment in favor of the Kernan Defendants, as third-party defendants. The trial court granted summary judgment in favor of Vimas regarding the claims against it by SeaBright. The Kernan Defendants had filed a motion for summary judgment against Appellee Vimas on their claims that the Kernan Defendants procured the wrong workers' compensation coverage for Vimas and that Vimas should be indemnified for any damages awarded to SeaBright should they be successful in their action.

**{¶70}** As the trial court ultimately concluded that the C-110 form constituted proof of "other insurance" under the SeaBright policy and granted summary judgment in favor of Vimas, the summary judgment motion filed by the Kernan Defendants to Vimas' third-party complaint was moot. The trial court should not, then, have granted Kernan Defendants' motion. The trial court's decision in the Vimas matter is reversed

only to the extent that it entered summary judgment in favor of the Kernan Defendants.

Conclusion

**{¶71}** As to SeaBright's appeal, the crux of the issue here is whether the C-110 forms provide proof that Appellees had "other insurance" for the majority of their employees under the policy at issue. The executed Ohio BWC C-110 form is a binding contract between employer and employee to be bound by Ohio workers' compensation law and forum. After conducting a "localized contacts" analysis, it is clear Appellees are Ohio employers with strong ties to Ohio and a history of paying into the Ohio workers' compensation system. Their employees, performing work on short-term out-of-state projects for their Ohio employer, are precisely the persons the C-110 form was promulgated to benefit. Signed C-110 forms provide proof of "other insurance" pursuant to the SeaBright policy.

**{¶72}** Because this is the case, SeaBright has not successfully demonstrated in the record any support for its contentions that it was entitled to summary judgment on any of its claims including breach of contract or unjust enrichment.

**{¶73}** In summary, Appellant's assignments of error are each without merit and the judgments of the trial courts as it relates to those assignments are affirmed. Appellee Vimas' cross-assignment of error is sustained as the trial court erred in not finding Kernan Defendants' summary judgment motion moot as a result of the decision to grant summary judgment to Vimas regarding SeaBright's claims. We reverse the trial court in the Vimas matter on the sole issue of the Kernan

Defendants' summary judgment directed at Vimas. The judgment of the trial court is affirmed on every issue with the exception of the issue on cross-appeal, where we reverse the judgment of the trial court and find the Kernan Defendants' motion for summary judgment moot.

Donofrio, J., concurs.

Robb, P.J., concurs.