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**Gallagher Sharp Newsflash: Insurance - Supreme Court of Ohio Clarifies
Who is Bound by DJ**

July 15, 2010, the Supreme Court of Ohio decided the case of *Estate of Heintzelman v. Air Experts, Inc.*, Slip Opinion No. 2010-Ohio-3264. Essentially, the court clarified under what circumstances plaintiffs are bound by a judgment in a declaratory judgment ("DJ") action between the insurer of the defendant and the defendant. The court held that plaintiffs are bound by the outcome of the DJ if either the DJ action was filed by the defendant/insured or the plaintiffs participated in the DJ action.

The *Heintzelman* case arose out of the death of Jeffrey Heintzelman, who was electrocuted in his home when he came in contact with a hot electrical outlet left exposed by Martel Heating & Cooling ("Martel"). When a wrongful death lawsuit was brought against Martel, its carrier, American Family Insurance Company, assumed the defense of Martel, which had gone out of business. American Family also filed a separate DJ action against only Martel, seeking a declaration that American Family had no duty to indemnify Martel for any judgment against it. When Martel did not answer, a default judgment was entered for American Family, apparently unbeknownst to the Heintzelman plaintiffs, who in the wrongful death suit obtained a multi-million dollar verdict against Martel.

Those plaintiffs filed a supplemental complaint against American Family pursuant to R.C. 3929.06 (the supplemental complaint statute allowing suit against an insurer where a judgment against an insured is unsatisfied for thirty days). It was only then that the plaintiffs learned of the judgment in the DJ action. Nevertheless, the trial court granted summary judgment to American Family, holding that pursuant to R.C. 3929.06, the plaintiffs were bound by the judgment even though they were not parties to the action. Reversing the trial court, the court of appeals held that the judgment was not binding on the plaintiffs because American Family initiated the DJ action. The appellate court noted that R.C. 3929.06 states that when the holder of the policy of insurance commences a DJ action against an insurer, any judgment in that action is binding on judgment creditors (including plaintiffs with a judgment against an insured). The statute does not speak to DJ actions commenced by the insurer, and thus does not state that when the insurer commences the DJ, any judgment is binding on creditors. American Family appealed to the Supreme Court.

The Supreme Court affirmed the court of appeals. Analyzing the specific language found in R.C. 2721.12(B), 2721.02(C), and 3929.06(C)(2), the Supreme Court held, in a unanimous opinion written by Justice Paul Pfeifer (with Chief Justice Brown not participating), that a judgment relating to insurance coverage is binding upon an insured's judgment creditor only if the insured initiated the DJ action or the judgment creditor participated in that action as a party. Because American Family commenced the DJ action against Martel and did not join the Heintzelman plaintiffs as parties (and they did not intervene), the default judgment declaring no indemnity coverage was not binding upon the plaintiffs.

(The Court noted, however, that assignees of insureds are treated differently under Ohio law, and that they are bound by any coverage determination made against the insured regardless of who commenced the suit.)

Practice pointer: If an insurer deems it necessary or appropriate to commence a DJ action before liability is established against its insured in an underlying lawsuit, the insurer should join any potential judgment creditors, i.e. claimants or plaintiffs, as necessary and interested parties in that action in order to bind them on any coverage determination. Occasionally, though, not all the claimants or plaintiffs are identified or apparent. In those cases, the insurer may still wish to pursue a DJ action, with the understanding that any judgment will not be binding on claimant who has not been named a party to the DJ action but later surfaces.

The link to read the Court's opinion is here:

<http://www.supremecourtofohio.gov/rod/docs/pdf/0/2010/2010-ohio-3264.pdf>

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