

THE PLAIN DEALER
METRO

Sunday, June 3, 2001

Section B

Insurers pay in unexpected places

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Using loophole, drivers collect from employers' policies

Drivers can sue under employer plans

The trend started after an Ohio Supreme Court decision in June 1999. That case involved a Stark County woman named Kathryn Scott-Pontzer. Her husband, who worked for a dairy, was killed in a car crash. The court said the loosely worded contract between the insurer and the employer entitled Scott-Pontzer to compensation from the dairy's insurer, even though her husband wasn't working at the time of the accident or driving a company car.

In the contract, the insurance company defined the insured as "you," which the court construed to mean "employees." The court said it made no sense to limit coverage to the corporation because a corporation can't drive a car and get hurt. And because the policy did not specify that coverage was limited to on-the-job accidents, Scott-Pontzer's husband was covered when he was killed.

That decision and others that followed have been far-reaching. In a case decided May 11, for example, a school employee in Zanesville, Ohio, was allowed to recover from the school board's insurance company for an accident that occurred while she was vacationing in West Virginia.

Cleveland lawyer Rubin Guttman, who won \$800,000 in April

on behalf of an Aurora woman in a Scott-Pontzer claim, chuckles when insurance companies claim they never meant to cover off-the-job crashes.

"What do you think the insurance company would say to you if you got into a crash and you called them up and said, 'I meant to have more coverage ...?' That's exactly what they're doing here," Guttman said. "They got lazy and sloppy. They probably didn't mean to cover the secretary when she's going out for pizza with her family on a Saturday night, but that's what they did, and they've got to be accountable for it."

Westlake lawyer John Bostwick, who represents insurance companies, said the policies were written so average people could easily understand them.

"If the courts find ambiguity in

the contract, they're just driving a Mack truck through it," he said. "What matters is the intent of the parties. No one ever intended to cover every employee every time, every place, everywhere."

Guttman and other lawyers believe the loophole won't last long. Ohio legislators are considering a proposal that would preclude Scott-Pontzer claims.

Most insurers also are rewriting their contracts to make them more specific. But sometimes even that doesn't help. Guttman noted another settlement he recently won from the insurance of a client's employer.

"That contract had been rewritten after Scott-Pontzer," he said.

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