

[Cite as *Ziegler v. Pacific Employers Ins. Co.*, 2003-Ohio-6405.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

BRIAN W. ZIEGLER

Plaintiff-Appellee

-vs-

PACIFIC EMPLOYERS INSURANCE COMPANY

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. John F. Boggins, J.

Case No. 2003CA00180

OPINION

CHARACTER OF PROCEEDING: Appeal from the Stark County Court of
Common Pleas, Case No. 2001CV00339

JUDGMENT: Reversed

DATE OF JUDGMENT ENTRY: December 1, 2003

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Defendant-appellant Pacific Employers Insurance Company (“Pacific”) appeals the April 14, 2003 Nunc Pro Tunc Judgment Entry of the Stark County Court of Common Pleas which granted summary judgment to plaintiff-appellee Brian W. Ziegler.

STATEMENT OF THE FACTS AND CASE

{¶2} On May 27, 2000, appellee was a passenger in a vehicle operated by Jeff Huff, III. Huff lost control of the vehicle, resulting in a crash and causing injury to appellee.

{¶3} Appellee lived at home with his parents at the time of the accident. Appellee’s father was employed by Babcock & Wilcox Company (“B&W”). Pacific insured B&W under a Business Auto Policy. The policy did not contain UM/UIM coverage. B&W had attempted to reject UM/UIM coverage by a written rejection.

{¶4} Appellee filed a declaratory judgment against Pacific and Indiana Insurance Company on February 7, 2001.¹ The trial court granted appellee summary judgment finding UM/UIM coverage existed under Pacific’s policy via Nunc Pro Tunc Judgment Entry filed April 14, 2003. It is from that judgment entry Pacific prosecutes this appeal, assigning as error:

{¶5} “I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT TO PLAINTIFF-APPELLEE BRIAN W. ZIEGLER AND IN DENYING SUMMARY JUDGMENT TO DEFENDANT-APPELLANT PACIFIC EMPLOYERS INSURANCE COMPANY.”

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{¶6} Appellee’s claim and the trial court’s finding of coverage is premised upon *Ezawa v. Yasuda Fire & Marine Ins. Co. of America* (1999), 86 Ohio St.3d 557. Subsequent to the trial court’s decision, *Ezawa* was overruled in *Westfield Ins. Co. v.*

¹ Indiana Insurance is not a party to this appeal.

Galatis, 100 Ohio St.3d ____, 2003-Ohio-5849. Pursuant to *Galatis*, Pacific's assignment of error is sustained.

{¶7} The judgment of the Stark County Court of Common Pleas is reversed.

By: Hoffman, P.J.

Wise, J. and

Boggins, J. concur