



*Gwin, P.J.*

{¶1} Defendants Royal Insurance Company of America and Royal Indemnity Company appeal a summary judgment of the Court of Common Pleas of Stark County, Ohio, entered in favor of plaintiffs/appellees Brandon Eslich, and Michelle and Dennis Miller. Appellants assign three errors to the trial court:

{¶2} “UM/UIM COVERAGE IS CONDITIONED UPON THE ALLEGED INSURED OCCUPYING OR OPERATING A COVERED AUTO WHICH FOR UM/UIM COVERAGE ARE ONLY THOSE VEHICLES OWNED BY ADVANCED STORES WHICH IS NEITHER AMBIGUOUS NOR VIOLATIVE OF THE OHIO SUPREME COURT’S DECISION IN *SCOTT-PONTZER V. LIBERTY MUTUAL INS. CO.* (1999), 85 OHIO ST. 3D 660.

{¶3} “AS MR. ESLICH WAS OCCUPYING HIS MOTHER’S AUTOMOBILE, UM/UIM COVERAGE WAS EXCLUDED UNDER ADVANCED STORE’S ‘OTHER OWNED VEHICLE’ EXCLUSIONS.”

{¶4} ROYAL INDEMNITY’S INCLUSION OF THE DRIVE OTHER CAR COVERAGE-BROADENED COVERAGE FOR NAMED INDIVIDUALS ENDORSEMENT EFFECTIVELY REMOVES ANY AMBIGUITY ALLEGEDLY CREATED BY THE TERM ‘YOU’ IN REFERENCE TO BURLINGTON COAT FACTORY.”

{¶5} The facts which gave rise to this case are undisputed. On November 4, 1999, Brandon Eslich was involved in an automobile collision with the alleged tortfeasor, Michael Johnson, who is not a party to this appeal. At the time of the accident,

Eslich was seventeen years old and resided with his mother and step-father. Brandon's mother owned the vehicle he was driving at the time of the collision.

{¶6} Erie Insurance Group insured Brandon and his mother under two personal auto policies.

{¶7} Eslich and his parents brought suit against the alleged tortfeasor, Erie Insurance Group, and various insurance companies which insured the employers of Brandon, his mother, and his step-father.

{¶8} The trial court entered summary judgment in favor of Brandon and his family against Erie, and found Erie's coverage was primary, subject to any set-offs of the tortfeasor.

{¶9} Eslich's other claims were made pursuant to *Scott-Pontzer v. Liberty Mutual Fire Insurance Company* (1999), 85 Ohio St. 3d 660 710 N.E. 2d 1116, and *Ezawa v. Yasuda Fire & Marine Insurance Company* (1999), 86 Ohio St. 3d 557, 715 N.E. 2d 1142. Brandon Eslich was employed by Burlington Coat Factory and Advanced Auto Parts. Royal Indemnity Insurance Company insured Burlington Coat Factory with a business auto policy and a commercial general liability policy. The trial court found Brandon Eslich was entitled to UM/UIM coverage under the business auto policy, but not under the commercial general liability policy. Royal also insured Advanced Auto Parts, and the trial court found Brandon Eslich was entitled to UM/UIM coverage under the business auto policy, but not under the commercial general liability policy.

{¶10} Brandon Eslich's mother, Michelle Miller, was employed by the Jackson Local School District. Nationwide Agribusiness Insurance Company insured the Jackson Local School District under an education liability policy and an education

umbrella policy. Indiana Insurance Company insured the Jackson Local School District under a commercial auto policy with an uninsured/underinsured motorist endorsement. The trial court found *Scott-Pontzer*, and its progeny applied to school boards, and the school board's authority to purchase UM/UIM coverage has no bearing on determining the scope of coverage under any policies the Board may have had in place at the time of the collision. The trial court concluded Brandon Eslich and his parents are entitled to UM/UIM coverage under the Indiana Insurance Policy and under Nationwide's umbrella policy. The trial court found the educational liability policy is not a motor vehicle policy of insurance, and for this reason, Brandon Eslich and his parents were not entitled to any coverage under that policy.

{¶11} Brandon Eslich's step-father, Dennis Miller, was employed by Sentry Insurance, who was insured by Sentry under a commercial auto policy with express UM/UIM coverage. The trial court found Brandon Eslich and his parents were covered under the Sentry policy.

{¶12} The trial court found Erie Insurance, as the personal auto insurance carrier for Brandon Eslich and his parents was primary, and subject only to the tortfeasor's setoff. The trial court found that amongst the various other insurance companies, each was obligated on pro-rata basis, after the primary coverage and the tortfeasor setoff.

{¶13} Four separate appeals were taken from this judgment, Stark Appellate Nos. 2003CA00200; 2003CA00207; 2003CA00195, and 2003CA00205. All are related and present similar issues, but for the purposes of clarity, each appeal will be addressed separately.

{¶14} The trial court found the insurance policies issued by Royal and Royal Indemnity provided coverage to Brandon Eslich and the Millers pursuant to the cases of *Scott-Pontzer* and *Ezawa*. During the pendency of the appeal, the Ohio Supreme Court decided the case of *Westfield Insurance Company v. Galatis*, 100 Ohio St. 3d 216, 2003-Ohio-5849. In *Galatis*, the Supreme Court limited the holding of *Scott-Pontzer* to situations where an employee is injured within the course and scope of his or her employment. The Supreme Court overruled the *Ezawa* case.

{¶15} None of the appellees were within the scope of their employment at the time they were injured, and for this reason, *Galatis* requires us to reverse the trial court's judgment.

{¶16} Each of appellants' assignments of error are sustained.

{¶17} For the foregoing reasons, the judgment of the Court of Common Pleas of Stark County, Ohio, is reversed, and pursuant to App. R. 12, we enter final judgment on behalf of Royal Insurance Company of America and Royal Indemnity Company.

By Gwin, P.J.,

Edwards, J., and

Boggins, J., concur