

DECLARATORY JUDGMENT ACTION INITIATED BY INSURER HAS NO BINDING EFFECT ON NON-INSURED PARTY

On July 15, 2010, the Ohio Supreme Court issued its slip opinion in the case of *The Estate of Heintzelman, et al. v. Air Experts, Inc., et al.* This decision has extensive implications for insurers, insureds and injured third parties, because the declaratory judgment action was initiated by the insurer and not the insured.

Jeffrey and Margaret Heintzelman hired Martel Heating & Cooling to install an attic air conditioner in their home in August 1999. The air conditioner malfunctioned and Martel returned to the home on several occasions to attempt to address the problems, but was unsuccessful. In 2001, having learned that Martel was no longer in business, the Heintzelmans hired Air Experts, Inc. to repair their air conditioner, but the problems continued. In July 2002, Mr. Heintzelman entered the attic to assess the damage caused by water leaking from the air conditioner. He was electrocuted and died when he came into contact with an unprotected electrical outlet Martel had installed. Mrs. Heintzelman filed a suit against Martel Heating and Cooling.

Martel was a named insured under a commercial insurance policy issued by American Family Insurance Company. American Family filed a separate declaratory judgment action against Martel, its named insured, seeking a declaration that it had no duty to provide coverage for Martel for any award in the Heintzelman case. Mr. Heintzelman was not named or joined in that declaratory judgment action. Martel never filed an answer in the declaratory judgment action, and American Family obtained a default against Martel on March 10, 2004.

The Heintzelman's personal injury case proceeded to trial in March 2005. The jury rendered a verdict against Martel and in favor of the estate on its wrongful death claim, and in favor of Mrs. Heintzelman for her emotional distress claim. The award was eventually overturned on a separate appeal, although the award to the estate was sustained. In May 2005, Mrs. Heintzelman filed a supplemental complaint against American Family, alleging that Martel's policy provided coverage for injuries. American Family filed a motion for summary judgment arguing that the Heintzelman's were bound by the default judgment rendered in the declaratory judgment action between American Family and Martel. The trial court in 2007 granted American Family's motion for summary judgment, and the matter was appealed. The Delaware County Court of Appeals held that a declaratory judgment relating to insurance coverage is binding upon an insured's judgment creditor, **only if** the insured initiated the declaratory judgment action. Since American Family initiated the declaratory judgment action, the Court held that the judgment was not binding on the Heintzelman's, and the Ohio Supreme Court affirmed.

The decision of the Ohio Supreme Court in *Heintzelman* places the determining factor of the ultimate binding effect of a declaratory judgment on who initiated the suit, rather than the legal issues involved. The issue presented to the Court, whether initiated by the insurer or the insured, is the same. This decision could have devastating effects on insurers and insureds as it increases the likelihood for inconsistent judicial determinations.

Megan Faust focuses her national practice on insurance coverage analysis, counseling and litigation, including first party and third party matters, employment liability coverages, construction, life and disability as well as professional liability issues. For further questions, please contact Megan at (330)849-6617 or lfaust@ralaw.com.