

OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Jared Wagner at 937-224-3333 or email Jared at jawagner@green-law.com.

Court of Appeals: Second District

Case Name: *Cincinnati Ins. Co. v. Lafitte*, 2006-Ohio-1806

Decided: April 7, 2006 (posted April 11, 2006)

Issue(s): Subrogation/Service of Summons

Summary of Opinion: Cincinnati Insurance initially attempted to serve a subrogation complaint on the defendant through certified mail but that attempt was not claimed by the defendant. Cincinnati Insurance then served the complaint through ordinary mail, which was never returned, but defendant still failed to file an answer. Cincinnati then moved for a default judgment, which the trial court granted; however, a little over a month later the trial court granted defendant's motion to set aside the default judgment based solely on defendant's affidavit stating that he had not been served with the complaint. The Second District reversed the trial court's decision, ruling that the trial court should have held an evidentiary hearing prior to setting aside the default judgment.

GREEN & GREEN, Lawyers represents select insurance clients in all aspects of insurance litigation, from complex coverage questions to more routine torts. We will see to it that your file will be handled only by a competent, seasoned attorney who will work diligently to obtain the best result possible.

As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate court decisions on cases of interest to our insurance clients. No opinion as to the legal import of the cases summarized is intended. Any questions regarding the information contained in this transmission should be directed at any time to one of the attorneys of the firm.

Court of Appeals: Fifth District

Case Name: *Jeavons v. Werner Ent.*, 2006-Ohio-1754

Decided: April 7, 2006 (posted April 7, 2006)

Issue(s): Subrogation/Service of Summons

Summary of Opinion: Plaintiffs were involved in an automobile accident with a tractor trailer. As a result of the accident, the tractor trailer driver received a traffic citation. The trial court denied defendant's motion in limine, seeking to prevent the traffic citation from being admitted into evidence. As a matter of strategy, defendant's attorney mentioned the citation to the jury during voir dire and opening statements. Defendant then presented an objection in court to the admission of the citation when a witness for plaintiffs mentioned the citation during direct examination. The trial court overruled the objection, and the Fifth District affirmed the decision. The Fifth District held that where a party first introduces evidence of a citation in a proceeding, regardless of the trial court's previous holding on a motion in limine, that party waives any further challenges to such evidence.

Court of Appeals: Eighth District

Case Name: *McGuffin v. Zaremba Contracting*, 2006-Ohio-1734

Decided: April 6, 2006 (posted April 6, 2006)

Issue(s): Umbrella Policy Coverage/Employer Intentional Tort

Summary of Opinion: Plaintiff brought an action against his employer for employer intentional tort. The employer filed a declaratory judgment action against State Auto, seeking coverage for this claim under its Umbrella liability policy. The trial court determined that the employer was entitled to coverage, and State Auto appealed. On appeal, the Eight District reversed the trial court's decision, finding that language in the Umbrella policy excluding bodily injury or property damage that is "either expected or intended from the standpoint of the insured" excludes coverage for a substantial-certainty employer intentional tort claim.

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