

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: Fourth District

Case Name: *Morgan v. Gracely*, 2006-Ohio-2344

Decided: May 3, 2006 (posted May 12, 2006)

Issue(s): Premise Liability Exceptions

Summary of Opinion: Plaintiff was injured when she stepped into a hole on a grassy strip of public land adjacent to Defendant's private property. Using the case law concerning a private property owner's duty to pedestrians using the public sidewalk abutting private land, Plaintiff argued that Defendant was liable for her injuries. However, the court rejected this argument because: (1) there were no statutes or ordinances ordering the landowner to maintain the grassy strip of land; (2) there was no evidence that the landowner had affirmatively acted to maintain or create the hole in the grassy strip; and (3) there was no evidence that the landowner had allowed the hole to exist for some private benefit or use. The court held that even if there was a material issue of fact concerning whether the landowner knew about the hole and allowed it to exist, summary judgment was appropriate because there was no evidence that the landowner received any benefit or use from the hole.

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: Eighth District

Case Name: *Bryan-Wollman v. Domonko*, 2006-Ohio-2318

Decided: May 11, 2006 (posted May 11, 2006)

Issue(s): Judgment Notwithstanding the Verdict/Manifest Weight
Extent of Injuries/Proximate Causation

Summary of Opinion: Plaintiff was injured in a car accident. Defendant stipulated that she was negligent, but challenged Plaintiff on the issue of damages. During trial both sides presented various expert witnesses that testified about the causes and extent of Plaintiff's injuries. After deliberation, the jury returned a verdict for Defendant. Consequently, Plaintiff moved for a judgment notwithstanding the verdict, which the trial court denied. The Eight District reversed, finding that the trial court had abused its discretion in not granting the motion because the manifest weight of the evidence proved that Plaintiff had suffered at least some injury. According to the majority, the only issue was how much damage Defendant was liable for not whether Defendant was liable at all. Thus, the court found that the jury's verdict was not supported by competent, credible evidence.

There was a dissent in this opinion. The dissenting judge would have upheld the trial court's decision on the basis that the jury was free to believe that the accident was not the cause of any of Plaintiff's injuries, regardless of Defendant's negligence.

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