

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: Tenth District

Case Name: Welch v. Ameritech, 2006-Ohio-2528

Decided: May 23, 2006 (posted May 23, 2006)

Issue(s): Damage Award/Pain and Suffering/Manifest Weight of the Evidence

Summary of Opinion: Plaintiff was injured in a car accident and brought suit against the tortfeasor's employer. Plaintiff had been involved in numerous other accidents and the cause and extent of her injuries was hotly debated at trial. After deliberation, the jury awarded Plaintiff damages for her medical expenses but awarded no damages for pain and suffering. Plaintiff moved for a new trial on the grounds that the jury's award was against the manifest weight of the evidence, but the trial court denied the motion. On appeal, the Tenth District affirmed the decision of the trial court and held that it would not automatically hold that a verdict is against the manifest weight of the evidence where the jury awards medical expenses in a personal injury case without also awarding pain and suffering. However, it should be noted that the Tenth District acknowledged there is a split on this issue amongst Ohio's Appellate Courts.

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: Twelfth District

Case Name: Nationwide Mut. Fire Ins. Co. v. Logan, 2006-Ohio-2512

Decided: May 22, 2006 (posted May 22, 2006)

Issue(s): Failure to Join Indispensable Party/Res Judicata

Summary of Opinion: The insured was injured in an accident caused by the tortfeasor. At the time of the accident, the insured had a policy of insurance through Nationwide Mutual Fire Insurance Company. Nationwide paid the insured \$23,658.80 for property damage losses and \$1,179.17 for personal injury losses. Thereafter, the insured brought suit against the tortfeasor, but failed to name Nationwide as a party or give Nationwide notice of the suit. At the same time, Nationwide had entered into negotiations with the tortfeasor regarding Nationwide's subrogation claims; however, the tortfeasor also failed to notify Nationwide of the pending suit. Eventually, the insured and the tortfeasor entered into a settlement agreement. Nationwide then brought suit against the tortfeasor under a subrogation claim. The tortfeasor responded that all the insured's claims had been determined via the settlement agreement and that Nationwide was precluded from bringing any claims under the doctrine of res judicata. The Twelfth District rejected the tortfeasor's claims and found that the tortfeasor had waived its right to raise res judicata with respect to Nationwide because the tortfeasor had not raised this issue during the course of the previous lawsuit initiated by the insured. The court found that despite the fact that the tortfeasor's answer in the previous law suit asserted an affirmative defense based on the insured's failure to join all indispensable parties, without some sort of affirmative action on the part of the tortfeasor to join or bring Nationwide into the litigation, the tortfeasor can not use res judicata in a subsequent and separate law suit brought by Nationwide.

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