

## 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](mailto:jawagner@green-law.com).**

Court of Appeals: Fifth District

Case Name: *Fields v. Snodgrass*, 2006-Ohio-3995

Decided: August 2, 2006 (posted August 4, 2006)

Issue(s): Right of Way / Parking Lots / Duty to Look

Summary of Opinion: While towing a camper with his truck, Defendant entered into a Wal-Mart parking lot and pulled his truck and camper straight into a parking space. The truck and camper occupied two parking spaces, front and back, and were parked within the designated spaces in the parking lot. After shopping, Defendant checked his left and right side to make sure that his intended direction of travel was clear and advanced forward out of the parking space. At the same time, Plaintiff, was trying to get into her car, which was parked next to Defendant's truck and camper. At some point, Plaintiff's hand became lodged between her car door and Defendant's trailer. Thereafter, Plaintiff brought suit against Defendant, alleging that he had violated his duty to check his rearview and side view mirrors prior to pulling out of the parking space. The trial court granted Defendant summary judgment on the basis that Defendant had the right of way and that he had not violated any duty to Plaintiff. On appeal, the Fifth District affirmed, finding that while Defendant had a common-law duty to act reasonably, he did not have a duty to look behind his vehicle prior to pulling out. Particularly relevant to the court's analysis was the fact that Plaintiff's car door crossed the line marking her parking space and had entered the parking space in which appellee's truck and camper were. Defendant had a right to proceed uninterrupted, within his marked parking space, as he pulled forward. There was no evidence that Defendant had acted unreasonably.

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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: Eight District

Case Name: *State Farm Fire & Cas. Co. v. Century 21 Arrow Realty*,  
2006-Ohio-3967

Decided: August 3, 2006 (posted August 3, 2006)

Issue(s): Public Utilities Commission of Ohio Jurisdiction /  
Liability of Real Estate Agent

Summary of Opinion: The insured put his home on the market and had hired a Century 21 agent to handle the sale. The home was unoccupied from August of 1999 until May of 2000. During December of 1999, East Ohio Gas Company ("East Ohio") relocated the gas main that was providing service to the home. This relocation caused the gas service to the home to be shut off on December 16, 1999. East Ohio left multiple notices at the property indicating that the gas would be shut off. East Ohio also called the Century 21 agent and informed them on several occasions that the property's gas had been shut off and that someone would need to come out to the property and let them in the home to restore the gas service. However, no one ever responded to East Ohio's communications, and the water pipes on the property eventually froze and broke, causing approximately \$40,000.00 in damages. Thereafter, suit was brought against both East Ohio and Century 21. The trial court granted Century 21 summary judgment, but entered judgment against East Ohio. On appeal, the Eight District reversed the judgment against East Ohio, finding that the allegation that East Ohio had failed to act as a reasonably prudent gas company would with regard to the actions it took or did not take in ensuring that the gas would be turned back on at insured's property was related to service. Accordingly, such claims fell within the exclusive jurisdiction of the Public Utilities Commission of Ohio, and the trial court did not have jurisdiction to decide such matters. With respect to Century 21, the appellate court held that while a real estate agent does not have a duty to look after the property he is attempting to sell, he is the seller's fiduciary and does have a duty to provide the seller with any information of which he is aware that would materially affect the real estate. Finding that a material issue of fact remained on the issue of whether the insured's real estate agent knew that the gas to the home had been shut off, the Eight District reversed the trial court's grant of summary judgment in favor of Century 21.

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