

**OHIO CASE SUMMARIES**  
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**Ohio case summaries are brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. Except for holidays, these summaries will be provided Wednesday and Friday of each week. 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: Third District

Case Name: *Derenberger v. Miller*, 2006-Ohio-4186

Decided: August 14, 2006 (posted August 14, 2006)

Issue(s): Child Safety Restraints / Proximate Causation

Summary of Opinion: Defendant caused an automobile accident by failing to yield the right of way at a stop sign. At the time of the accident, Defendant had a three year old boy in the car whom she was babysitting. As a result of the accident, the three year old was ejected from the vehicle and pinned under it. The child's parents reached an agreement whereby Defendant's insurance carrier agreed to pay its policy limits in exchange for the release of any claims based on Defendant's negligence for failure to yield the right of way. However, no other claims were waived. Subsequently, an action was initiated against Defendant alleging negligence for failure to properly restrain the child. The trial court granted Defendant summary judgment, and the Third District affirmed. In finding that Defendant was entitled to summary judgment, the appellate court held that Defendant had a duty pursuant to R.C. 4511.81(A) to place the child in a restraint while operating a motor vehicle and that Defendant had breached this duty. Nonetheless, the court found that Defendant's breach of this duty could not be held to be a proximate cause of the injuries to the child as a matter of law. Citing to R.C. 4511.81(D), the court found that the failure to properly use a car seat is not admissible against any other person in a civil case. The court also compared R.C. 4511.81 to R.C. 4513.263 (the seat belt statute) and found that Ohio courts have consistently held that the nonuse of a seat belt is inadmissible in negligence cases to show that damages would have been lesser if the seat belt had been worn. The damages are the damages regardless of the restraint device used. Thus, the court held that a claim for enhanced damages based on a failure to restrain a child cannot be separated from the negligence causing the accident, and summary judgment was proper because Plaintiffs had released all claims relating to the cause of the accident.

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Court of Appeals: Eleventh District

Case Name: *Derenberger v. Miller*, 2006-Ohio-4186

Decided: August 11, 2006 (posted August 14, 2006)

Issue(s): Definition of Occurrence and Accident in Insurance Policies /  
Causation View

Summary of Opinion: Plaintiffs were proceeding northbound on separate motorcycles when Defendant, heading east, failed to yield the right of way and struck each Plaintiff sequentially, causing them serious bodily injury. At the time of the accident, Defendant was insured by Nationwide Mutual Insurance Company (“Nationwide”) with bodily injury liability limits of \$100,000 per person and \$100,000 per occurrence. However, the Nationwide policy failed to define either “accident” or “occurrence.” As a result, Plaintiffs filed separate actions, claiming that there had in fact been two “occurrences” and that each was entitled to recover the \$100,000 per person policy limits. In response, Nationwide filed a declaratory action, requesting a declaration that there had been only one “occurrence” and that the most Plaintiffs could recover under the terms of its policy was \$100,000 total. The basis of Nationwide’s argument was that the terms “accident” and “occurrence,” while not specifically defined in the policy, have been given such clear and definite meanings in the jurisprudence of this state as to render the terms clear and unambiguous. In essence, Nationwide was arguing that Ohio adheres to the “causation view,” under which the terms “accident” and “occurrence” in insurance liability policies are defined by determining whether there is but one proximate cause for a series of injuries. The trial court declined to apply the “causation view” and held that the Nationwide’s policy was ambiguous with respect to whether an occurrence included a series of injuries caused by a single proximate cause or whether each injury constituted a separate occurrence. Accordingly, the trial court interpreted the ambiguous policy language in favor of coverage and granted summary judgment in favor of Plaintiffs. On appeal, the Eleventh District found that despite an opinion from the First District supporting Nationwide’s position, the Ohio Supreme Court had not adopted the “causation view.” Accordingly the appellate court declined to do so and instead focused exclusively on the terms and definitions of the Nationwide policy. In finding that the undefined terms “accident” and “occurrence” were ambiguous, the court held that “[a] person unversed in the technicalities of insurance law might, therefore, easily conclude that [Defendant’s] striking each of the [Plaintiffs], sequentially, constituted separate accidents or occurrences, rather than the single accident or occurrence of losing control of the minivan.” Accordingly, the appellate court affirmed the trial court’s grant of summary judgment.

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