

**OHIO CASE SUMMARIES**  
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A Legal Professional Association

**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: Sixth District

Case Name: *Brown v. Helzberg Diamonds*, 2006-Ohio-4297

Decided: August 18, 2006 (posted August 18, 2006)

Issue(s): Surveillance Liability / Providing Information to Police Officers

Summary of Opinion: On August 12, 2002, Plaintiff and his girlfriend entered Defendant's Jewelry store and purchased a diamond bracelet. Later that same day, two other men entered the store and also purchased a diamond bracelet; however, the second two men made their purchases with what turned out to be stolen credit cards. Accordingly, the police contacted Defendant and requested a copy of the store's surveillance video from that day. Defendant provided the police with the requested video, but a time sequencing error in the video recording equipment showed Plaintiff's purchasing a diamond bracelet at the time when the two males had used the stolen credit cards to make a similar purchase. The police published the video, and Plaintiff was eventually arrested. After the arrest, Defendant's manager informed police that Plaintiff was not the suspect, and Plaintiff was released. Subsequently, Plaintiff brought suit against Defendant alleging that he was a business invitee and that Defendant had violated its duty to maintain the store in a reasonably safe condition by failing to ensure that the use and operation of the store surveillance equipment did not cause him harm. The trial court granted summary judgment to Defendant on the grounds that Plaintiff had failed to show that Defendant owed him a duty to properly maintain its video equipment, and Defendant could not be held liable for Plaintiff's false arrest because it did not direct or request that Plaintiff be arrested. On appeal, the Sixth Circuit affirmed the trial court's decision, finding that it was not foreseeable to Defendant that the police would fail to confirm Plaintiff's identity with Defendant's manager before broadcasting the tape. Moreover, Defendant was not liable because it had not directed the police to either broadcast the tape or to arrest Plaintiff.

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Court of Appeals: Twelfth District

Case Name: *Land O'Lakes, Inc. v. Nationwide Tanks, Inc.*, 2006-Ohio-4327

Decided: August 21, 2006 (posted August 21, 2006)

Issue(s): Proximate Causation / Comparative Negligence / Service of Process Action Brought Against a Bankrupt Entity

Summary of Opinion: Plaintiffs brought this action when the storage tank that Defendant had constructed ruptured, releasing nearly 1.5 million gallons of liquid fertilizer. Plaintiffs' expert testified that the cause of the rupture was both the negligent manufacture of the tank and the nature of the fertilizer that had been stored inside. Without either, the expert testified that the tank would not have ruptured. The trial court granted Plaintiffs summary judgment on the basis of this testimony. On appeal, the Twelfth District recognized that there can be two or more proximate causes of an injury and that Defendant can not escape liability unless it shows that the rupture would have occurred independent of its negligent manufacture of the tank. Nevertheless, the appellate court held that summary judgment was inappropriate in this case and reversed the trial court's decision because a material issue of fact remained on the issue of comparative negligence. Specifically, the court held that reasonable minds could reach different conclusions as to whether Plaintiff was negligent and, if so, to what extent.

The appellate court also found that service by publication was appropriate upon a corporation where the location of the corporation's place of business and statutory agent are unattainable. Additionally, the court found that the action against Defendant was appropriate despite the fact that Defendant had filed for and been granted bankruptcy over one and a half years prior. The basis for this finding was that Defendant was still an operating corporation at the time the defected tank was manufactured and installed. Thus, Plaintiffs' claims accrued prior to the dissolution of Defendant, and Defendant is estopped from claiming lack of capacity based upon the dissolution.

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