

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.

Court of Appeals: Tenth District

Case Name: *Stratman v. Sutantio*, 2006-Ohio-4712

Decided: September 12, 2006 (posted September 12, 2006)

Issue(s): Independent Medical Examinations / Rules of Civil Procedure / Sanctions for Discovery Violations

Summary of Opinion: Plaintiff and Defendant were involved in a car accident. Plaintiff filed a complaint alleging that Defendant had negligently caused her to suffer various physical and mental injuries. During discovery, Defendant sent Plaintiff a "Notice of Independent Medical Examination," with which Plaintiff refused to comply. Plaintiff argued that Ohio's Rules of Civil Procedure do not recognize a notice for an independent medical examination ("IME") and that an IME could only be scheduled pursuant to a court order. In response, the Defendant filed a motion to compel the IME and for the costs of filing the motion to compel. The trial court granted the motion to compel and ordered Plaintiff to pay Defendant's costs associated with the motion. On appeal, the Tenth District noted that there is no provision in the Ohio Civil Rules that allows a party to conduct an IME pursuant to a notice; however, the appellate court also noted that it is the custom of attorneys in situations where a complaint alleges mental or physical injury to allow their clients to participate in an IME based solely on a notice rather than requiring the trial court to order the IME. According to the Tenth District, such a custom is in keeping with the underlying purpose of both the civil rules and judicial economy. Nevertheless, the court held that the rules as they are currently written technically require court intervention to force a party to participate in an IME.

Turning to the merits of the Court's decision granting Defendant's motion to compel, the Tenth District found that the trial court had properly ordered Plaintiff to submit to an IME because the pleadings were sufficient to establish that Plaintiff's mental and physical

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condition were in controversy and provided Defendant with good cause for an IME. Nevertheless, the trial court's order was found to be deficient because it did not address the scope of the examination. Thus, the Tenth District remanded the cause for the trial court to consider and establish the scope of the IME.

Finally, the appellate court also reversed the portion of the trial court's judgment that granted Defendant the costs of filing the motion to compel the IME. The Tenth District held that while the Ohio Rules of Civil Procedure provide for sanctions based on a parties failure to obey a court order to attend an IME, the Rules do not provide for an award of expenses in connection with making or opposing a motion to compel such an order.

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