

**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: Third District

Case Name: *Kehres v. Auck*, 2006-Ohio-4839

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

Issue(s): Vicious Dog Common Law Liability / Prior Owner

Summary of Opinion: Plaintiff was bitten by a dog that had displayed past signs of aggression and tendencies to “nip” at people. These tendencies were known to the dog’s current owner, trainer, and previous owners. In fact, the previous owners had given the dog to the current owner after unsuccessfully working with the trainer to break the dog of these tendencies. Plaintiff brought suit against the dog’s current owner, trainer, and previous owners. Plaintiff’s claim against the previous owners was based on Ohio’s common law liability for injuries inflicted by a dog. The trial court granted the previous owners summary judgment and dismissed them from the case. On appeal, the Third District affirmed the trial court’s decision, finding that summary judgment was proper because the previous owners did not qualify as “owners,” “keepers,” or “harborers” of the dog at the time Plaintiff was bitten.

Court of Appeals: Third District

Case Name: *Conway v Dravenstott*, 2006-Ohio-4840

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

Issue(s): Motor Vehicle Accident / Wrongful Death / Prejudicial Evidence

Summary of Opinion: Defendant negligently caused a motor vehicle accident that resulted in the death of three people and serious injury to the two survivors. The estate of one of

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the people killed in this accident brought suit against Defendant for wrongful death. Prior to trial, Defendant filed a motion in limine seeking to exclude any mention of the other two deaths. The court denied this motion and Defendant failed to object to the introduction of such evidence at trial. Thus, the Third District ruled that Defendant had waived any objection to the introduction of this evidence. However, the appellate court went on to address the merits of Defendant's arguments and found that the trial court did not abuse its discretion by allowing the jury to learn of the other two deaths. Specifically, the court found that such evidence was not unfairly prejudicial because administrators of the estate did not use the deaths to appeal to the jurors' emotions, and the trial court cautioned the jury before counsel questioned prospective jurors in voir dire that the issue was limited solely to damages arising from only the one death.

Court of Appeals: Eleventh District

Case Name: *Gutierrez v. Mika Metal Fabricators*, 2006-Ohio-4818

Decided: September 15, 2006 (posted September 18, 2006)

Issue(s): Personal Injury / Property Damage / Res Judicata

Summary of Opinion: Plaintiff was involved in an automobile accident with Defendant. Following the accident, Plaintiff hired the law firm of Elk & Elk to represent him with respect to the personal injury aspect of this accident; however, Plaintiff, with the knowledge of Elk & Elk, choose to separately pursue the property damage portion of his claim pro se. Defendant was represented by counsel hired by his insurance company. Eventually, Plaintiff received a \$2,234.01 against Defendant for damage done to his vehicle. This judgment was satisfied, and the satisfaction was signed and recorded. Thereafter, Plaintiff, through Elk & Elk, attempted to file an additional claim against Defendant based on the alleged personal injuries that he had suffered as a result of the accident. Defendant moved for summary judgment on the theory of res judicata. The trial court found that Plaintiff should have brought both his personal injury and property damage claims in the same action and granted Defendants motion for summary judgment based on res judicata. On appeal, Plaintiff claimed that res judicata did not apply because the judgment against him had been obtained through fraud on the part of the insurance company. Furthermore, he argued that under *Hatcher v. Oliver*, 164 Ohio App.3d 290, 2005-Ohio-5818 the insurance company had impliedly consented to the damages and property issues being tried separately. Overruling Plaintiff's claims and affirming the dismissal on the basis of res judicata, the Eleventh District held that there was no evidence the insurance company had committed fraud. While there was evidence that the insurance company was aware Plaintiff would be precluded from pursuing his bodily injury claim and that the insurance company never informed him of such, the insurance company did not have a duty to inform

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Plaintiff. Likewise, the court found that *Hatcher* was distinguishable because the insurance company in this case made no representations during the pendency of the prior action that a settlement of the property damage claims would not affect Plaintiff's claims for injuries.

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