

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: Sixth District

Case Name: *Al-Sorghali v. Modene & Assoc., Inc.*, 2006-Ohio-4911

Decided: September 22, 2006 (posted September 22, 2006)

Issue(s): Premise Liability / Open and Obvious Doctrine

Summary of Opinion: Plaintiff was interested in buying a home that was still under construction. She went to look at the home and was informed that entrance to the home could only be gained by stepping on an upside-down bucket that bridged the gap between the garage and the home. Plaintiff utilized the upside-down bucket and entered the home without incident. Upon leaving the home, Plaintiff was injured when the upside-down bucket overturned. Plaintiff brought suit against the home's owners alleging negligence. The trial court granted summary judgment to the Defendants on the basis that the upside-down bucket was an open and obvious hazard. On appeal, Plaintiff argued that the doctrine of open and obvious did not apply because the use of the overturned bucket was the only manner of exiting the home. Rejecting Plaintiff's argument and affirming the trial court's decision, the Sixth District held that the open and obvious doctrine did apply because Plaintiff had not been forced to enter the home in the first place. Therefore, she had not been forced to subject herself to the open and obvious hazard at all, and Defendants did not owe her a duty of care. The appellate court specifically drew a distinction between the facts of this case and previous cases where an employee or a tenant had encountered an open and obvious danger while using the only available method of exiting the premises. Those plaintiffs had no initial choice of whether to be on the premises and could not be faulted for encountering an unavoidable open and obvious hazard when exiting the premises.

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Court of Appeals: Sixth District

Case Name: *Stemen v. State Farm Ins. Co.*, 2006-Ohio-4919

Decided: September 22, 2006 (posted September 22, 2006)

Issue(s): Uninsured Motorist Coverage / Anti-Stacking Provision / Wrongful Death Claim

Summary of Opinion: Plaintiff's wife was killed in an automobile accident while riding as a passenger in a vehicle being driven by their daughter. The tortfeasor's insurance company paid its per accident limit of \$100,000 to the wife's estate, all of which was paid to the daughter. Plaintiff then sought underinsured motorist coverage ("UIM") from his insurer, State Farm. Plaintiff's policy had UIM coverage limits of \$100,000. State Farm denied Plaintiff coverage under the anti-stacking provisions of the policy, which provided that the most State Farm would pay to anyone insured under the policy is the single person per incident coverage limit (\$100,000 in this instance) minus any amounts paid to all insureds by a tortfeasor. Because Plaintiff's wife was an insured under the State Farm policy, Plaintiff's recovery for UIM losses had to be offset by the \$100,000 the tortfeasor had already paid to the wife's estate. Thus, the trial court held that Plaintiff was not entitled to any recovery. On appeal, Plaintiff argued that such anti-stacking provisions were against public policy. Addressing Plaintiff's argument, the Sixth District first distinguished this case from another of its earlier cases that had focused on whether an insurer could legally limit UIM coverage to the situation where an insured actually suffers bodily injury. In fact, the appellate court even held that the language of State Farm policy in question was ambiguous and could arguably be read to include UIM coverage for losses arising out of the wrongful death of another. Nevertheless, the Sixth District found that the anti-stacking provisions, which were not discussed in the earlier case, were not against public policy and prevented Plaintiff from recovering under the State Farm policy.

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