

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: Fifth District

Case Name: *Rockett v. Newark Builders Supply, Inc.*, 2006-Ohio-5715

Decided: October 30, 2006 (posted November 1, 2006)

Issue(s): Liability for injury to an independent contractor / Active participation

Summary of Opinion: Defendant was a general contractor in charge of building a home and hired a subcontractor to perform the drywall work. The subcontractor in turn hired independent contractors to sand the drywall. Plaintiff's son was working as such an independent contractor when he fell and died. Plaintiff claimed that Defendant was liable for his son's death because Defendant had actively participated in the job by erecting a guardrail and removing scaffolding. The trial court disagreed and granted Defendant summary judgment. On appeal, the Fifth District acknowledged that a general contractor is liable for injuries to an independent contractor only where the general contractor "actively participates" in the job of the independent contractor. Active participation means that the general contractor directed the activity which resulted in the injury and/or gave or denied permission for the critical acts that led to the employee's injury. A mere supervisory role does not give rise to active participation, even if the supervisory role involves compliance with safety laws and regulations. Accordingly, the Fifth District affirmed the trial court's decision because there was no evidence that Defendant had directed Plaintiff's son's activities and/or gave or denied him permission to do certain acts. The court also found that the line of cases holding that a premise owner exercising exclusive control over a critical variable in the workplace is liable to an independent contractor did not apply to the situation where a general contractor who did not own the premises had hired an independent contractor.

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