

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: Supreme Court

Case Name: *Whitaker v. M.T. Automotive, Inc.*, 111 Ohio St.3d 177,
2006-Ohio-5481

Decided: November 8, 2006 (posted November 8, 2006)

Issue(s): Consumer Sales Practices Act / Noneconomic damages

Summary of Opinion: Plaintiff brought an action against the Defendant automobile dealer for violations of the Consumer Sales Practices Act (CSPA), 1345 et seq. A jury found that the Defendant had knowingly committed 11 separate violations of the CSPA and awarded Plaintiff \$105,000 in damages. The trial court found that Defendant's actions had previously been held to be violations of the CSPA and trebled Plaintiff's damages pursuant to 1345.09(B). Defendant appealed the award of damages to the Ninth District, arguing that only economic damages are recoverable under the CSPA. The Ninth District agreed, and reversed the decision of the trial court. Plaintiff then appealed the Ninth District's decision to the Ohio Supreme Court, which accepted jurisdiction over the question of what kind of damages are recoverable under the CSPA. On appeal, the Supreme Court held that the language of 1345.09(A) allows a consumer to recover all his damages and is not limited to economic damages. Thus, a supplier who violates the CSPA is liable for both economic losses and any pain, suffering, loss of society, loss of consortium, loss of companionship, mental anguish, and any other intangible loss the consumer suffers. Furthermore, while R.C. 1345.09(B) provides that a consumer may treble his "actual damages", the Court found that the term "actual damages" includes both economic and noneconomic damages. Accordingly, all losses, both economic and noneconomic, are subject to trebling under the CSPA.

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Court of Appeals: Eighth District

Case Name: *Stiggers v. Erie Ins. Group*, 2006-Ohio-5920

Decided: November 9, 2006 (posted November 9, 2006)

Issue(s): Notice to Insurer / Waiver of Notice

Summary of Opinion: Plaintiff contracted with Elie Construction ("Elie") for the construction of an addition to her home. Eventually, Plaintiff brought suit against Elie for breach of contract and/or defective construction, but dismissed the case with prejudice. Plaintiff then refiled the case and obtained a default judgment against Elie. Accordingly, Plaintiff brought suit against Erie Insurance, Elie's insurer at the time of the construction, to enforce the default judgment. However, Erie argued that neither Elie nor Plaintiff had given it proper notice and that the default judgment was not enforceable against Erie. The trial court agreed and granted Erie summary judgment. On appeal, the Eighth District noted that while notice is a condition precedent to coverage and an insurer will normally not be liable for a default judgment without prior notice of the litigation, the notice requirement can be deemed waived by the actions of the insurer. In this case, Plaintiff had given Erie notice of the original suit prior to its dismissal and that Erie told Plaintiff that her claims were not covered under Elie's policy and that Erie would not be providing Elie with coverage or a defense. Thus, the appellate court held that Erie had waived the notice requirement by denying coverage and the fact that Plaintiff failed to give Erie notice that it had refiled the action was immaterial. Accordingly, the decision of the trial court was reversed.

Court of Appeals: Eighth District

Case Name: *Doolin v. Old River Yacht Club Ltd. Partnership*, 2006-Ohio-5922

Decided: November 9, 2006 (posted November 9, 2006)

Issue(s): Dram Shop Laws / Motion to Dismiss

Summary of Opinion: Plaintiff's daughter drowned after drinking alcohol at the Tesoro's Bar and Grill. At the time of her death she was 26 years old. Plaintiff, as Administratrix of her daughter's estate, brought suit against the Tesoro's and an individual Rick Annotico. In her complaint, Plaintiff alleged that Tesoro's "was negligent in gratuitously serving, furnishing, or otherwise providing alcohol and intoxicating liquors to *** Rick Annotico." The trial court found that Plaintiff's complaint failed to state a claim upon which relief could be based and dismissed Plaintiff's claims against both Tesoro's and Annotico. Ohio historically prohibited a cause of action against a liquor permit holder for injury caused by an intoxicated person

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except in limited circumstances. The legislature codified this rule of general non-liability and the exceptions R.C. 4399.18, Ohio's Dram Shop Act. According to R.C. 4399.18, a liquor permit holder can be held liable for injuries or death occurring off of the permit holder's premises when the permit holder sells a noticeably intoxicated person an intoxicating beverage and the intoxicated person causes an injury or death. The Eighth district held that the Plaintiff's complaint was inadequate because she only alleged that Tesoro's had "served, furnished, or otherwise provided" alcohol and did not allege that Tesoro's had sold alcohol to Annotico. Plaintiff's complaint only alleged that Tesoro's had knowingly served an intoxicating beverage to a noticeably intoxicated person. Thus, the dismissal as to Tesoro's was appropriate. Furthermore the Court noted that there were no allegations in Plaintiff's complaint that Annotico had done anything other than become voluntarily intoxicated. Therefore, Plaintiff had failed to even allege that Annotico owed a duty to Plaintiff's daughter and dismissal as to him was also appropriate.

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