

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: Third District

Case Name: *Snyder v. Celina Mut. Ins. Co.*, 2006-Ohio-6487

Decided: December 11, 2006 (posted December 11, 2006)

Issue(s): Agreed Judgment Entry / Motion in Limine / Waiver of Issue

Summary of Opinion: Plaintiff was injured in an automobile accident in 1996. At the time of the accident, he had underinsured motorist (“UIM”) coverage through Celina Mutual Insurance Company (“Celina”) in the amount of \$25,000.00. In 1990, Plaintiff had signed a reduction that lowered his UIM coverage from \$300,000.00 to the \$25,000.00. After the accident, Plaintiff brought suit against Celina, arguing that he was entitled to \$300,000 in UIM coverage as a matter of law because the reduction form he had signed did not conform with the Supreme Court’s requirements for a written offer or an express and knowing reduction as outlined in *Linko v. Indemnity Ins. Co. of N. Am.* Prior to trial, Plaintiff filed a motion in limine seeking to prevent Celina from introducing documents and testimony that would supplement the 1990 reduction form. The trial court granted this motion in limine because such evidence did not fit within the four corners of the reduction form. In an effort to expedite an appeal, both parties entered into an agreed judgment entry, whereby the parties agreed that the trial court had invalidated the 1990 reduction form pursuant to *Linko* and that the trial court had also held that Plaintiff was entitled to \$300,000.00 in UIM coverage. The agreed entry also stated that Celina was preserving its legal issues, contentions, and evidence and that Celina did not concede liability. On appeal, Celina argued that the trial court should have considered the evidence it ruled against in its motion in limine. The Third District held that Celina had failed to preserve the issue by not attempting to introduce such evidence *at trial*. The appellate court found that the agreed judgment entry was a well meaning but insufficient attempt to preserve this issue. The parties cannot give a court jurisdiction that it does not otherwise possess. Accordingly, the Third District held that it did not have jurisdiction to consider the issue and dismissed the appeal.

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Court of Appeals: Eleventh District

Case Name: *Parker v. Hegler*, 2006-Ohio-6495

Decided: December 8, 2006 (December 11, 2006)

Issue(s): Construction Damages / Economic Waste / Diminution in Value

Summary of Opinion: Plaintiffs' property was damaged when their neighbors undertook a road construction project near the property line. The cost of repairing the damage was \$160,000. However the difference in market value of Plaintiff's property before and after the road construction was only \$20,000. Applying the Supreme Court's formula for damages in a construction case outlined in *Ohio Collieries Co. v. Cocks* (1923), 107 Ohio St. 238., the trial court found that a repair of the property would result in economic waste and that the diminution in property value plus the cost of consulting and engineering fees was the proper measure of damages. On appeal, a majority of the Eleventh District held that such a determination was improper. The court stated that it was moving away from the "rigid" comparison of market values test espoused in *Ohio Collieries* and toward an overall "reasonableness test." Specifically, the Eleventh District held that the cost of repair is the proper measure of damages regardless of the amount of diminution in value where a residential property owner has personal reasons for seeking complete restoration of the premises.

One member of the panel dissented, and would have affirmed the decision of the trial court to follow the damages calculation outlined in *Ohio Collieries*.

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