

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: Eighth District

Case Name: *Manigault v. O'Connor Automotive*, 2006-Ohio-6598

Decided: December 14, 2006 (posted December 14, 2006)

Issue(s): Damages for breach of bailment contract / Definition of "property damage" & "loss of use" in insurance contracts

Summary of Opinion: Plaintiffs originally brought a products liability action against Ford, seeking damages for an automobile accident that occurred due to an alleged manufacturer's defect in a 1987 Crown Victoria ("the vehicle"). In order to secure the vehicle, Plaintiffs entered into a bailment contract, whereby Defendant agreed to store the vehicle on its premises. Before any experts had the opportunity to inspect the vehicle, it was either lost or stolen while in Defendant's possession. As a result of the vehicle being lost or stolen, Ford filed numerous motions against Plaintiffs based on spoliation of the evidence. Plaintiffs eventually settled their case against Ford. However, Plaintiffs subsequently filed a separate law suit against Defendant, alleging breach of the bailment contract and seeking consequential damages such as the alleged lost opportunity to secure a larger settlement against Ford and the time and effort spent defending Ford's spoliation defenses. Defendant's insurer, Motorists Mutual, provided Defendant with a defense and argued that the case should be dismissed through summary judgment because (1) consequential damages are not available for a breach of a bailment contract, (2) Plaintiffs' claims essentially seek recovery for intentional spoliation of the evidence but there is no evidence that Defendant intentionally lost the vehicle, and (3) Ohio does not recognize the tort of negligent spoliation. Motorist Mutual also argued that it was entitled to a declaratory judgment because spoliation of the evidence claims are not within the coverage of Defendant's policy. The trial court agreed with Motorist Mutual and granted it and Defendant summary judgment. On appeal, the Eighth District held that damages for a breach of bailment contract are limited to the fair market value of the property at the time the property is either lost or stolen. The appellate court also held that the only recognized

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cause of action in Ohio based on an interference with a litigant's cause of action is the tort of intentional spoliation of the evidence. Because there was no evidence that Defendant had intentionally lost the vehicle, the Eighth District affirmed the trial court's summary judgment decision as to Defendant. On the issue of Motorist Mutual's coverage, the Eighth District held that the term "property damage" does not include the intangible value of a motor vehicle as evidence. The Eighth District also held that the phrase "loss of use of the automobile as an automobile" does not cover such consequential damages. Thus, the trial court's decision as to Motorist Mutual was also affirmed.

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