

OHIO CASE SUMMARIES
A SERVICE OF
GREEN & GREEN, LAWYERS
A Legal Professional Association

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: *Groch v. Gen. Motors Corp.*, 2008-Ohio-546.

Decided: February 21, 2008 (posted February 21, 2008)

Issue(s): Constitutionality of Workers' Compensation Subrogation Statute and 10 Product Liability Statute of Repose

Summary of Opinion: Plaintiff was injured on March 3, 2005 when the trim press he was operating came down on his right arm and wrist. He was acting in the course and scope of his employment with General Motors at the time of his injury, and the trim press was manufactured by Kard Corporation and Racine Federated, Inc. Plaintiff brought suit against the manufacturers based on a theory of product liability. The action was removed to federal court by GM under diversity jurisdiction, and GM asserted a subrogation interest in Groch's recovery for its payment to him of workers' compensation benefits. Groch asserted that the Ohio statutes granting GM subrogation interests—R.C. 4123.93 and R.C. 4123.931—are unconstitutional. The manufacturers asserted that they are immune from liability based on the 10 year statute of repose for products liability claims provided at R.C. 2305.10. The Northern District certified questions to the Ohio Supreme Court concerning the constitutionality of these statutes.

In a 55 page opinion, the Supreme Court held that R.C. 4123.93 and 4123.931, the Workers' Compensation Subrogation statutes are facially constitutional.

Furthermore, the Court held that R.C. 2305.10, the 10 year statute of repose for product liability claims, is also facially constitutional. The Court's analysis contains a detailed review of its previous decisions considering the constitutionality of statutes of repose in general, including the Court's previous holdings in *Sedar v. Knowlton Constr. Co.* (1990), 49 Ohio St.3d 193 and *Brennaman v. R.M.I. Co.* (1994), 70 Ohio St.3d 460. In

GREEN & GREEN, Lawyers represents select insurance clients in all aspects of insurance litigation, from complex coverage questions to more routine torts. We will see to it that your file will be handled only by a competent, seasoned attorney who will work diligently to obtain the best result possible.

As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate decisions on cases of interest to our insurance clients. No opinion as to the legal import of the cases summarized is intended. Any questions regarding the information contained in this transmission should be directed at any time to one of the attorneys of the firm.

particular, the Supreme Court held that “the interpretation of the open-courts and right-to-a remedy provisions by this court in *Sedar* is more fully developed and appropriate than that set forth in *Brennaman*.” Thus, the Supreme Court rejected the analysis set forth in *Brennaman* and specifically adopted the rationale set forth in *Sedar* as based upon the proper construction of the requirements of Section 16, Article I.

Finally, the Court held that R.C. 2305.10 was unconstitutionally retroactive under Section 28, Article II of the Ohio Constitution as applied in this particular case. The issue arose because Plaintiff was injured on March 3, 2005, and R.C. 2305.10 applies to any action commenced on or after April 7, 2005. Thus, Plaintiff’s injury accrued prior to the statute being passed and Plaintiff had a mere 34 days between the time of his injury to the effective date of the statute in which to file suit. The Court ruled that this was not a reasonable amount of time. Thus, the statute, while facially constitutional, applied in an unconstitutional manner in this instance.

GREEN & GREEN, Lawyers represents select insurance clients in all aspects of insurance litigation, from complex coverage questions to more routine torts. We will see to it that your file will be handled only by a competent, seasoned attorney who will work diligently to obtain the best result possible.

As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate decisions on cases of interest to our insurance clients. No opinion as to the legal import of the cases summarized is intended. Any questions regarding the information contained in this transmission should be directed at any time to one of the attorneys of the firm.