

## OHIO CASE SUMMARIES

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**Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Adam Webber at 937.224.3333 or send an email to [arwebber@green-law.com](mailto:arwebber@green-law.com).**

Court of Appeals: Ninth District

Case Name: Niskanen v. Giant Eagle, 2008-Ohio-1385

Decided: March 26, 2008

Issue(s): Claims of self-defense to negligence-based tort claims

Summary of Opinion:

Paul Niskanen walked out of a Giant Eagle grocery store with a cart of groceries for which he had not paid. The store manager followed him out of the store and yelled for another employee in the parking lot to “Stop the shoplifter!” As that employee ran toward him, Niskanen punched him, knocking him to the ground. As the three men fought on the ground, the store manager screamed for help, and a customer aided the Giant Eagle employees in restraining Niskanen. All three men were on top of Niskanen, holding him down. Although Niskanen had stopped struggling, none of the men checked to make sure he was okay. By the time police arrived, Niskanen had asphyxiated from the weight of their bodies.

Niskanen’s estate proceeded to trial only on a claim of negligence against Giant Eagle—the estate earlier had dismissed its claims for assault and false imprisonment against the store and the men. The negligence claim rested on the theory that Giant Eagle store policies were instructed to only verbally confront shoplifters and to disengage if a confrontation became violent. The store employees in question had never been informed of this policy, and Giant Eagle admitted they were acting within the scope of their employment.

At trial, the trial court admitted testimony that the store employees were acting in self-defense. The jury returned a verdict stating that Giant Eagle’s negligence had caused

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Niskanen's death, but it did not award punitive damages. The Ninth District Court of Appeals held that it was error for the trial court to instruct the jury that self-defense was an affirmative defense to Niskanen's claim of negligence. The appellate court first noted that no Ohio court has ever recognized self-defense as a defense to negligence. It reasoned that this jury instruction was in error because (a) it had nothing to do with whether Giant Eagle's employees were properly trained and (b) self-defense presumes an intentional, willful use of force to repel or escape force. Claims of negligence, it held, presume *unintentional* conduct, and therefore, a judgment as to whether an *intentional* act was justified as self-defense was a non sequitur. The appellate court reversed and remanded for a new trial.

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