

## 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 Sean McCormick at 937.224.3333 or send an email to [smccormick@green-law.com](mailto:smccormick@green-law.com).**

Court of Appeals: Second District Court of Appeals

Case Name: *Adkins v. Place*, 2009-Ohio-526

Decided: February 6, 2009

Issue(s): Attorney's authority to enter into a settlement agreement

Summary of Opinion: Adkins was injured when her car was struck by a car driven by Place. Adkins filed suit against Place claiming injuries, lost wages, and loss of consortium. Thereafter, Place passed away, and the administrator of his estate, Orefice, was substituted as the defendant.

Adkins's attorney mistakenly believed his client had authorized him to settle the claims for \$20,000. He called Orefice's attorney and stated the case was settled, and then he notified the court. Thereafter, Adkins discovered that counsel had misunderstood him and he moved to reinstate the case on the trial docket. Without a hearing, the trial court overruled Adkins's motion, and it sustained Orefice's motion to enforce the settlement. Adkins appealed.

The Second District Court of Appeals explained that in order for Adkins to be liable for his attorney's actions, he had to have actually given counsel the authority to accept the settlement. Although Adkins had given his attorney the authority to represent him in the litigation, that was not the same as giving him the authority to enter into a settlement under Ohio law.

The Court acknowledged that Ohio law appeared split on the question of whether or not a party was entitled to relief from judgment when its attorney mistakenly entered into

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a settlement agreement. However, the Court distinguished between a party that could not obtain relief from a final judgment under Civ.R. 60(B), and a party that could receive relief from a judgment that had not yet become final. As a result, the Court reasoned that since the appeal in this case was timely, the judgment was not final, and Adkins could obtain relief.

Finally, the Court concluded that when a factual dispute arose concerning the existence of a settlement agreement, an evidentiary hearing by the trial court was necessary to determine whether Adkins's attorney had the actual authority to enter into the agreement.

The judgment was reversed and remanded.

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