

## 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: The Ohio Supreme Court

Case Name: *Natl. Union Fire Ins. Co. of Pittsburgh, PA v. Wuerth*, 2009-Ohio-3601

Decided: July 29, 2009

Issue(s): Legal Malpractice/Vicarious Liability

Summary of Opinion: In August 1998, Hurricane Bonnie seriously damaged six hotels insured by the Nationwide Mutual Insurance Company (Nationwide). Nationwide hired National Catastrophic Adjusters (NCA) to provide claims adjustment services, which hired McLarens Toplis North America (McLarens), which hired an individual, Larry Wood. Thereafter, Nationwide demanded Wood's removal from the project, claiming he had negligently overestimated the damage to the hotels by nearly \$16 million dollars.

Subsequently, Nationwide filed suit against NCA, McLarens, and Wood, claiming negligence and seeking \$16 million in damages. McLarens and Wood retained the Columbus law firm of Lane, Alton, & Horst, L.L.C. (Lane Alton) to provide defense. The firm assigned one of its partners, Richard Weurth, to the case.

During trial, Weurth became very ill and had to be replaced by another attorney. Eventually, Nationwide prevailed at trial, and National Union responded by filing a legal malpractice suit, in federal district court, against Weurth and Lane Alton.

The district court dismissed Weurth from the action because the statute of limitations on legal malpractice claims had run under R.C. 2305.11(A). The claims against Lane Alton were dismissed as well, and National Union appealed. The Sixth Circuit Court of Appeals determined that Ohio law was unsettled on the question of whether or not Lane

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Alton could be held directly liable for legal malpractice when all relevant principals and employees have been dismissed from the law suit or never sued in the first place, and certified the issue to the Ohio Supreme Court.

The Ohio Supreme Court first explained that while clients may refer to a law firm as providing legal representation or giving legal advice, in reality, it is the attorneys in the firm who perform those services and with whom the clients have an attorney-client relationship. The Court held that a law firm does not engage in the practice of law, and cannot directly commit legal malpractice.

Further, the Court concluded that a law firm may not be held vicariously liable when an agent cannot be held directly liable. The Court explained that a law firm's sole liability depends on a finding of liability on the part of an employee, and it cannot be held accountable where there is no such finding. The Court reasoned that there was no basis for differentiating between a law firm and any other principal to whom Ohio law would apply.

The certified question was answered in the negative.

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