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I. THE STATE OF OHIO

A. FREQUENTLY CITED OHIO STATUTES

1. General Considerations in Insurance Claims Management

Ohio Administrative Code § 3901-1-54
Unfair Property/Casualty Claims Settlement Practices

This provision is not a statute but is part of the state regulations governing insurers. It governs unfair settlement practices in the handling of property and casualty claims. Numerous minimum standards of conduct for claims representatives are set forth.

Although the code expressly provides violations of the code may result in disciplinary action being taken by the Department of Insurance, violations do not lead to civil liability, even on first-party claims.

R.C. § 2111.18
Settlement of Minor's Claims

All settlements of personal injury claims of minors must be approved by the probate court of the county where the minor resides.

Amended by 2009 Ohio SB 106 to change the amount of net settlement from $10,000.00 or less to $25,000.00 or less after payment of fees and expenses. Additional language added includes: "In the settlement, if the ward is a minor, the parent or parents of the minor may waive all claim for damages on account of loss of service of the minor, and that claim may be included in the settlement."

R.C. § 3737.16
Release of, or Request For, Information Relating to Fire Loss by Insurance Company

Civil authorities investigating property fire losses (including the fire marshal, a fire department chief, local law enforcement, or the county prosecutor) may request an insurance company investigating a property fire loss to release any information in its possession concerning the loss.

R.C. § 4505.11
Salvage Titles

If it is economically impractical to repair a vehicle and the insurer has paid the owner an agreed sum for the purchase of the vehicle, the insurer shall obtain the title and within thirty (30) days obtain a salvage title.

If the owner retains possession of the vehicle, the insurer cannot pay the owner to settle the claim until the owner first obtains a salvage title.

R.C. § 4509.51
Automobile Minimum Liability Limits

The statute requires minimum automobile liability coverage limits (per accident) of: (1) $25,000.00 for bodily injury or death of any one person in any accident; (2) $50,000.00 for bodily injury to or death of two or more persons in any one accident; and (3) $25,000.00 for injury to property of others in any one accident.

R.C. § 4509.53(D)
Motor Vehicle Insurance Policy Applications

The written application of insurance is part of a motor vehicle liability policy.

2. Clarification of Facts and Legal Duties

R.C. § 2317.48
Action for Discovery

When information and facts surrounding a case are difficult to obtain, a person claiming to have a cause of action, or a person against whom a cause of action has been filed, may bring an action for discovery. A discovery action allows such party to explore the strengths of the complaint or defense without subjecting the party to the potential penalties associated with frivolous lawsuits.

R.C. §§ 2721.01 *et. seq.*
Declaratory Judgment Actions

This chapter allows parties to file suit to have the court determine the validity of a contract and/or the rights of the parties under the contract. This is the most effective tool for resolving disputes on the availability or amount of insurance coverage available.

A plaintiff who is not an insured under a policy cannot bring a declaratory judgment action against a third party's insurer to determine if coverage is available for a claim until or unless a final judgment has been placed of record awarding the plaintiff damages against the insured.

R.C. § 4123.01(A)(1)(c)
"Employee" Under Construction Contract

The statute sets out specific factors to determine whether a person is an "employee" under a construction contract.

3. Uninsured Motorist Coverage

R.C. § 3937.18
UM/UIM Coverage

(A) Effective October 31, 2001, an insurer no longer has a duty to offer UM/UIM coverage to its insured with the sale of a policy. As a result, there will no longer be any requirement that a rejection or reduction in coverage be in writing.

(B) The statute contains a five factor test for who is an "uninsured motorist."

(C) UIM coverage is not excess coverage.

(D) To recover UM/UIM an insured must prove all elements which would be necessary to recovery from the uninsured or underinsured motorist.

(E) Workers compensation benefits do not offset UM/UIM recovery.

(F) Insurers may preclude both inter-family and intra-family stacking in their policies.

(G) On wrongful death claims, any claim for a single death is subject to the per person limit on coverage.

(H) An insured has a three-year statute of limitations to assert a UM/UIM claim, assuming they did not destroy the insurer's right of subrogation.

(I) A vehicle available for the regular use of the insured, a family member, or a fellow household member can be deemed an uninsured vehicle.

(J) The UM/UIM insurer is entitled to subrogate, standing in the shoes of its insured.

(K) The statute does not prohibit inclusion of underinsured motorist coverage.

(L) These requirements only apply to policies meeting the financial responsibility requirements or to umbrella policies.

R.C. § 3937.44
Per Person Limits

For both liability and UM/UIM coverages, only the per person limit is available for recovery for each person suffering a bodily injury or for each decedent.

4. Statutory Subrogation Rights

R.C. § 2744.05
Immunity of Political Subdivisions to Subrogation Claims

Political subdivisions are immune to any subrogation claim brought by an insurer.

R.C. § 3937.18(J)
UM/UIM Claims

In the event of payment to an insured for an uninsured/underinsured motorist claim, the insurer making such payment is entitled to the proceeds of any settlement or judgment resulting from the exercise of the insured's rights against a legally liable party. This right is limited by relevant insolvency proceedings.

R.C. § 3937.21
Subrogation

If an insurance company pays to, or on behalf of, it's insured any amount later determined to be due from another insurer, it shall be subrogated to all rights of the insured against such insurer.

R.C. § 4123.93
Workers' Compensation Subrogation Rights

This statute became effective April 9, 2003, and therefore applies only to injuries occurring on or after that date. It restores subrogation rights of the Ohio Bureau of Workers' Compensation and self-insured employers. For claims where the injury occurred prior to April 9, 2003, there is no right of subrogation.

Employees now must notify the lienholder if there is a third-party who is responsible for their injuries so that there is a reasonable opportunity to assert their subrogation rights. Responsible parties include UM/UIM insurers.

If an employee is not made whole, then the statute prescribes a formula for *pro-rata* distribution of any recovery between the employee and lienholder.

If there is the potential for future payments by the lienholder, a portion of the recovery is to be put in an interest-bearing trust account to protect any future lien.

5. Liability and Damages Considerations

R.C. § 1533.181
Immunity – Recreational User Claims

The statute provides where a premises owner may be immune from claims by a recreational user of the premises.

R.C. § 2125.01 *et. seq.*
Wrongful Death Actions

A wrongful death action can only be brought by the executor or administrator of the decedent's estate.

The decedent's surviving spouse, parents, and children are rebuttably presumed to have been damaged by the death.

All other family members must prove their entitlement to damages.

R.C. § 2305.402
Trespass Liability Statute

A possessor of real property does not owe a duty of care to a trespasser except to refrain from willful, wanton, or reckless conduct that is likely to cause injury or death. However, this section builds back in a duty on the part of the possessor of real property if the possessor knows or should know a trespasser is in a position of peril and fails to exercise ordinary care to avoid injury, death or loss. The statute also recognizes duties toward child trespassers, which a Court would need to construe based on a balancing test weighing the danger of an artificial condition against the burden of eliminating danger to child trespassers. The statute further recognizes duties toward rescuers of child trespassers.

R.C. § 2307.22
Allocation of Damages

If there are multiple defendants at fault, any defendant who is more than 50% at fault is subject to joint and several liability for the plaintiff's economic damages. Intentional tortfeasors also are subject to joint and several liability for economic damages. All other at-fault defendants are liable only to the proportionate extent of their liability. All at-fault defendants are only proportionally liable for non-economic damages.

If there are multiple defendants at fault, and no one defendant is more than 50% at fault, then the at-fault defendants are liable only to the proportionate extent of their liability for both economic and non-economic damages. For injuries occurring prior to April 8, 2003, there is joint and several liability among joint tortfeasors for economic damages.

Note below, under R.C. 2315.33, if a plaintiff is more than 50% at fault, then recovery against any defendant is barred.

R.C. § 2307.25
Right of Contribution

This statute only applies to claims where the injury occurred on or after April 8, 2003. A right of contribution will exist only if two or more tortfeasors are subject to joint and several liability.

R.C. § 2307.28
Set-offs for Damages

This statute only applies to claims where the injury occurred on or after April 8, 2003. A non-settling defendant is entitled to a set-off from any award of damages from what a plaintiff has already recovered from any settling party. This right exists even if the settling party is not found to be liable. This overrules *Fildelholtz v. Peller*, (1998), 81 Ohio St. 3d 197, which required a finding the settling party was liable before a set-off could be imposed.

R.C. § 2307.711
Comparative Fault in Product Liability Actions

Assumption of risk is a defense in product liability claims. Depending upon the nature of the assumption of risk, it can be an absolute bar to a plaintiff's recovery, without any comparative fault analysis, or serves as a proportionate basis for reducing damages and liability. This statute took effect in April 2005.

R.C. § 2315.18
Caps on Compensatory Damages

There are no caps on economic damages. There are no caps on non-economic damages for "catastrophic" injuries, which are defined as "permanent and substantial physical deformity, loss of use of a limb, or loss of a bodily organ system, or permanent physical functional injury that permanently prevents the injured person from being able to independently care for and perform life-sustaining activities." With respect to "non-catastrophic" injuries, non-economic damages are capped at the greater of $250,000.00 or three (3) times the amount of economic damages, with an absolute maximum of $350,000.00 per plaintiff or $500,000.00 per occurrence. Thus, if an individual plaintiff incurs more than $83,333.00 in economic loss damages, the cap for non-economic damages increases from $250,000.00 to $350,000.00.

R.C. § 2315.20
Collateral Benefits

A defendant in a tort action may introduce evidence of certain collateral benefits for the plaintiff, with stated exceptions. One such exception is if the source of collateral benefits has a federal, contractual or statutory right of subrogation.

R.C. § 2315.21
Punitive or Exemplary Damages

Effective April 2005, a defendant now has an absolute right to bifurcate a trial on a punitive damage claim.

Punitive damages are capped at one to two times the amount of any compensatory damage award. In the case of a small employer or private individual, punitive damages are capped at two times the amount of damages or ten percent of their net worth.

R.C. § 2315.33
Comparative Fault

If a plaintiff is more than 50% at fault, they are barred from recovery. If a plaintiff is not barred from recovery, the recovery is reduced in proportion to their percentage of comparative fault under procedures set forth in R.C. 2315.34. As to apportionment of fault among joint tortfeasors, where plaintiff is 50% or less at fault, see discussion of R.C. **§** 2307.22 above.

R.C. § 2317.02
Waiver of Physician-Patient Privilege

By filing a tort action, a plaintiff waives any physician-patient privilege and the defendant is entitled to obtain the entirety of the plaintiff's medical records.

R.C. § 2323.44
Rights of Subrogee

Notwithstanding any contractual or statutory provision to the contrary, the rights of a subrogee asserting a subrogation claim against a third party will be diminished in the same manner as the injured party's interests are diminished. Either party may file a suit under Chapter 2721 to resolve any disputes that may arise from the distribution of the recovery in the tort action.

R.C. § 2745.01
Employer Intentional Torts

This statute took effect April 7, 2005. It reflects the latest legislative effort to codify employer intentional torts. An employee making such a claim must now either prove the employer intended to injure them or that the employer acted with the belief that injury was substantially certain to occur. Substantial certainty is considered a deliberate intent to cause injury, disease, or death. The statute goes on to provide that the deliberate removal of a safety guard or any misrepresentation of a toxic or hazardous substance creates a rebuttable presumption of an intent to injure.

R.C. § 3109.09 and § 3109.10
Parental Liability

Vicarious liability of the parents is limited to $10,000.00 where their child willfully damages property or commits a theft offense (R.C. § 3109.09) and where their child has assaulted someone (R.C. § 3109.10). However, the statute does not limit liability of parents for their own acts or omissions.

R.C. § 3929.06
Insurance Money Applied to Judgment

Once a final judgment is entered in favor of a plaintiff against a person insured against such liability, after thirty (30) days the judgment creditor may file a supplemental complaint directly against the insurer to pay the amount of the unpaid judgment against the insured.

R.C. § 3929.25
Extent of Liability Under Policy (Valued Policy Statute)

The valued policy statute applies to any structure insured against loss by fire or lightning. In case of a total loss the insurer shall pay the amount of the policy; however, if the policy requires actual repair or replacement of the structure, then the amount paid shall be as prescribed by the policy.

R.C. § 3929.86
Fire Loss Claim – Payment of Property Taxes

Where fire damage to a structure exceeds $5,000.00, the statute sets forth procedures for payment of delinquent property taxes from the insurance proceeds.

R.C. § 3937.182
No Insurance for Punitive Damages

Motor vehicle policies cannot insure against punitive damages.

R.C. § 4123.741
Fellow Employee Tort Immunity

An employee may not bring suit against an employer or fellow employee for injuries sustained as a result of the negligence of the employer or fellow employee.

The injury must have occurred within the scope and course of employment and be compensable under Workers' Compensation laws.

The statutory immunity does not apply to intentional torts.

R.C. § 4399.18
Liquor Liability Claims

This statute limits the scope of claims against a tavern due to actions of an intoxicated person resulting in injury to a third party.

R.C. § 4513.263
Seatbelt Defense

This statute became effective April 2005. A defendant may now interject evidence the plaintiff failed to wear a seatbelt. This evidence is not admissible for the purposes of establishing liability but can be utilized to establish a plaintiff's injuries would not have occurred or not have been as severe, had a seatbelt been worn.

6. Insurance Fraud

R.C. § 2913.47(B)(1)
Presenting Fraudulent Claims

A person commits insurance fraud if, while acting with purpose to defraud or knowing the person is facilitating a fraud, the person presents or causes to be presented any written or oral statement that is part or in support of an application for insurance or a claim for a benefit under a policy of insurance, knowing the statement, in whole or in part, is false or deceptive.

R.C. § 2913.47(B)(2)
Fraud in the Application or Claim for Insurance

It is illegal to assist, aid, abet, solicit, procure, or conspire with another to prepare or make any written or oral statement intended to be presented to an insurer as part or in support of an application for insurance or a claim for a benefit under a policy of insurance, knowing the statement, in whole or in part, is false or deceptive.

R.C. § 2913.47(C)
Penalties

First Degree Misdemeanor—Fraudulent claims in an amount less than $999.99.

Fifth Degree Felony—Fraudulent claims between $1,000.00 and $7,499.99.

Fourth Degree Felony—Fraudulent claims between $7,500.00 and $149,999.99.

Third Degree Felony—Fraudulent claims of $150,000.00 or more.

R.C. § 3904.01(T) and § 3904.03
Pretext Interviews

A "pretext interview," as defined in R.C. § 3904.01(T), is an interview whereby a person, in an attempt to obtain information about a natural person, performs one or more of the following:

(1) Pretends to be someone else;

(2) Pretends to represent another entity;

(3) Misrepresents the true purpose of the interview; and/or

(4) Refuses to identify himself/herself.

An insurer is generally prohibited from using pretext interviews to obtain information in connection with an insurance transaction; however, a pretext interview may be undertaken to obtain information for the purpose of investigating suspected criminal activity, fraud, material misrepresentation, or a material non-disclosure in connection with an insurance claim.

R.C. § 3904.13

Disclosure of Personal or Privileged Information by an Insurance Carrier

An insurer is prohibited from disclosing any personal or privileged information about an individual collected or received in connection with an insurance transaction, unless the disclosure is necessary for detecting or preventing criminal activity, fraud, material misrepresentation, or a material non-disclosure in connection with an insurance action.

Disclosed information must be limited to that which is reasonably necessary to detect or prevent criminal activity, fraud, material misrepresentation, or a material non-disclosure in connection with insurance transactions.

When the above conditions are met, disclosure may be made to law enforcement or other governmental agencies to protect the interest of the insurer in preventing and/or prosecuting fraudulent claims or if the insurer reasonably believes illegal activities have already been conducted by the individual.

R.C. § 3911.06

False Answer in Application for Insurance

An insurer is prohibited from denying recovery under a policy of insurance on the basis the applicant gave false answers in his application, unless it is proved the answer was willfully false, fraudulently made, material, and induced the company to issue the policy.

The agent or insurance company must have no prior knowledge of the application's falsity or fraudulent nature prior to issuing the policy of insurance.

R.C. § 3929.87

Time for Determination in Arson Investigation

The Fire Marshall has ninety (90) days after a fire loss in excess of $5,000.00 to determine whether the loss was caused by arson.

R.C. § 3937.42 and § 3937.99

Exchange of Information With Law Enforcement and Prosecuting Agencies

An insurer has a legal obligation to notify law enforcement authorities when it has reason to suspect its insured has submitted a fraudulent motor vehicle claim.

Failure to notify the proper authorities constitutes a fourth degree misdemeanor.

R.C. § 3999.21

Insurance Fraud Warnings

All application and claim forms issued by an insurer must contain the following warning: *Any person who, with intent to defraud or knowing he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.*

Failure to include the warning is not a valid defense for insurance fraud.

R.C. § 3999.31

Immunity for Providing or Receiving Information Relating to Suspected Fraudulent Insurance Acts

No person is subject to liability for libel or slander by furnishing information to the Superintendent of Insurance relating to suspected fraudulent insurance acts. This immunity extends to any such information provided to any law enforcement official and any other person involved in the detection or prevention of fraudulent insurance acts.

R.C. § 3999.41

Anti-Fraud Programs

Every insurer is now required to adopt a written anti-fraud program. This program must include procedures for detecting insurance fraud.

Additionally, this program is to identify the person(s) responsible for the anti-fraud program.

Those not yet engaged in the business of insurance must submit a written plan within ninety (90) days after beginning to engage in the business of selling insurance.

R.C. § 3999.42

Notice to Department of Insurance of Suspected Fraud

Requires an insurer to notify the Ohio Department of Insurance whenever it suspects insurance fraud (as established in the Theft Fraud Law under R.C. § 3917.47) involving a claim of $1,000.00 or more.

B. OHIO STATUTES OF LIMITATIONS

ONE YEAR

Claim Type/Section	Statute Period
Assault and Battery R.C. § 2305.111	One year from the date of assault or battery. If the identity of the person committing the assault or battery is unknown, the statute of limitations begins on the date plaintiff either learns the identity of the person or should have learned the identity of the person, whichever comes first.
Medical Malpractice R.C. § 2305.113	One year from the date of the malpractice incident. If the act of medical malpractice is not discoverable within one year, the plaintiff has one year from the date plaintiff knew or should have known of the malpractice, not to exceed four years from the date of malpractice.
Libel, Slander, Defamation R.C. § 2305.11	One year from the publication of the defamatory act.

TWO YEARS

Claim Type/Section	Statute Period
Bodily Injury Due to Negligence R.C. § 2305.10	Two years from the date of incident.
Wrongful Death R.C. § 2125.02	Two years from the date of death.
Personal Property Damage Due to Negligence R.C. § 2305.10	Two years from the date of incident.
Product Liability Claims R.C. § 2305.10	Two years from the date of injury.

THREE YEARS

Claim Type/Section	Statute Period
UM/UIM Claims R.C. § 3937.18	Three years from the date of the accident. If the wrongdoer's insurer becomes insolvent, then the plaintiff has one year from the date of insolvency to make the UM/UIM claim, even if it is more than three years after the accident.

FOUR YEARS

Claim Type/Section	Statute Period
Intentional Infliction of Emotional Distress R.C. § 2305.09	Four years from the date of incident.
Damage to Real Estate R.C. § 2305.09	Four years from the date the damage occurred.
Fraud R.C. § 2305.09	Four years from the alleged act of fraud.
Breach of Covenant to Provide Adequate Insurance R.C. § 2305.09	Four years from the date inadequate insurance is discovered.
Tort of Bad Faith R.C. § 2305.09	Four years from the alleged act of bad faith.
Torts, Rights not Otherwise Enumerated R.C. § 2305.09	Four years after the cause thereof accrued.

Claim Type/Section	Statute Period
Statutorily Created Actions R.C. § 2305.07	A liability created by statute, other than forfeiture or penalty, must be brought within six years of the date the claim arose.
Breach of Contracts Not in Writing R.C. § 2305.07	Six years from the date plaintiff's claim first arose.
Breach of Contracts in Writing R.C. § 2305.06	Amended by 2012 Ohio Senate Bill 224 to reduce the statute of limitations period for actions based upon a breach of a written contract to eight (8) years. The new law shortens the period within which a lawsuit may be brought for breach of contract actions accruing both before and after the effective date of September 28, 2012. For claims that accrued prior to September 28, 2012, the limitations period is the earlier of: eight years from September 28, 2012; or the expiration of the limitations period in effect prior to the enacted of 2012 SB 224, which is 15 years from the date of the breach.
Minor's Claims - Claims of Incompetent Persons R.C. § 2305.16	The limitation period for any minor's claim does not begin until the minor reaches age 18. If a plaintiff is incompetent when injured, the limitation period does not begin until plaintiff is found competent.
Appeals R.C. § 2505.07	Unless otherwise provided by law, 30 days after the entry of the judgment or appealable order, whichever comes last. In a civil case, 30 days after service of notice of judgment and its entry.

C. SIGNIFICANT OHIO COURT DECISIONS

1. Supreme Court Decisions

a) Insurance Coverage Decisions

Ohio N. Univ. v. Charles Constr. Servs., Inc., Slip Opinion No. 2018-Ohio-4057
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-4057.pdf

A Subcontractor's Faulty Work Does Not Meet the Definition of an "Occurrence" Under a General Contractor's CGL Policy

The Ohio Supreme Court extended its prior rationale in *Westfield Ins. Co. v. Custom Agri Sys., Inc.*, 133 Ohio St.3d 476 (2012), in which it previously held that property damage caused by a contractor's own faulty workmanship does not involve an "occurrence" defined as an "accident, including continuous or repeated exposure to substantially the same general harmful conditions." Ohio lower courts had been recognizing an exception, treating faulty subcontractor work as constituting an occurrence with respect to claims against the general contractor. In this case, however, the Supreme Court of Ohio extended the rationale of *Custom Agri* and determined a subcontractor's faulty work also is not considered an "occurrence" under a CGL policy.

b) Governmental Immunity Decisions

Pelletier v. Campbell, 153 Ohio St.3d 611, 2018-Ohio-2121
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-2121.pdf

A City Has No Obligation to Remove Foliage That is Not on a Stop Sign

Plaintiff was injured when she entered an intersection and collided with another vehicle, and brought a personal injury action against the city and other parties. Plaintiff alleged that their failure to maintain the grassy area between the street and sidewalk known as the "devil strip" caused overgrown foliage to block the stop sign from her view. The court found that the stop sign was in repair because it was in good or sound condition and because the foliage was not on the stop sign. Therefore, the city had no obligation to remove the foliage and is immune from liability under R.C. 2744.02(B)(3). The court reasoned that because foliage cannot be removed from a stop sign if it is not on the stop sign, the exception to governmental immunity does not apply.

c) Other Significant Decisions

LGR Realty, Inc. v. Frank &London Ins. Agency, 152 Ohio St.3d 517, 2018-Ohio-334
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-334.pdf

Delayed-Damage Rule Does Not Apply to Causes of Actions Alleging Negligent Procurement or Negligent Misrepresentations of Insurance Policies When the Policy Language is Clear

Plaintiff, a real estate company, brought a negligence action against defendant, a commercial insurance agency, alleging that the defendant failed to secure the appropriate liability policy to protect it from a lawsuit and that defendant misrepresented that the policy would cover the lawsuit. Defendant argued that plaintiff's claim was time barred by statute of limitations in R.C. 2305.09.

Defendant reasoned that the cause of action accrued on the date the policy went into effect. Plaintiff argued that under the delayed-damage rule, its cause of action did not accrue until it suffered an "injury", which would have been the date the insurer denied plaintiff's claim. The court held that the statute of limitations period began to run when the insurance policy was issued. Additionally, the Court ruled, the delayed-damage rule does not apply to claims of negligent procurement or negligent misrepresentation when the policy at issue specifically excludes coverage.

Schwartz v. Honeywell Internatl., Inc., 153 Ohio St.3d 175, 2018-Ohio-474
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-474.pdf

Theory of Cumulative Exposure to Various Asbestos-Containing Products is Insufficient to Prove that a Specific Product is a Substantial Factor in Causing an Asbestos-Related Disease

Plaintiff, as executor of his wife's estate, brought a products liability action against a defendant manufacturer alleging that his wife developed mesothelioma and died from exposure to asbestos dust from her father's periodic installation of defendant's brakes. The court held that defendant's motion for summary judgment should have been granted because plaintiff's claim of cumulative exposure did not meet the statutory requirement for an individualized finding of substantial causation by each defendant under R.C. 2307.96. The court reasoned that a theory of causation based only on a plaintiff's cumulative exposure to various asbestos-containing products is insufficient to demonstrate that exposure to asbestos from a particular defendant's product was a substantial factor in causing the plaintiff's asbestos-related disease.

Toledo v. State, 154 Ohio St.3d 41, 2018-Ohio-2358
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-2358.pdf

Separation of Powers Doctrine Does Not Allow a Court to Enjoin the Legislature From Enacting New Laws, Unless Those New Laws are Alleged to be Unconstitutional

After finding statutes regulating local governments' use of traffic cameras unconstitutional, the trial court held the general assembly in contempt for passing new regulations that would withhold state funds from municipalities unless they complied with the new statutes. As a penalty for the contempt the trial court enjoined the state from enforcing the new laws. The Supreme Court held that in Ohio a statute cannot be invalidated or enjoined unless it is unconstitutional. The parties had not raised argument as to the constitutionality of the new laws in the trial court, and therefore, because of the separation of powers doctrine, the trial court did not have the authority to enjoin the state from enforcing the new statutes.

Portee v. Cleveland Clinic Found., Slip Opinion No. 2018-Ohio-3263
http://www.supremecourt.ohio.gov/rod/docs/pdf/0/2018/2018-Ohio-3263.pdf

Ohio Saving Statute Does Not Apply to Actions Previously Commenced in Another State Court or in a Federal Court Located in Another State

Plaintiff filed a medical negligence claim against defendant in a federal court in Indiana. The federal court dismissed the case, without prejudice, finding that the court lacked personal jurisdiction over defendants. Plaintiff refiled the action in Ohio asserting that the claim was not barred by statute of limitations because of the Ohio Saving Statute. The Ohio Supreme Court held that if an action is commenced in a state or federal court, outside the state of Ohio, and fails otherwise than on the merits and the statute of limitations allowing for commencement of the

action has expired, the Ohio Saving Statute does not apply. The decision clarifies that the Ohio Saving Statute can only be used where the first action is commenced in the state of Ohio.

2. Appellate Court Decisions

a) Insurance Coverage Decisions

GrafTech Internatl., Ltd. v. Pacific Emps. Ins. Co., 2017-Ohio-9271 (8th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2017/2017-Ohio-9271.pdf

The Facts as Alleged in a Complaint Determine an Insurer's Duty to Defend

An insured manufacturer brought action against its liability insurer for declaratory judgment claiming the insurer had a duty to defend against workers' claims of injury from exposure to coal-tar pitch from the product supplied by the insured to the workplace. The court held that the pollution exclusion in the insurance policy applied. The court reasoned that the workers' complaints alleged that insured's products had the effect of making the environment impure, harmful, or dangerous and thus constituted "traditional" environmental pollution falling within the exclusion. Since an insurer's duty to defend is determined by the facts as alleged, the court affirmed that the insurer had no duty to defend.

Orthopedic & Neurological Consultants, Inc. v. Cincinnati Ins. Group, 2018-Ohio-185 (10th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2018/2018-Ohio-185.pdf

Mere Reference to an Employment Contract in a Lawsuit Does Not Trigger Coverage Under an Employment Practices Liability Policy

Insured, a corporate entity in the business of heath care, brought an action for indemnification and duty to defend against insurer under an employment practices liability coverage policy. Insured claimed insurer's duties arose from another action in which insured's shareholders and real estate partners claimed that insured violated fiduciary and contractual obligations. The appellate court affirmed, granting the insurer's motion for summary judgement because the underlying claim by the insured's shareholders and real estate partners did not allege a violation of an employment agreement, and therefore was not covered by the employment practices liability policy.

Nationwide Mut. Fire Ins. Co. v. Pusser, 2018-Ohio-2781 (7th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2018/2018-Ohio-2781.pdf

Policy Must Contain Clear Warning that a Misstatement as to Warranty About Drivers in Household Will Render the Policy Void

An automobile insurer filed a declaratory judgment action to determine whether it owed coverage to benefit the estate of a victim of a motor vehicle accident where the insured did not list the driver as a household member of driving age on their insurance application. The court held the policy did not clearly state a misstatement by an insured would render the policy void *ab initio*, and because the insurer failed to declare the policy void and return insured's premiums, the insurance policy was enforceable in favor of the unscheduled driver.

H.P. Mfg. Co., Inc. v. Westfield Ins. Co., 2018-Ohio-2849 (8th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-2849.pdf

Insurance Company May Defend Insured Before a Final Determination of Underlying Employer Intentional Tort Action

An insured manufacturer brought a declaratory judgment action to establish coverage for indemnity and defense for an employee's judgment on an employer intentional tort claim. The insurer defended the insured under reservation of rights. The appellate court found that the commercial liability policy at issue excluded coverage for bodily injury intentionally caused or aggravated by the insured and the insurer fulfilled its duty to defend the insured in the underlying intentional tort action. The court reasoned that a policy excluding coverage for bodily injury intentionally caused by the insured does not require the insurer to indemnify the insured. Because the plaintiff was found liable for an intentional tort, there was no duty to pay the damages for the bodily injury intentionally caused by the plaintiff. The court found that under a policy that excludes coverage for bodily injury intentionally caused by an insured, a final determination by a judge or jury is not required before the insurer can refuse to defend a claim alleging an employer intentional tort.

Allstate Ins. Co. v. Bowman, 2018-Ohio-4171 (3rd Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2018/2018-Ohio-4171.pdf

Use of Motor Vehicle Exclusion in a Homeowner's Policy Precludes Coverage When Insured Supplies Intoxicants to Another Person who then Operates a Vehicle and Causes Harm

An insured under a homeowner's policy suppled drugs to his friend while at the insured's home. While allegedly under the influence of the drugs, the friend was involved in an auto accident that seriously injured one person and killed another. In construing the coverage under the insured's homeowner's policy, the trial court and the appellate court determined the motor vehicle exclusion was unambiguous and the insurer was not obligated to defend the insured. Additionally, the appellate court noted that other jurisdictions are in agreement with motor vehicle exceptions when the facts involve the impairment of a third party at an insured's home. The court noted that risks associated with motor vehicle accidents are not normally risks associated with home or property ownership. Therefore, the motor vehicle exception to the homeowner's policy precludes coverage when an insured supplies intoxicants to someone that is later involved in a car accident.

b) UM/UIM Decisions

Herman v. Sema, 2018-Ohio-281 (8th Dist.)
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-281.pdf

A Business Insurance Policy Does Not Cover Bodily Injuries Incurred While Working Outside the Course and Scope of Employment

Plaintiff, owner of a landscaping business, had an auto insurance policy covering plaintiff's vehicle for both personal and business use. Plaintiff was in an accident while employed by the Ohio Department of Transportation and while using an ODOT vehicle. Nevertheless, plaintiff filed an uninsured motorist claim with his insurer under the business auto insurance policy. Plaintiff argued that the policy did not contain specific language restricting coverage to the scope of employment. The court found there to be no coverage, holding that since a business was named on the policy as

the insured, the coverage only covers loss within the course and scope of employment, and did not cover Plaintiff while working for ODOT.

Hale v. State Farm Mut'l Ins. Co., 2018-Ohio-3035 (5th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2018/2018-Ohio-3035.pdf

Summary Judgment is Not Proper When a Driver's Negligence Causes a Rapid Succession Accident and Insured's Potential Negligence May Have Caused a Break in the Causal Chain

An motorist filed suit against his UM carrier seeking uninsured motorist coverage after a grill fell out of the bed of an uninsured pickup truck into the road, causing the insured to stop, and in turn to be hit from behind by another motorist. The insured's UM carrier conceded negligence on part of the uninsured motorist, who fled the scene, but also argued its insured was negligent for failing to adhere to Ohio's assured clear distance statute. Additionally, the insurer argued that the ability of a following driver to stop coupled with insured's negligence broke the chain of causation traceable to the uninsured absconding driver. The appellate court found that summary judgment for the UM carrier was in error because reasonable minds could differ as to whether the following driver's ability to stop coupled with the insured's potential negligence broke the chain of causation implicating the uninsured motorist.

c) Employment Decisions

Roty v. Batelle Mem. Inst., 2017-Ohio-9125 (10th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2017/2017-Ohio-9125.pdf

Statistics in a Disparate Impact Case are Discoverable and Relevant to Show a Disparate Impact

Older employees filed suit against employer and specific members of management for age discrimination stemming from employees' terminations during a period in which employer was reducing their workforce. The employees moved to compel the employer to produce discovery relating to the statistics of ages and positions of those included and not included in the reduction of the work force. The trial court denied the employees' motion based on a finding that each determination was made at a business unit level and any statistics on the age of the reduced workforce were not discoverable as irrelevant. The appellate court reversed, finding the trial court incorrectly decided that the employer's organization-wide statistics were irrelevant without first evaluating the information. The court held that where a disparate impact claim is alleged in regard to a company-wide reduction in force, a statistical analysis is likely to lead to relevant evidence that could help either the employee or the employer and therefore should be discoverable.

d) Premises Liability Decisions

Thayer v. B.L. Bldg. & Remodeling, L.L.C., 2018-Ohio-1197 (8th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-1197.pdf

Open and Obvious Doctrine Does Not Relieve an Independent Contractor of a Duty of Care, but the Open and Obvious Nature of the Hazard may be Relevant to Determine Breach of Duty

Plaintiff, a nurse, sued an independent contractor, for negligence after a trip and fall accident. While at work, plaintiff went to a kitchenette area that was under construction, tripped on a piece of wood, and fell through a partially constructed window opening. The appellate court found that

the defendant independent contractor owed a duty of ordinary care to plaintiff, but the open and obvious nature of the hazard may still be relevant in determining whether a duty of care was breached. The court held that there was a genuine issue of material fact as to whether defendant breached its duty of ordinary care and whether plaintiff was contributorily negligent in failing to observe and avoid the hazard.

Armstrong v. Lakes Golf & Country Club, Inc., 2018-Ohio-1018 (5th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2018/2018-Ohio-1018.pdf

Business Owner Owes No Duty to Protect an Invitee from Dangers that are Known or are Obvious and Apparent

A guest sued a country club, for injuries he sustained when he stepped into a valve box between the parking lot and a patio bar at the club. The appellate court affirmed summary judgment for defendant. The court reasoned that under the open and obvious doctrine the business owner owed no duty to protect an invitee from dangers that are known to the invitee or are so obvious and apparent that invitee may be reasonably expected to discover the danger and protect themselves. The court concluded that the valve box was open and obvious and that defendant owed no duty to plaintiff.

Grady v. Karvo, Inc., 2018-Ohio-3053 (8th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/8/2018/2018-Ohio-3053.pdf

A Party Must be Shown to Have Exclusive Management and Control in Order to be Liable Under *Res Ipsa Loquitur*

Plaintiff brought a negligence action after tripping on a protruding bolt from a device installed in the sidewalk by defendant-subcontractor. The appellate court affirmed summary judgment for defendants because plaintiff failed to prove that the defendants proximately caused his injury. The court reasoned that the evidence did not establish defendant's responsibility for the protruding bolt or that they knew of the condition and failed to rectify it. Further, the court rejected plaintiff's argument for *res ipsa loquitur* because the evidence failed to show that the device installed in the sidewalk was under the exclusive management and control of defendant after installation.

Nicoll v. Centerville City Schools, 2018-Ohio-36 (2nd Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2018/2018-Ohio-36.pdf

Attendant Circumstances Must Create a Greater Than Normal and Substantial Risk of Injury in Order to Negate the Open and Obvious Doctrine

In a slip and fall negligence action against a school district, the appellate court affirmed summary judgment for defendant. Plaintiff claimed her foot became stuck in a crack and caused her to break her ankle. Defendant moved for summary judgment claiming that the hazard was "open and obvious." Plaintiff argued that whether the hazard was open and obvious was a matter for the jury and that attendant circumstances – the need to focus on her children and the other people walking in to the school – diverted her attention from the open and obvious hazard. In affirming the summary judgment for the school district, the court concluded that the defect was open and obvious and that no attendant circumstances existed. The court explained that although plaintiff is not required to be constantly looking down while walking, the hazard posed by the curb and sidewalk would have been discoverable by a reasonable person. Additionally, none of the evidence

suggested that the crowded environment or the behavior of her children created a greater than normal risk requiring the application of the attendant circumstances doctrine.

Norris v. Riesbeck Food Markets, Inc., 2018-Ohio-54 (7th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/7/2018/2018-Ohio-54.pdf

A Hazard Must be Objectively Open and Obvious in Order to Support a Motion for Summary Judgment

Plaintiff slipped and fell in a grocery store. The defendant store claimed its employee had placed safety cones around the area after mopping, and before plaintiff fell. Plaintiff alleged that after turning from the center aisle to the rear aisle he did not see any hazard signs and only noticed the wet floor after he was already standing on the wet area. Plaintiff also claims that he was distracted because he had to try and avoid another shopper while turning. The appellate court reversed the granting of summary judgment in favor of defendant. The court reasoned that there was a genuine issue of material fact as to whether the wet floor hazard was objectively open and obvious to a shopper making a turn from a center aisle into the rear aisle. Additionally the court reasoned that viewing the evidence in plaintiff's favor, there remained a genuine issue of whether defendant's warning was adequate enough.

Jackson v. Akron Summit Cty. Library, 2017-Ohio-9298 (9th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2017/2017-Ohio-9298.pdf

Open and Obvious Doctrine is a Complete Bar on Negligence Claims

Plaintiff brought suit against the public library for injuries she sustained after tripping and falling on the concrete outside of the library. The appellate court affirmed summary judgment for the library because the open and obvious nature of the hazard barred any negligence claims. The court reasoned that the height differential between the concrete slabs was observable and plaintiff was unable to put forth enough evidence to prove that the attendant circumstances distracted her and enhanced the danger of the fall.

e) Governmental Immunity Decisions

Thorton v. Lemon, 2018-Ohio-3150 (5th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/5/2018/2018-Ohio-3150.pdf

Mere Negligence Not Enough to Overcome Governmental Immunity

In a negligence action arising from the death of a pedestrian while she was crossing an intersection, summary judgment for the city was proper because the city was immune under R.C. 2744. The court determined that the timing of pedestrian signals would fall within the purview of a governmental function and therefore the city was entitled to blanket immunity unless an exception to immunity applied. The court found that the timing of the pedestrian signal at issue was not set with a malicious purpose, in bad faith, or in a wanton or reckless manner. The court found that allegations sounding exclusively in negligence and containing no allegations or evidence of malicious behavior, bad faith, or wanton or reckless behavior, did not create an issue of material fact and would not be sufficient to overcome immunity.

Thomas v. Lorain Metro. Hous. Auth., 2018-Ohio-2997 (9th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2018/2018-Ohio-2997.pdf

Summary Judgment is Proper When a Political Subdivision Engages in a Proprietary Function and When Political Subdivision Fails to Argue Immunity under R.C. 2744.02(B)(2)

Plaintiff brought suit after he fell into an open water meter "crock" on defendant housing authority's property. The appellate court affirmed the denial of defendant's motion for summary judgment claiming governmental immunity. The court found that defendant conceded that it was engaged in a proprietary function pursuant to R.C. 2744.02(B)(2) because the water meter crock was related to the operation of the sewer system. Furthermore, defendant failed to challenge trial court's determination that the exception under R.C 2744.02(B)(2) applied.

Bartchak v. Columbia Twp., 2018-Ohio-2991 (9th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/9/2018/2018-Ohio-2991.pdf

Township is Immune from Liability for Death of Teenagers Who Intended to Use Intersection of Railroad Tracks and Roadway to Make Vehicle Go Airborne

Four teenagers died after using a railroad crossing to make their car go airborne, veering off the road after landing, and colliding with a tree. The parents of three of the teenagers brought a wrongful death action against the two bordering townships. The townships moved for summary judgment arguing sovereign political subdivision immunity under R.C. 2744. The trial court denied summary judgment in part as to the parents' claims that the townships failed to remove obstructions from the road, failed to keep the road in repair, and failed to have mandatory road makings. The appellate court found that the trial court erred by denying townships' motions. The appellate court reasoned that the intersection of the tracks and roadway did not constitute an obstruction, the slope and the unevenness of the road did not make the road "out of repair", and the teenagers would have ignored mandatory traffic control devices so the absence of mandatory traffic control devices did not contribute to the accident.

McDonald v. Lacy, 2018-Ohio-2753 (2nd Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2018/2018-Ohio-2753.pdf

City Immune Under R.C. 2744 for Injuries Sustained by Motorist When Debris from City's Median and Monument Struck Motorist

A motorist sued for personal injury from flying debris generated by another motorist after hitting the median and a monument erected by the city. The appellate court affirmed summary judgment for city based on political subdivision immunity under R.C. 2744. The court found that the construction of the median and monument was part of the city's entryway enhancement project which is a governmental function and since there is no evidence that the city's conduct was wanton or reckless, the city was immune from liability.

f) Other Significant Decisions

McBride v. Butler, 2018-Ohio-1251 (3rd Dist.)
https://www.supremecourt.ohio.gov/rod/docs/pdf/3/2018/2018-Ohio-1251.pdf

Inherent and Foreseeable Risks of a Recreational Activity Makes Assumption of the Risk Doctrine Applicable

Plaintiff brought suit against defendants seeking recovery after being ejected from an all-terrain vehicle ("ATV"). The trial court granted the defendant insurance company's motion for summary judgment because the plaintiff assumed the inherent risks associated with the recreational activity of riding an ATV. On appeal, plaintiff argued that the assumption of risk doctrine did not apply because a genuine issue of fact remained as to whether plaintiff was truly engaged in a recreational activity. Plaintiff argued that she was merely using the ATV as transportation from one home to another on a public road. The appellate court held that the trial court did not err by granting the insurance company's summary judgment. The court concluded that losing control and flipping an ATV is a foreseeable and customary risk associated with riding an ATV.

Bolin v. Allstate Property &Cas. Ins. Co., 2018-Ohio-3396 (2nd Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/2/2018/2018-Ohio-3396.pdf

Negligent Performance of a Contract is Not a Valid Claim

Plaintiffs brought a declaratory judgment, breach of contract, negligent fulfillment of contractual duties, bad faith, and punitive damages action against insurer for denying coverage on personal and real property that was damaged by a fire. The appellate court found the trial court appropriately dismissed a cause of action for "negligent" fulfillment of contractual duties, because that is not a recognized tort claim.

Link v. Wayne Ins. Group, 2018-Ohio-3529 (3rd Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/3/2018/2018-Ohio-3529.pdf

Failing to Disclose Pets on an Insurance Application Renders a Policy Null and Void as a Matter of Law

Plaintiff was attacked by two dogs that resided with defendant's insured. Upon learning of the dog attack, defendant sent the insured a cancellation notice on the basis that the insured made a material misrepresentation on her insurance application by stating that she did not have any dogs on the premises. Plaintiffs, suing as third-party beneficiaries to insured's policy, appealed the trial court's determination that the defendant was entitled to summary judgment. The appellate court concluded that the plaintiffs were not, as a matter of law, third-party beneficiaries to the insured's insurance policy with the defendant. Further, because of the material misrepresentation the insurance policy was declared null and void as a matter of law and the defendant had no duty to defend or indemnify the insured.

Peterson v. Natl. Sec. Assocs., Inc., 2018-Ohio-2905 (10th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/10/2018/2018-Ohio-2905.pdf

Primary Assumption of Risk Might Not Apply if a Participant's Risk of Injury is Elevated Beyond the Ordinary Risk Associated With an Activity

Plaintiff brought suit after he was injured during explosives training at the Columbus bomb range. At the time of injury, plaintiff was a state trooper and a member of the special response team. Being a part of the special response team involved being trained in explosives. Defendants asserted that primary assumption of risk barred plaintiff's negligence claims. The trial court granted defendants' motion for summary judgment holding that detonating explosives is a dangerous activity and plaintiff was aware of the risk of injury. Therefore, primary assumption of risk completely barred any negligence claim. The appellate court reversed reasoning that although explosive training carries certain inherent risks, there is a genuine issue of material fact as to whether the participants were properly instructed and whether the inherent risks were elevated beyond the ordinary risks of explosive training. Therefore, there was an issue of fact to be resolved by the trial court to determine whether primary assumption of risk would be applicable.

Cintas Corp. v. Great Lakes Best One Tire & Serv., L.L.C., 2018-Ohio-2456 (11th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2018/2018-Ohio-2456.pdf

Successor Corporation Will be Liable for Selling Corporation's Liability if Successor Corporation Expressly or Impliedly Agrees

Defendant successor corporation appealed a trial court finding that when it purchased the assets of a predecessor corporation, it assumed the liabilities of the predecessor including contractual liabilities to plaintiff Cintas. The appellate court found no reversible error in enforcing Cintas's contract against the defendant successor. Traditionally a successor corporation is not liable for the debts and obligations of the selling corporation. However, the purchase agreement between the defendant and the selling corporation, notwithstanding its being an "asset purchase," expressly stated that defendant assumed the selling corporation's liabilities, including the contractual liability toward plaintiff Cintas.

Block v. Battaglia, 2018-Ohio-4380 (11th Dist.)
http://www.supremecourt.ohio.gov/rod/docs/pdf/11/2018/2018-Ohio-4380.pdf

Motion for Relief from Judgment Cannot be Used as a Substitute for an Appeal

Defendant homeowner failed to comply with discovery requests in a dispute with a neighbor over the property line, as well as over alleged civil assault. As a result, the court granted default judgment to the plaintiff. The defendant appealed, but the appeal was dismissed as untimely. The defendant then filed a Civil Rule 60(B) motion. However, all the issues the defendant presented under the 60(B) motion were present during the initial appeal. The court determined *res judicata* barred the 60(B) motion because while not a substitute for appeal, and must present issues which could not be considered in an appeal of the underlying judgment.

3. Federal Court Decision

Marshall Garber v. Heriberto Menendez, M.D., 888 F.3d 839 (6th Cir. 2018)
http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0082p-06.pdf

Ohio's Tolling of Statute of Limitations Does Not Violate the Dormant Commerce Clause

Plaintiff was a minor when defendant treated him for a fever, constipation, and back pain, after which plaintiff became a paraplegic. Minors in Ohio have one year to sue their doctors after they turn eighteen (18). When plaintiff tried to sue defendant in May 2017, the one year statute of limitations had run. However, Ohio also tolls the statute of limitations if the defendant leaves the state. Here, defendant retired to Florida before the one year statute of limitations had run. Defendant argued that the differential treatment of residents and non-residents violated the Dormant Commerce Clause of the United States Constitution. The Sixth Circuit Court of Appeals held that the Ohio statute draws no distinction based on residency and that the law applies equally to Ohio residents and non-Ohio residents. The court reasoned that many states offer benefits to their in-state residents and that if those residents move out of the state they lose that benefit. The defendant lost the benefit of the medical malpractice statute of limitations by moving out of the state. Therefore, the tolling of the statute of limitations did not violate the Dormant Commerce Clause, and the action was not barred.

Terry Martin, et al. v. Behr Dayton Thermal Prods., et al., 896 F.3d 405 (6th Cir. 2018)
http://www.opn.ca6.uscourts.gov/opinions.pdf/18a0139p-06.pdf

The Sixth Circuit Adopts a Broad View When Certifying Class Action Issues

Plaintiffs brought a toxic tort class action claiming that defendants contaminated the groundwater of a neighborhood. The district court denied plaintiffs' motion for certification as a class but did certify seven issues for class treatment under Rule 23. Defendants appealed. The court found that the district court properly certified the issues for class action because the issues could be answered once and in the same way to each plaintiff. Furthermore, the most efficient way to advance the litigation was to certify the issues class in order to promote economies of time, effort, expense and to promote uniformity in deciding the issues.

These cases were pending at the time this summary was printed. To confirm whether the Supreme Court has issued a decision in any of these cases, we invite you to visit our website at http://www.rolfeshenry.com.