

**WAITE ET AL., APPELLANTS, v. PROGRESSIVE INSURANCE COMPANY,
APPELLEE.**

[Cite as *Waite v. Progressive Ins. Co.*, 1999-Ohio-413.]

Appeal dismissed as improvidently allowed.

(No. 98-1462—Submitted May 4, 1999—Decided June 9, 1999.)

APPEAL from the Court of Appeals for Huron County, No. H-97-036.

Murray & Murray Co., L.P.A., Michael T. Murray, Steven C. Bechtel, Dennis E. Murray, Sr. and W. Patrick Murray, for appellants.

Meyers, Hentemann & Rea Co., L.P.A., Henry A. Hentemann and J. Michael Creagan, for appellee.

Elk & Elk Co., L.P.A., and Todd O. Rosenberg, urging that R.C. 3937.18(H) be found unconstitutional, for *amicus curiae*, Ohio Academy of Trial Lawyers.

Mark W. Ruf and Jean M. McQuillan, urging that R.C. 3937.18 be found unconstitutional, for *amicus curiae*, Cleveland Academy of Trial Lawyers.

Betty D. Montgomery, Attorney General, *Judith L. French* and *Kimberly L. Charles*, Assistant Attorneys General, urging that R.C. 3937.18(H) be found constitutional, for *amicus curiae*, Ohio Attorney General.

Vorys, Sater, Seymour & Pease, L.L.P., and John J. Kulewicz, urging that R.C. 3937.18(H) be found constitutional, for *amicus curiae*, Ohio Insurance Institute.

{¶ 1} The appeal is dismissed, *sua sponte*, as having been improvidently allowed.

MOYER, C.J., DOUGLAS, RESNICK, PFEIFER and LUNDBERG STRATTON, JJ., concur.

SUPREME COURT OF OHIO

F.E. SWEENEY, J., dissents and would reverse the judgment of the court of appeals.

COOK, J., dissents and would affirm the judgment of the court of appeals.
