

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

October 23, 2002

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### MERIT DECISIONS WITH OPINIONS

**2001-1942. State ex rel. Schlosser v. Indus. Comm., 2002-Ohio-5443.**

Franklin App. No. 01AP-47. Judgment reversed and writ allowed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg  
Stratton, JJ., concur.

**2001-2214. State v. Bryant-Bey, 2002-Ohio-5450.**

Lucas App. No. L-94-003. Judgment affirmed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg  
Stratton, JJ., concur.

**2001-2236. State ex rel. Pate v. Indus. Comm., 2002-Ohio-5444.**

Franklin App. No. 01AP-76. Judgment affirmed.

Moyer, C.J., Resnick, F.E. Sweeney, Cook and Lundberg Stratton, JJ.,  
concur.

Douglas, J., dissents.

Pfeifer, J., dissents.

**2002-0246. In re Hoffman, 2002-Ohio-5368.**

Stark App. No. 2001CA00207, 2001-Ohio-1816. Judgment affirmed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer and Lundberg  
Stratton, JJ., concur.

Cook, J., concurs in judgment only.

**2002-0928. Harris v. Bagley, 2002-Ohio-5369.**

Richland App. No. 02-CA-29. Judgment affirmed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg  
Stratton, JJ., concur.

## **MERIT DECISIONS WITHOUT OPINIONS**

### **2002-1421. State ex rel. Joseph & Joseph v. Watson.**

In Mandamus. On answer of respondent and amended motion for judgment on pleadings. On S.Ct.Prac.R. X(5) determination, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg  
Stratton, JJ., concur.

### **2002-1445. State ex rel. Savage v. O'Connor.**

In Mandamus. On motion to dismiss of Betty D. Montgomery, Attorney General, motion to dismiss of Maureen O'Connor, Lieutenant Governor and Director of the Department of Public Safety, motion to dismiss of Jim Petro, Auditor of State, request for oral argument on motions to dismiss, motion for awarding damages or court costs to relator as prevailing party, motion for joinder of Governor Bob Taft et al. as respondents under paragraph 5 of the complaint, motion for finding that respondents had acted unlawfully, and motion for summary judgment. Motions to dismiss sustained. Cause dismissed and motion for damages and costs denied.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg  
Stratton, JJ., concur.

### **2002-1450. State ex rel. Steele v. Picken.**

In Prohibition. On answer of respondent, motion to dismiss, and motion for judgment on pleadings. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg  
Stratton, JJ., concur.

### **2002-1451. State ex rel. Bell v. Marion Cty. Pros. Atty.**

In Mandamus. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg  
Stratton, JJ., concur.

### **2002-1479. Robinson v. Betleski.**

In Prohibition. On motion to dismiss. Motion to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg  
Stratton, JJ., concur.

**2002-1491. State ex rel. Grigsby v. Court of Appeals.**

In Mandamus and Prohibition. On motion to dismiss of Terri A. Mazur, Clerk, and the Second District Court of Appeals, Greene County, Ohio, motion to dismiss of Dan Foley, Clerk of Courts of Montgomery County, Ohio, and motion to dismiss of Second District Court of Appeals. Motions to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

**2002-1549. State ex rel. Howard v. McDonald.**

In Mandamus. On answer of respondent the Honorable Frederick H. McDonald, motion for judgment on pleadings of the Honorable Frederick H. McDonald, motion for summary judgment, motion to dismiss of Michael Vanderhorst, motion to dismiss of James S. Nowak, motion to dismiss of Jonathan Coughlan, motion to dismiss of Anthony Georgetti, counsel for Yark Automotive Group, Inc., motion to dismiss of Thomas A. Dixon, and motion for default judgment. Motions to dismiss sustained. Cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

**2002-1625. In re Complaint for a Writ of Habeas Corpus for Griffin.**

In Habeas Corpus. On petition for writ of habeas corpus of Patrick Griffin. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

**2002-1629. In re Petition for a Writ of Habeas Corpus for Pianowski.**

In Habeas Corpus. On petition for writ of habeas corpus of Ted A. Pianowski. Sua sponte, cause dismissed.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

**MOTION AND PROCEDURAL RULINGS**

**2001-1709. Kemper v. Michigan Millers Mut. Ins. Co.**

Certified State Law Question, No. 300CV07799. On request of the United States District Court to hold certified question in abeyance. Request granted.

Lundberg Stratton, J., dissents.

Cook, J., not participating.

**2002-0073. State ex rel. Smith v. Indus. Comm.**

Franklin App. No. 01AP-272. On request for oral argument. Request denied.

**2002-0517. State ex rel. Kirby v. Indus. Comm.**

Franklin App. No. 01AP-596. On request for oral argument. Request denied.

**2002-0824. In re Thomas.**

Warren App. No. CA2001-02-013, 2002-Ohio-1426. On motion for stay pending the decision in 2002-0892 and 2002-0894, *In re April B.*, Lucas App. Nos. L-01-1334 and L-01-1348, 2002-Ohio-2299. Motion denied.

Douglas, J., dissents.

In the alternative, on motion to consolidate with 2002-0892 and 2002-0894. Motion denied.

Cook, J., would schedule this cause for oral argument on the same date as that in 2002-0892 and 2002-0894.

Moyer, C.J., and Resnick, J., dissent.

**2002-1176. Carrick v. Plusquellic.**

In Quo Warranto. On motion to strike motion for reconsideration and motion to vacate order. Motion denied.

Lundberg Stratton, J., would deny as moot.

Pfeifer, J., would dismiss.

**2002-1206. Natl. Indemn. Co. v. Ryerson.**

Certified State Law Question, No. C2-01-0223. On review of preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The court will answer the following questions certified by the United States District Court for the Southern District of Ohio, Eastern Division:

“1. Where additional amounts of UIM coverage exist as a matter of law under *Abate v. Pioneer Mutual Casualty Co.*, 22 Ohio St.2d 161 (1970) and its progeny, is the additional coverage subject to the same terms and conditions as the UIM coverage actually written as part of the policy?

“2. Are policy conditions requiring prompt notice of an accident or loss excused for UIM claims arising out of accidents which occurred prior to the decision in *Scott-Pontzer [v. Liberty Mut. Fire Ins. Co.]*, 85 Ohio St.3d 660, 710 N.E.2d 1116]?

“3. Are policy conditions requiring notice of a tentative settlement with an uninsured motorist excused for UIM claims arising out of accidents that occurred prior to the decision in *Scott-Pontzer*?

“4. Are policy conditions requiring an insured to protect the insurer’s subrogation rights excused for UIM claims arising out of accidents that occurred prior to the decision in *Scott-Pontzer*?”

Moyer, C.J., concurs in part because he would hold this cause for the decision in 2001-1843, *Ferrando v. Auto-Owners Mut. Ins. Co.*, Ashtabula App. No. 2000-A-0038.

Lundberg Stratton, J., dissents.

On motion for stay. Stay denied.

On motion to dismiss. Motion denied.

Lundberg Stratton, J., dissents.

**2002-1400. Gass v. Auto-Owners Ins. Co.**

Lucas App. No. L-02-1032, 2002-Ohio-3966. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause held for the decision in 2001-1786, *Lemm v. The Hartford*, Franklin App. No. 01AP-251; briefing schedule stayed.

Resnick, J., not participating.

**2002-1454. State ex rel. Weist v. Cuyahoga Cty. Bd. of Commrs.**

In Mandamus. Sua sponte, alternative writ granted and cause consolidated with 2002-1455, *infra*.

**2002-1455. State ex rel. Weist v. Mason.**

In Mandamus. Sua sponte, alternative writ granted and cause consolidated with 2002-1454, *supra*.

**2002-1558. State v. Maggy.**

Medina App. No. 3127-M, 2001-Ohio-1368. On motion for leave to file delayed appeal. Motion denied.

**2002-1585. State v. Colvin.**

Butler App. No. CA94-04-092. On motion for leave to file delayed appeal. Motion denied.

**2002-1595. State v. Severns.**

Knox App. No. 01CA23, 2002-Ohio-3685. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

**2002-1596. State v. Boddie.**

Allen App. No. 12-00-072, 2001-Ohio-2261. On motion for leave to file delayed appeal. Motion denied.

**2002-1598. State v. Needham.**

Hamilton App. No. C-010175. On motion for leave to file delayed appeal. Motion denied.

Lundberg Stratton, J., dissents.

**2002-1603. State v. Barry.**

Hamilton App. No. C-010629. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

**2002-1606. State v. Robinson.**

Union App. No. 14-02-01, 2002-Ohio-2714. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

**2002-1609. State v. Young.**

Stark App. No. 1999CA00122. On motion for leave to file delayed appeal. Motion denied.

**2002-1647. Nyamusevya v. Dr. T.C. Hobbs & Assoc., Inc.**

Franklin App. No. 02AP-782. On motion for stay of court of appeals' judgment. Motion denied.

**2002-1666. State v. Doe.**

Montgomery App. No. 19408, 2002-Ohio-4966. On motion to continue appellate court's stay. Motion denied.

Moyer, C.J., Pfeifer and Lundberg Stratton, JJ., dissent.

**APPEALS ACCEPTED FOR REVIEW**

**2002-0984. Boshier v. Euclid Income Tax Bd. of Review.**

Cuyahoga App. No. 80240, 2002-Ohio-2671.

Pfeifer and Cook, JJ., dissent.

**2002-1173. Neville v. Neville.**

Holmes App. No. 01CA028, 2002-Ohio-2901.

F.E. Sweeney and Pfeifer, JJ., dissent.

**2002-1188. State v. Davis.**

Cuyahoga App. No. 80364, 2002-Ohio-3104. Discretionary appeal accepted and cause held for the decision in 2002-0201, *State v. Fisher*, Franklin App. No. 01AP-614, 2001-Ohio-8772; briefing schedule stayed.

F.E. Sweeney, Pfeifer and Cook, JJ., dissent.

**2002-1191. Solove v. Westerville City Council.**

Franklin App. No. 01AP-1213, 2002-Ohio-2925.

Moyer, C.J., Resnick and Cook, JJ., dissent.

**2002-1229. Std. Loan Office, Inc. v. Scottsdale Surplus Lines, Inc.**

Lucas App. No. L-01-1435, 2002-Ohio-3051.

Moyer, C.J., and Lundberg Stratton, J., dissent.

Resnick, J., not participating.

**2002-1299. Sowards v. W. Res. Mut. Cas. Co.**

Pike App. No. 01CA675, 2002-Ohio-4409. Discretionary appeal accepted and cause held for the decision in 2001-1786, *Lemm v. The Hartford*, Franklin App. No. 01AP-251; briefing schedule stayed.

Cook and Lundberg Stratton, JJ., dissent.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2002-1427. State v. Pahl.**

Hancock App. No. 5-01-41.

**2002-1361. State v. King.**

Clark App. No. 2502.

**2002-1372. State v. Murawski.**

Cuyahoga App. No. 70854, 2002-Ohio-3631.

**RECONSIDERATION OF PRIOR DECISIONS**

**2001-1078. State v. Yarbrough.**

Shelby App. No. 17-2000-10, 2001-Ohio-2351. Reported at 96 Ohio St.3d 1490, 2002-Ohio-4534, 774 N.E.2d 765. On motion for reconsideration. Motion denied.

**2002-0823. In re Keeran.**

Licking App. No. 01CA69, 2002-Ohio-1580. Reported at 96 Ohio St.3d 1491, 2002-Ohio-4534, 774 N.E.2d 765. On motion for reconsideration. Motion denied.  
Moyer, C.J., and Lundberg Stratton, J., dissent.

**2002-0906. Baker v. Toledo City School Dist. Bd. of Edn.**

Lucas App. No. L-01-1303, 2002-Ohio-854. Reported at 96 Ohio St.3d 1493, 2002-Ohio-4534, 774 N.E.2d 766. On motion for reconsideration. Motion denied.  
Resnick and F.E. Sweeney, JJ., dissent.  
Douglas, J., not participating.

**2002-0929. Gidley v. Cincinnati Ins. Co.**

Summit App. No. 20813, 2002-Ohio-1740. Reported at 96 Ohio St.3d 1493, 2002-Ohio-4534, 774 N.E.2d 766. On motion for reconsideration. Motion denied.  
F.E. Sweeney, J., dissents.  
Cook, J., not participating.

**2002-1000. Sutton v. Ohio State Bd. of Pharmacy.**

Trumbull App. Nos. 2001-T-0030, 2001-T-0031 and 2001-T-0032. Reported at 96 Ohio St.3d 1495, 2002-Ohio-4534, 774 N.E.2d 767. On motion for reconsideration. Motion denied.  
Moyer, C.J., Douglas and F.E. Sweeney, JJ., dissent.

**2002-1002. In re Devine.**

Hamilton App. No. C-000780. Reported at 96 Ohio St.3d 1488, 2002-Ohio-4478, 774 N.E.2d 763. On motion for reconsideration. Motion denied.  
Moyer, C.J., and Lundberg Stratton, J., dissent.

**2002-1147. State v. Shondrick.**

Medina App. No. 3216-M, 2002-Ohio-2439. Reported at 96 Ohio St.3d 1495, 2002-Ohio-4534, 774 N.E.2d 768. On motion for reconsideration. Motion granted and discretionary appeal accepted.  
Douglas, F.E. Sweeney and Pfeifer, JJ., dissent.

**2002-1151. Rexrode v. Space.**

In Quo Warranto. Reported at 96 Ohio St.3d 1483, 2002-Ohio-4478, 774 N.E.2d 759. On motion for reconsideration. Motion denied.

**2002-1172. Wood v. Rose.**

In Habeas Corpus. Reported at 96 Ohio St.3d 1484, 2002-Ohio-4478, 774 N.E.2d 760. On motion for reconsideration. Motion denied.

**2002-1176. Carrick v. Plusquellic.**

In Quo Warranto. Reported at 96 Ohio St.3d 1484, 2002-Ohio-4478, 774 N.E.2d 760. On motion for reconsideration and motion to vacate order. Motions denied.

**2002-1177. State ex rel. Koukios v. Ruehlman.**

In Mandamus and Prohibition. Reported at 96 Ohio St.3d 1484, 2002-Ohio-4478, 774 N.E.2d 760. On motion for reconsideration. Motion denied.

Moyer, C.J., and F.E. Sweeney, J., not participating.