

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

April 27, 2005

[Cite as *04/27/2005 Case Announcements*, 2005-Ohio-1880.]

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### MERIT DECISIONS WITH OPINIONS

**2004-0307. State ex rel. Holdren v. Indus. Comm., 2005-Ohio-1734.**

Franklin App. No. 03AP-164, 2003-Ohio-7230. Judgment reversed and writ granted.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton and O'Connor, JJ., concur.  
O'Donnell and Lanzinger, JJ., dissent.

**2004-0524 and 2004-0525. Rosette v. Countrywide Home Loans, Inc., 2005-Ohio-1736.**

Cuyahoga App. No. 82938, 2004-Ohio-359, and Cuyahoga App. Nos. 82885 and 82999, 2004-Ohio-356. Judgments reversed and causes remanded.

Moyer, C.J., Resnick, Pfeifer and O'Donnell, JJ., concur.  
Lundberg Stratton, O'Connor and Lanzinger, JJ., dissent.

**2004-1200. Valigore v. Cuyahoga Cty. Bd. of Revision, 2005-Ohio-1733.**

Board of Tax Appeals, No. 2002-R-2709. Decision affirmed.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

**2004-1908. State ex rel. Hamilton v. Brunner, 2005-Ohio-1735.**

Franklin App. No. 02AP-1332. Judgment affirmed.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

### MERIT DECISIONS WITHOUT OPINIONS

**2005-0231. State ex rel. Badock v. McMonagle.**

In Mandamus. On respondents' answer and motion for summary judgment. On S.Ct.Prac.R. X(5) determination, cause dismissed.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

**2005-0347. State ex rel. Wooden v. Bond.**

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

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

**2005-0357. State ex rel. Coleman v. Court of Appeals, Eighth Appellate Dist.**

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

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

**2005-0360. State ex rel. Beal v. Sadler.**

In Mandamus. On answer of respondent. On S.Ct.Prac.R. X(5) determination, cause dismissed.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

**2005-0363. State ex rel. Smith v. Court of Appeals, Eleventh Appellate Dist.**

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

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

**2005-0442. State ex rel. Lozada v. Callahan.**

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

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

**2005-0461. State ex rel. Degler v. Jeffreys.**

In Habeas Corpus. On petition for writ of habeas corpus of Michael L. Degler, Jr. Sua sponte, cause dismissed.

Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.

## MOTION AND PROCEDURAL RULINGS

### **2004-1104. Smith v. Leis.**

Hamilton App. No. C-040273. Sua sponte, the court orders this cause to be scheduled for oral argument.

O'Donnell, J., dissents.

### **2005-0227. Norwood v. Horney.**

Hamilton App. No. C-040683. On motion of appellee Rookwood Partners, Ltd. to dissolve and/or modify stays and injunctions and motion of appellee City of Norwood to dissolve the injunction or, in the alternative, to set a bond to protect the city's interests. Motions denied.

### **2005-0228. Norwood v. Gamble.**

Hamilton App. No. C-040783. On motion of appellee Rookwood Partners, Ltd. to dissolve and/or modify stay and injunction and motion of appellee City of Norwood to dissolve the injunction or, in the alternative, to set a bond to protect the city's interests. Motions denied.

### **2005-0378. Pilkington N. Am., Inc. v. Travelers Cas. & Sur. Co.**

Certified Question of State Law, No. 3:01CV7617. On review of preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The court will answer the following questions:

1. "Whether the demand by Pilkington North America for defense and indemnification, as asserted in this case, constitutes a chose in action, as that term is defined under Ohio law?"

2. "Whether the policies' 'anti-assignment' clauses bar acquisition by Pilkington North America of such chose in action?"

3. "Whether by operation of law insurance benefits for transferred liabilities were conveyed, along with those liabilities, so that Pilkington North America may, notwithstanding the anti-assignment clauses, pursue insurance under the original LOF Glass's policies for the environmental liabilities at issue here, which arise out of the original LOF Glass's operations."

O'Donnell, J., dissents.

On motions for admission pro hac vice of Thomas E. Birsic and James E. Scheuermann by John K. Nelson, of Mary Massoron Ross and Kenneth C. Newa by Amelia A. Bower, of Gary L. Justice and Andrew Z. Edlestein by Arthur M. Kaufmann, and of Mitchell F. Dolin, Seth A. Tucker, and Ann-Kelley Kemper by Steven R. Smith. Motions granted.

**2005-0399. State v. Paige.**

Cuyahoga App. No. 84574, 2004-Ohio-7029. On motion for leave to file delayed appeal. Motion granted.

Resnick, O'Connor and Lanzinger, JJ., dissent.

**2005-0408. State v. Fulkerson.**

Cuyahoga App. No. 83566, 2004-Ohio-3114. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2005-0421. State v. Maple.**

Summit App. No. 20514, 2001-Ohio-1875. On motion for leave to file delayed appeal. Motion denied.

**2005-0473. Austin v. Webb-Lewis.**

Franklin App. No. 04AP-1135. On motion for stay of trial court proceedings. Motion denied.

Moyer, C.J., Resnick and O'Donnell, JJ., dissent.

**2005-0498. State v. Montgomery.**

Hamilton App. No. C-040190, 2005-Ohio-1018. On motion for stay of court of appeals' judgment. Motion granted.

Resnick and Pfeifer, JJ., dissent.

O'Connor, J., dissents and would dismiss the appeal as moot.

**2005-0499. State v. Bruce.**

Hamilton App. No. C-040421, 159 Ohio App.3d 562, 2005-Ohio-373. On review of order certifying a conflict. The court determines that a conflict exists. Sua sponte, cause consolidated with 2005-0391, *State v. Bruce*, Hamilton App. No. C-040421, 159 Ohio App.3d 562, 2005-Ohio-373; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**2005-0507. State v. Morgan.**

Defiance App. No. 4-04-01. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**2005-0541. Siemientkowski v. Moreland Homes, Inc.**

Cuyahoga App. No. 84758, 2005-Ohio-515. On motion for stay of court of appeals' judgment. Motion denied.

**2005-0559. State v. Alexander.**

Muskingum App. No. CT2004-0021, 2004-Ohio-6990. On motion for stay of court of appeals' judgment. Motion denied.

**APPEALS ACCEPTED FOR REVIEW**

**2005-0107. State v. Murrin.**

Cuyahoga App. No. 83482, 2004-Ohio-6301. Discretionary appeal accepted; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

Moyer, C.J., would accept and hold the cause on Proposition of Law I only.

**2005-0132. Bd. of Edn. of N. Olmsted City School Dist. v. Bd. of Edn. of Cleveland Mun. School Dist.**

Cuyahoga App. No. 84372, 2004-Ohio-6422.

Moyer, C.J., would accept the appeal on Proposition of Law I only.

Resnick and O'Connor, JJ., dissent.

**2005-0172. Seaford v. Norfolk S. Ry. Co.**

Cuyahoga App. No. 83137, 159 Ohio App.3d 374, 2004-Ohio-6849. Discretionary appeal accepted on Proposition of Law IV and cause held for the decision in 2003-2035, *Hess v. Norfolk S. Ry. Co.*, Cuyahoga App. No. 80717, 153 Ohio App.3d 565, 2003-Ohio-4172.

Pfeifer, J., dissents.

**2005-0201. Gass v. Massachusetts Mut. Life Ins. Co.**

Summit App. No. 21956.

O'Donnell, J., dissents.

On motion for admission pro hac vice of David J. Manogue, Joseph N. Kravec, Jr., Bruce D. Greenberg, Andrew Friedman, and Barry A. Weprin by Clair M. Car. Motion granted.

**2005-0243. Arrington v. Daimler Chrysler Co.**

Summit App. Nos. 22108, 22270, 22271, 22272, 22273, 22274, 22284, 22285 and 22311, 2004-Ohio-7180.

Moyer, C.J., Lundberg Stratton and O'Connor, JJ., dissent.

**2005-0391. State v. Bruce.**

Hamilton App. No. C-040421, 159 Ohio App.3d 562, 2005-Ohio-373. Discretionary appeal and discretionary cross-appeal accepted and cause consolidated with 2005-0499, *State v. Bruce*, Hamilton App. No. C-040421, 159 Ohio App.3d 562, 2005-Ohio-373; cause held for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2004-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209; and briefing schedule stayed.

**APPEALS NOT ACCEPTED FOR REVIEW**

**2005-0071. State v. Marshall.**

Hamilton App. No. C-040153.

**2005-0081. Mayfield Hts. v. Shemo.**

Cuyahoga App. No. 85226.

O'Donnell, J., not participating.

**2005-0091. State v. Hall.**

Trumbull App. No. 2003-T-0114, 2004-Ohio-6471.

**2005-0092. State v. Hayes.**

Lucas App. No. L-03-1221 and L-03-1222, 2004-Ohio-6460.

**2005-0102. State v. Nigh.**

Allen App. No. 1-04-86.

Lundberg Stratton, J., dissents and would accept the appeal and hold the cause for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2005-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209.

**2005-0106. State v. Pifer.**

Mercer App. No. 10-04-10, 2004-Ohio-6492.

**2005-0108. State v. Stanley.**

Mahoning App. No. 03 MA 42, 2004-Ohio-6801.

**2005-0110. State v. Pamer.**

Medina App. No. 04CA0027-M, 2004-Ohio-7190.

**2005-0113. Cadle Co. II, Inc. v. HRP Auto Centers, Inc.**  
Cuyahoga App. No. 84296, 2004-Ohio-6292.

**2005-0115. Sprint Corp. v. Continental Cas. Co.**  
Cuyahoga App. Nos. 83468 and 83475, 2004-Ohio-6298.  
Moyer, C.J., dissents.  
Resnick, J., not participating.

**2005-0117. State v. Wright.**  
Mahoning App. No. 03 MA 112, 2004-Ohio-6802.

**2005-0119. LeCrone v. LeCrone.**  
Franklin App. No. 04AP-312, 2004-Ohio-6526.

**2005-0120. In re Sellers.**  
Richland App. No. 03 CA 95, 2004-Ohio-6595.

**2005-0121. Knight v. Grange Mut. Cas. Co.**  
Tuscarawas App. No. 2004 AP 04 0033, 2004-Ohio-6677.

**2005-0122. State v. Krzywkowski.**  
Cuyahoga App. Nos. 83599, 83842 and 84056, 2004-Ohio-5966.

**2005-0124. Shaffer v. OhioHealth Corp.**  
Franklin App. No. 04AP-236, 2004-Ohio-6523.  
Resnick and Pfeifer, JJ., dissent.

**2005-0131. State v. Coran.**  
Clark App. No. 2003-CA-80, 2004-Ohio-6874. Discretionary appeal not accepted.  
Motion to hold appeal in abeyance denied as moot.

**2005-0133. Tucker v. Lakeshore Chevrolet, Inc.**  
Cuyahoga App. No. 83589, 2004-Ohio-5381.

**2005-0134. D & R Properties v. Twp. of Burton.**  
Geauga App. No. 2003-G-2523, 2004-Ohio-6939.  
Moyer, C.J., dissents.

**2005-0135. Seminatore v. Dukes.**

Cuyahoga App. No. 84032, 2004-Ohio-6417.  
O'Donnell, J., dissents.

**2005-0136. State v. Biehl.**

Summit App. No. 22054, 2004-Ohio-6532.  
O'Connor and Lanzinger, JJ., dissent.

**2005-0138. In re Estate of Thompson.**

Hamilton App. No. C-040385.

**2005-0140. State v. Hinckley.**

Huron App. No. H-03-024, 2004-Ohio-4849.  
Lanzinger, J., not participating.

**2005-0142. Klocinski v. Am. States Ins. Co.**

Lucas App. No. L-03-1353, 2004-Ohio-6657.  
Lanzinger, J., not participating.

**2005-0145. Spicer v. Ace Property & Cas. Ins. Co.**

Perry App. No. 03CA21, 2004-Ohio-6756.  
Pfeifer, J., dissents.

**2005-0146. Furnier v. Drury.**

Hamilton App. No. C-030067.  
Resnick, O'Connor and O'Donnell, JJ., dissent.

**2005-0147. Jura v. Hudson.**

Summit App. No. 22135, 2004-Ohio-6743.

**2005-0149. State v. Brewer.**

Montgomery App. No. 20051, 2004-Ohio-6873.

**2005-0150. Lewis v. J.E. Wiggins & Co.**

Franklin App. Nos. 04AP-469, 04AP-544 and 04AP-668, 2004-Ohio-6724.  
Discretionary appeal not accepted. Motion to dismiss court of appeals' judgment entry, motion for preliminary injunction, motion for order to show cause, and motion to vacate summary judgment entry denied as moot.

**2005-0151. In re Wood.**

Medina App. No. 04CA0005-M, 2004-Ohio-6539.

**2005-0153. State v. Abels.**

Mercer App. Nos. 10-04-15, 10-04-16 and 10-04-17.

**2005-0159. Bozsik v. Grabenstetter.**

Medina App. No. 04CA0030-M, 2004-Ohio-6750. Discretionary appeal not accepted. Motion to certify record and motion for stay denied as moot.

Moyer, C.J., dissents and would accept the appeal.

Resnick, J., would grant the motion to stay and remand the cause to the court of appeals.

**2005-0162. In re Self.**

Stark App. No. 2004CA00199, 2004-Ohio-6822.

Lanzinger, J., dissents.

**2005-0165. State v. Akemon.**

Hamilton App. No. C-040284.

**2005-0166. Frinkley v. Meeker.**

Portage App. No. 2004-P-0022, 2004-Ohio-6696.

**2005-0170. Cuyahoga Falls v. Fraternal Order of Police, Ohio Labor Council, Inc.**

Summit App. No. 22170, 2004-Ohio-6739.

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

**2005-0173. In re Trust of Harrower.**

Tuscarawas App. No. 2003 AP 12 0097, 2004-Ohio-6819.

**2005-0174. State v. Richter.**

Lake App. Nos. 2003-L-065 and 2003-L-066, 2004-Ohio-6682.

**2005-0176. State v. Hickman.**

Stark App. No. 2003-CA-00408, 2004-Ohio-6760.

**2005-0178. Ruch v. Ohio Dept. of Transp.**

Franklin App. No. 03AP-1070, 2004-Ohio-6714.

**2005-0184. State v. Nicholson.**

Warren App. No. CA2003-10-106, 2004-Ohio-6666.

**2005-0191. State v. Rose.**

Hamilton App. No. C-040092, 2004-Ohio-7000.

Lundberg Stratton and Lanzinger, JJ., dissent and would accept the appeal and hold the cause for the decisions in 2004-1771, *State v. Quinones*, Cuyahoga App. No. 83720, 2004-Ohio-4485, and 2005-Ohio-1568, *State v. Foster*, Licking App. No. 03CA95, 2004-Ohio-4209.

**2005-0195. Oak Hills Edn. Assn. v. Oak Hills Local School Dist. Bd. of Edn.**

Hamilton App. Nos. C-040169 and C-040172, 158 Ohio App.3d 662, 2004-Ohio-6843.

**2005-0198. Smalley v. Pauly.**

Lucas App. No. L-04-1106, 2004-Ohio-6885.

**2005-0203. Kelly v. Ohio Dept. of Adm. Serv.**

Franklin App. No. 04AP-119, 2004-Ohio-6732.

O'Donnell, J., dissents and would accept the appeal on Proposition of Law II.

**2005-0204. Murry v. Watkins.**

Stark App. Nos. 2004CA00136 and 2004CA00139, 2004-Ohio-7053.

O'Donnell, J., dissents.

**2005-0207. In re Estate of Fouras.**

Licking App. Nos. 2003CA00049, 2003CA00052 and 2004CA00069, 2004-Ohio-5563.

Pfeifer, J., dissents.

**2005-0210. State v. Lallathin.**

Noble App. No. 03 NO 312, 2004-Ohio-7066.

**2005-0213. Rodriguez v. Frietze.**

Athens App. No. 04CA14, 2004-Ohio-7121.

**2005-0218. State v. Mathis.**

Summit App. Nos. 22039 and 22040, 2004-Ohio-6749.

Lanzinger, J., dissents.

**2005-0221. Grine v. Sylvania Schools Bd. of Edn.**

Lucas App. No. L-04-1137, 2004-Ohio-6904. Discretionary appeal not accepted. Motion to defer determination regarding jurisdiction denied as moot.

Lundberg Stratton, J., dissents.

Lanzinger, J., not participating.

**2005-0232. Don Keyser Co., Inc. v. Niles Mfg. & Finishing, Inc.**

Trumbull App. No. 2003-T-0089, 2004-Ohio-7228.

O'Connor and O'Donnell, JJ., dissent and would accept the appeal on Proposition of Law II.

**2005-0237. Gillespie v. Gillespie.**

Clermont App. No. CA2004-03-023, 2004-Ohio-6932.

**2005-0240. Gissiner v. Cincinnati.**

Hamilton App. No. C-040070, 2004-Ohio-6999.

**2005-0270. State v. Miller.**

Summit App. No. 22035, 2004-Ohio-7186.

**2005-0302. State v. Kitchens.**

Clark App. No. 2001-CA-92, 2002-Ohio-4335.

**2005-0308. State v. Patterson.**

Richland App. No. 03 CA 48, 2004-Ohio-4298.

**2005-0361. State v. Baker.**

Columbiana App. No. 03 CO 24, 2005-Ohio-565.

**2005-0445. State v. Cvijetinovic.**

Cuyahoga App. No. 81534, 2003-Ohio-563.

## **RECONSIDERATIONS OF PRIOR DECISIONS**

**2004-1943. Borkowski v. Shaffer.**

Fulton App. No. F-04-029. Reported at 105 Ohio St.3d 1452, 2005-Ohio-763, 823 N.E.2d 457. On motion for reconsideration. Motion denied.

**2004-2000. Paar v. Jackson Twp. Bd. of Trustees.**

Stark App. No. 2003CA00334. Reported at 105 Ohio St.3d 1453, 2005-Ohio-763, 823 N.E.2d 457. On motion for reconsideration. Motion denied.

**2004-2105. State ex rel. Ham v. Court of Appeals, Seventh Appellate Dist.**

In Mandamus and Prohibition. Reported at 105 Ohio St.3d 1449, 2005-Ohio-763, 823 N.E.2d 455. On motion for reconsideration. Motion denied.

**2005-0128. Avery v. Money.**

In Habeas Corpus. Reported at 105 Ohio St.3d 1450, 2005-Ohio-763, 823 N.E.2d 455. On motion for reconsideration. Motion denied.