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Legal Updates – State Supreme Courts

Presenters



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Supreme Court of Ohio

Insurance Coverage

- ✓ *Sherwin-Williams Co. v. Certain Underwriters at Lloyd's London* (December 2024)
 - **Background:** Sherwin-Williams ordered to pay \$409M into California abatement fund for lead paint hazards. The fund required testing, remediation, removal, repair and education. S-W sought indemnification for this payment and filed suit in Ohio to determine coverage obligations under its commercial general liability (“CGL”) policies. The CGL policies covered damages on account of “personal injuries” and “property damage.” The parties agreed on the definition of damages as “money claimed by, or ordered to be paid to, a person as compensation for loss or injury.”
 - **Issue:** Whether the payments into the abatement fund constituted “damages” under the CGL policies.

Insurance Coverage

✓ *Sherwin-Williams Co. v. Certain Underwriters at Lloyd's London*
(December 2024)

- **Holding:** No. The payments into the abatement fund were not to compensate for past harm, but to eliminate future harm, and were, therefore, not “damages” under the CGL policies.
- **Significance:** Highlights the parameters of the term “damages” for purposes of insurance indemnification, which may cover compensation for past harms, but not an abatement fund payment to prevent future harms. The Court distinguished a decision involving “response costs” under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) for environmental hazards because response costs in that case were aimed at remediating past harm done to property, despite the suit also alleged public nuisance.

Public Nuisance

✓ *In re: National Prescription Opiate Litigation* (December 2024)

- **Background:** As part of the “Opioid Litigation,” two Ohio counties won \$650M verdict in the Northern District of Ohio against manufacturers, distributors, and pharmacies with claims based principally on public nuisance under Ohio law.
- **Issue:** The Sixth Circuit asked the Ohio Supreme Court to clarify whether the Ohio Product Liability Act (OPLA) abrogated, or abolished, the right to file a common law public nuisance case against product makers and sellers.

Public Nuisance

✓ *In re: National Prescription Opiate Litigation* (December 2024)

- **Holding:** “The plain language of the OPLA abrogates product liability claims, including product-related public-nuisance claims seeking equitable relief.”
- We recognize that the opioid crisis has touched the lives of people in every corner of Ohio. . . Creating a solution to this crisis out of whole cloth is, however, beyond this court’s authority. We must yield to the branch of government with the constitutional authority to weigh policy considerations and craft an appropriate remedy. And the General Assembly has spoken, plainly and unambiguously: a public-nuisance claim seeking equitable relief is not that remedy.
- **Significance:** Not specific to opioid litigation—Ohio law does not support any public nuisance claim ties to any allegation about the design, manufacture, supply, marketing, distribution, promotion, advertising, labeling, or sale of a product.

The Commercial Activity Tax (CAT)

✓ *Aramark Corp. v. Harris* (June 2025)

- **Relevant Law:** CAT is “levied . . . on each person with taxable gross receipts for the privilege of doing business in this state.”
 - “‘Gross receipts’ means the total amount realized . . . without deduction for the cost of goods sold or other expenses incurred, that contributes to the production of gross income.”
 - Gross receipts excludes “[p]roperty, money, and other amounts received or acquired by an agent on behalf of another in excess of the agent’s commission, fee, or other remuneration.”

The Commercial Activity Tax (CAT)

✓ *Aramark Corp. v. Harris* (June 2025)

- **Relevant Law:**

- Gross-receipts exclusion to CAT arises in the context of an agency relationship.
- “‘Agent’ means a person authorized by another person to act on its behalf to undertake a transaction for the other, including . . . [a] person retaining only a commission from a transaction with the other proceeds from the transaction being remitted to another person.”

The Commercial Activity Tax (CAT)

✓ *Aramark Corp. v. Harris* (June 2025)

- **Background:** Aramark managed food services for institutional clients under management-fee contracts, which required the clients to reimburse Aramark for food and labor costs and pay a separate management fee. After paying CAT on those reimbursements, Aramark sought a \$907,000 refund, claiming (1) it is subject to the gross-receipts exclusion because Aramark received the reimbursements as the client's agent and (2) the reimbursements are not subject to CAT because they did not contribute to the production of gross income.
- **Issue:** Whether Aramark has met the requirements for a gross-receipts exclusion under the CAT statute and is entitled to a refund.

The Commercial Activity Tax (CAT)

✓ *Aramark Corp. v. Harris* (June 2025)

- **Holdings:**

- (1) Aramark did not meet the statutory definition of “agent”—it failed to show that it did not “retain” (*i.e.*, “hold, have or keep”) the reimbursements. Even so, Aramark still could not meet the terms of the gross-receipts exclusion because it did not “receive” or “acquire” the reimbursements “on behalf of another”—it acquired them on behalf of itself; and
- (2) The reimbursements were subject to CAT because they contributed to Aramark’s gross income.

The Commercial Activity Tax (CAT)

✓ *Aramark Corp. v. Harris* (June 2025)

- **Significance:**

- In analyzing the definition of “agent,” the Court rejected its prior precedent (*Willoughby Hills* (2018)) because it adopted an “interpretive gloss” of the definition of “agent” when it required a showing of “actual authority” to demonstrate that a person is “authorized” as an agent.
- Actual authority does not appear in the statute and does not determine whether someone is an agent under CAT.
- CAT taxpayers may need to reevaluate the applicability of the gross-receipts exclusion based on the Court’s statutory interpretation of the definition of an agent.

The Commercial Activity Tax (CAT)

✓ *Total Renal Care, Inc. v. Harris* (December 2024)

- **Relevant Law:** CAT is “levied . . . on each person with taxable gross receipts for the privilege of doing business in this state.”
 - “Taxable gross receipts” are “gross receipts sitused to this state under [R.C. 5751.033].”
 - “Gross receipts are sitused to this state in the proportion that the purchaser’s benefit in this state with respect to what was purchased bears to the purchaser’s benefit everywhere with respect to what was purchased. The physical location where the purchaser ultimately uses or receives the benefit of what was purchased shall be paramount in determining the proportion of the benefit in this state to the benefit everywhere.”

The Commercial Activity Tax (CAT)

✓ *Total Renal Care, Inc. v. Harris* (December 2024)

- **Background:** Total Renal Care (subsidiary of DaVita, Inc.) provided dialysis services to patients in Ohio. TRC, through DaVita, also performed lab and administrative services outside of Ohio. TRC sought refund under the CAT on the portion of gross receipts relating to the lab and administrative services, citing Ohio Administrative Code 5703-29-17(C)(28), which provides that if healthcare services are provided partly within Ohio and outside Ohio, a reasonable allocation for the services performed in Ohio must be made.
- **Issue:** Whether TRC's gross receipts have an Ohio situs.

The Commercial Activity Tax (CAT)

✓ *Total Renal Care, Inc. v. Harris* (December 2024), cont'd.

- **Holding:** All gross receipts properly sitused to Ohio since patients received the benefit of the dialysis service in Ohio. Out-of-state lab and administrative work were ancillary to the Ohio services.
- **Significance:** CAT situsing is based on where the purchaser receives the benefit.
 - For healthcare, this means where the patient receives care—not where supporting functions occur. Ancillary services supporting primary healthcare services cannot be treated as separate gross receipts for purposes of applying the CAT sourcing rule for services.
 - Taxpayers seeking refunds for CAT based on ancillary services must demonstrate that these services are distinct and not merely supportive of primary services.

Ohio Deceptive Trade Practices Act

✓ *Goomai v. H&E Enterprises* (December 2024)

- **Background:** Homeowners sought actual damages from their contractor for violation of the Ohio Deceptive Trade Practices Act (R.C. 4165.03), which authorizes attorney's fees to a plaintiff who is a "prevailing party" in a claim for actual damages or injunctive relief. A jury found that the contractor violated the Act, but awarded \$0 in damages for that claim.
- **Issue:** Whether a plaintiff who fails to recover any monetary damages or injunctive relief is a "prevailing party" under the Act.

Ohio Deceptive Trade Practices Act

✓ *Goomai v. H&E Enterprises* (December 2024), cont'd.

- **Holding:** The Court held that a plaintiff is a “prevailing party” under the Act only if they obtain actual damages or injunctive relief. A finding of liability without a remedy is insufficient.
- **Significance:** “[A] moral victory is not a legal victory.” Persuaded by the SCOTUS’s logic that a plaintiff must obtain something that “materially alters the legal relationship between the parties.”

Labor (Jurisdiction)

✓ *Ohio Council 8 v. City of Lakewood* (June 2025)

- **Background:** Employee was fired for misconduct while under a last chance agreement (LCA), which provided that any further misconduct would result in termination not subject to the Union's grievance process. The Union filed a grievance. The City refused to process the grievance for arbitration. The Union filed in common pleas court to compel arbitration and claimed that the City had violated the CBA. City argued that the court lacked subject matter jurisdiction and that the State Employment Relations Board (SERB) had exclusive jurisdiction.
- **Issue:** Whether SERB possesses exclusive jurisdiction over the enforcement of an arbitration clause in a CBA.

Labor (Jurisdiction)

✓ *Ohio Council 8 v. City of Lakewood* (June 2025)

- **Holding:** When a party does not allege an unfair labor practice or conduct that constitutes an unfair labor practice, but instead raises a claim that is independent of the rights created by Chapter 4117, jurisdiction is not exclusive to SERB and may be exercised by a common pleas court.
 - The union did not allege that the City engaged in an unfair labor practice or conduct that constitutes an unfair labor practice. Therefore, jurisdiction was properly exercised by the common pleas court over the Union's application and motion to compel arbitration.
- **Significance:** Clarifies the boundary between SERB and judicial jurisdiction. Contractual grievance-arbitration disputes belong in common pleas court.

Public Officials

✓ *Barga v. Village Council of the Village of St. Paris* (November 2024)

- **Background:** Ohio Open Meetings Act (R.C. 121.22(G)(1)) requires public officials to “conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.” It also permits a public body to enter into executive session “to consider” the dismissal of a public employee “unless the public employee . . . Requests a public hearing.” Police chief requested a public hearing, but the Village Council conducted only some of the proceedings in public. After presentation of evidence at an open council meeting, it decided to remove the police chief in executive session, despite her request for a public hearing.
- **Issue:** Whether the Village Council was permitted to deliberate and make a decision in executive session after the police chief requested a public hearing regarding her termination.

Public Officials

✓ *Barga v. Village Council of the Village of St. Paris* (November 2024)

- **Holding:** Under the plain terms of the Open Meeting Act, upon request by the police chief, the Village Council was required to consider the entire matter at a public hearing.
 - The Court analyzed the court of appeals' use of the quasi-judicial exception to the Open Meetings Act and declined to apply it. "[W]e are mindful that the quasi-judicial exception to the Open Meetings Act is purely judge-made law, with no basis in the text of the Open Meeting Act. Thus, we must tread cautiously before widening the exception. . . . We decline to render R.C. 121.22(G)(1) a dead letter."
- **Significance:** Consistent with the Court's other recent decisions to follow a plain reading of applicable statutes.

Civil Procedure (Service)

✓ *Hunt v. Alderman* (August 2025)

- **Background:** Plaintiffs mailed service to defendant's *former* address even though they knew he no longer resided there and were aware of his new address. Despite this, defendant eventually received the complaint through others just days before the answer deadline. Defendant answered after the deadline and alleged insufficient service of process as an affirmative defense. Defendant moved for summary judgment on the basis of insufficient service.
- **Issue:** Whether compliance with the *technical* requirements of Civ.R. 4.1(A)(1)(a)—*i.e.*, using certified mail, suffices—or whether there is additionally a constitutional due process requirement that service be “reasonably calculated” to notify the defendant.

Civil Procedure (Service)

✓ *Hunt v. Alderman* (August 2025)

- **Holding:** When initiating a civil lawsuit by certified mail, the mailing must comply with service requirements of Civ.R. 4.1(A)(1)(a) *and* the due process requirement that service be “reasonably calculated to notify the defendant of the lawsuit.” Service was insufficient because mailing to a former residence was not reasonably calculated to give notice. Actual notice did not cure the defect.
 - Action was properly dismissed because service was not properly perfected within one year pursuant to Rule 3(A).
- **Significance:** Reaffirms that due-process adequacy is required *in addition* to compliance with the Civil Rules. And reaffirms that, whether the action was timely “commenced” under Civ.R. 3(A) depends on whether service was proper within the one-year period. If service is defective, the clock for commencement under Rule 3(A) does not begin.

Ohio Public Records Act

✓ *State ex rel. Platt v. Montgomery Cnty. Bd. of Elections* (June 2025)

- **Background:** Franklin County Prosecutor's Office sent a memo by email to the Montgomery County Board of Elections and its deputy director (#1), who forwarded the email (including the attached memo) from his state-issued account to his private email (#2), then used his private email to it to a third party (#3). PRR sought all emails related to the memorandum sent by Franklin County (not the memo itself). Board of Elections denied the PRR. Relator sought a writ of mandamus.
- **Issue:** Whether the three emails were public records subject to disclosure.

Ohio Public Records Act

✓ *State ex rel. Platt v. Montgomery Cnty. Bd. of Elections* (June 2025)

- **Holding:** The first two emails were public records, not covered by attorney-client privilege. The third email did not constitute a public record because it was not “kept by a public office”—not “created or received” by the Board.
- **Significance:**
 - Transmittal-only emails are not automatically covered by attorney-client privilege when they merely transmit an attached privilege document and do not otherwise contain substantive client confidences.
 - An e-mail can be a “public record” even if the activity it documents was unauthorized by policy—the question is whether it documents the office’s activities, not whether those activities were proper.

Supreme Court of Kentucky

Insurance

- ✓ *Motorists Mut. Ins. Co. v. First Specialty Ins. Corp.* (December 2024)
 - **Background:** Two insurers each claimed excess coverage for the same loss; both “other insurance” clauses conflicted.
 - **Issue:** Whether the “other insurance” clauses in Motorists’ and First Specialty’s policies are mutually repugnant excess clauses requiring equal-share, co-primary coverage, or whether First Specialty’s clause operates as a nonstandard escape clause that makes Motorists’ coverage primary.

Insurance

- ✓ *Motorists Mut. Ins. Co. v. First Specialty Ins. Corp.* (December 2024)
 - **Holding:** Clauses were **mutually repugnant**; both insurers must **share equally** in defense and indemnity. *Haddix* (1996) overruled.
 - **Significance:** Clarifies how Kentucky courts handle competing “other insurance” provisions. Equal-share rule now controls.

Insurance

- ✓ *State Auto Property & Casualty Company v. Greenville Cumberland Presbyterian Church* (December 2024)
 - **Background:** Church roof caved in due to hidden decay; insurer denied claim, arguing total building collapse required.
 - **Issue:** Whether State Auto's policy covering "collapse of a building or any part of a building" was triggered by the roof's actual collapse caused by hidden decay and insect damage, even though the entire building did not fall to the ground and the Church mitigated further damage.

Insurance

- ✓ *State Auto Property & Casualty Company v. Greenville Cumberland Presbyterian Church* (December 2024)
 - **Holding:** Partial collapse was sufficient—coverage applied under policy for “collapse of a building or any part of a building.”
 - **Significance:** Clarifies collapse coverage and prevents illusory insurance limitations in Kentucky.

Insurance

✓ *Hill v. State Farm. Mut. Auto. Ins. Co.* (February 2025)

- **Background:** Minor driver injured another while living temporarily with relatives; insurer denied coverage, claiming he was not a “resident relative.”
- **Issue:** Whether an unemancipated minor in the sole legal custody of the named insured, but staying elsewhere at the time of the accident, qualifies as a “resident relative” who “resides primarily” with the named insured under State Farm’s policy, thereby triggering coverage.

Insurance

- ✓ *Hill v. State Farm. Mut. Auto. Ins. Co.* (February 2025)
 - **Holding:** Court found “resident relative” ambiguous; unemancipated minor remained a resident of custodial parent’s household.
 - **Significance:** Reinforces broad coverage construction—ambiguous terms favor the insured; clarifies residency and domicile rules for minors.

Civil Procedure

✓ *Baum v. Aldava* (April 2025)

- **Background:** Plaintiff's treating physician excluded for late expert disclosure; trial court entered summary judgment.
- **Issue:** Whether the trial court abuse its discretion by excluding the plaintiff's only medical expert for late disclosure under Civil Rule 37.02

Civil Procedure

- ✓ *Baum v. Aldava* (April 2025)
 - **Holding:** Exclusion was disproportionate. No bad faith and lesser sanctions were available.
 - **Significance:** Reinforces proportionality and fairness in discovery sanctions under Civil Rule 37.02; favors decisions on the merits.

Tort

- ✓ *Deramos v. Anderson Communities, Inc.* (October 2023)
 - **Background:** A tenant sued her landlord for negligence after a dog attack in a common area. The case was dismissed because the lower court mistakenly focused on the statutory strict liability rule.
 - **Issue:** Whether strict liability dog-bite statute abrogate a plaintiff's right to pursue a separate common law negligence claim against a landlord.

Tort

- ✓ *Deramos v. Anderson Communities, Inc.* (October 2023)
 - **Holding:** The dog-bite strict liability statute (KRS 258.235) does not displace a common law negligence claim.
 - **Significance:** Property owners, even if not the dog's statutory "owner," can be sued for their own negligence (premises liability). Liability can stem from failing to enforce breed restrictions, neglecting known hazards, or maintaining an unsafe environment.

Worker's Compensation

- ✓ *W.G. Yates & Sons Constr. Co. v. Harvey* (December 2024)
 - **Background:** Employee relocated to Kentucky for a fixed construction job and was injured during a personal motorcycle trip to a restaurant on his day off.
 - **Issue:** Whether the "traveling employee" exception to the "going and coming rule" apply when an employee relocates to a fixed worksite but is injured during purely personal travel.

Worker's Compensation

- ✓ *W.G. Yates & Sons Constr. Co. v. Harvey* (December 2024)
 - **Holding:** The employee was not a “traveling employee.” Relocating to a fixed worksite does not trigger the exception to the going and coming rule.
 - **Significance:** The decision helps employers defend against claims for injuries sustained during off-duty, personal activities. Coverage is limited to those who must travel as part of their job (e.g., sales, multi-site work), not just those who live far away.

Worker's Compensation

- ✓ *Hall v. BPM Lumber, LLC* (December 2024)
 - **Background:** Workers' Comp Board order affirmed some issues but remanded others. The claimant waited to appeal the affirmed issues until the entire case was finished.
 - **Issue:** Whether a Workers' Compensation Board order that affirms certain issues but remands others considered a "final and appealable" order regarding the issues that were affirmed.

Worker's Compensation

- ✓ *Hall v. BPM Lumber, LLC* (December 2024)
 - **Holding:** The Supreme Court affirmed. Affirmed portions of a Board order are immediately final and appealable. Waiting to appeal those issues resulted in a waiver under the Law of the Case Doctrine.
 - **Significance:** Requires legal counsel to file immediate judicial review of any adverse ruling affirmed by the Board, even if the case is not fully concluded. Promotes finality for employers and prevents claimants from relitigating issues they failed to appeal in a timely manner.

Supreme Court of Indiana

Civil Procedure (Discovery)

✓ *Jennings v. Smiley* (January 2025)

- **Background:** Plaintiff sought the defendant's smartphone data in a negligence case, alleging phone use contributed to an accident.
- **Issue:** Whether a court may compel forensic inspection of a driver's smartphone absent some evidence of phone use contributing to the accident and in light of proportionality and privacy limits under Trial Rule 26(B)(1).

Civil Procedure (Discovery)

✓ *Jennings v. Smiley* (January 2025)

- **Holding:** The Court required “some evidence” of phone use and “reasonable particularity” in the discovery request, emphasizing proportionality and privacy under Rule 26(B)(1).
- **Significance:** Establishes modern discovery limits for digital evidence: requests must be specific, supported, and proportionate to avoid privacy overreach.

Civil Procedure (Finality)

- ✓ *Automotive Finance Corp. v. Meng Liu* (January 2025)
 - **Background:** After summary judgment in a loan dispute, the defendant sought relief based on her ex-husband's admitted forgery.
 - **Issue:** Whether a trial court may grant Rule 60(B)(3) relief from a final summary judgment based on fraud when the issue could have been raised by a timely motion to correct error and the alleged fraud did not prevent a full and fair presentation of the case.

Civil Procedure (Finality)

- ✓ *Automotive Finance Corp. v. Meng Liu* (January 2025)
 - **Holding:** The Supreme Court held Rule 60(B) cannot replace a timely motion or appeal—relief is limited to fraud that truly prevented a fair defense.
 - **Significance:** Emphasizes Indiana’s strong policy favoring finality; post-judgment relief remains narrowly and strictly confined.

Commercial/Construction

- ✓ *EdgeRock Development, LLC v. C.H. Garmong & Son, Inc.* (June 2025)
 - **Background:** Contractor's lien conflicted with lenders' mortgages on a development project
 - **Issue:** Whether construction liens may secure the same debt across multiple lots owned by different parties, and whether a lender's mortgage has priority beyond the portion of loan proceeds used to satisfy a prior lien.

Commercial/Construction

- ✓ *EdgeRock Development, LLC v. C.H. Garmong & Son, Inc.* (June 2025)
 - **Holding:** Court upheld lien validity based on owner's implied consent but recognized equitable subrogation for lenders who discharge prior liens in good faith.
 - **Significance:** Clarifies lien-priority framework—protects contractors' rights while preserving fairness for refinancing lenders in Indiana construction projects.

Employment

- ✓ *South Bend Community School Corp. v. Grabowski* (June 2025)
 - **Background:** School custodian claimed he was fired in retaliation for filing a workers' compensation claim.
 - **Issue:** Whether a Frampton retaliatory-discharge claim can succeed absent evidence that the employee was constructively discharged solely for seeking workers' compensation benefits.

Employment

- ✓ *South Bend Community School Corp. v. Grabowski* (June 2025)
 - **Holding:** Court limited the *Frampton* retaliation exception, holding that an employee must show clear causal evidence linking the claim to the termination.
 - **Significance:** Reinforces Indiana's strong at-will employment rule and raises the evidentiary bar for proving retaliatory discharge claims.

Questions?



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