

**SUPREME COURT OF OHIO**

**COLUMBUS**

**ANNOUNCEMENT**

1:00 P.M.

WEDNESDAY  
October 10, 2001

**MERIT DOCKET**

**01-1250. State ex rel. Williams v. Reed.**

In Mandamus. On complaint in mandamus of Charles L. Williams.

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.

**01-1271. State ex rel. Cincinnati Enquirer, Div. of Gannett Satellite Info.  
Network, Inc. v. Spaeth.**

In Mandamus. On motion to dismiss and on motion to dismiss of Ohio  
Prosecuting Attorney's Association. Motions to dismiss sustained. Cause  
dismissed.

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

**01-1324. State ex rel. Miller v. Fifth Dist. Court of Appeals.**

In Mandamus. On complaint in mandamus of Chad Miller.

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.

**01-1356. State ex rel. Cleveland Elec. Illum. Co. v. Zupancic.**

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

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

Douglas, J., dissents and would grant an alternative writ and schedule oral argument on the same date as in 01-1009, *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, Board of Tax Appeals Nos. 00-K-1751 through 00-K-1758.

Cook, J., not participating.

**01-1379. State ex rel. Nelson v. Gaul.**

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.

**01-1389. State ex rel. Pointer v. Wilkinson.**

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.

**01-1415. State ex rel. Rembert v. Nusbaum.**

In Mandamus. On complaint in mandamus of Albert L. Rembert.

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.

**01-1454. Comella v. St. Paul Mercury Ins. Co.**

Certified State Law Question, No. 100CV2664. On preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The following questions were certified to this court by the United States District Court for the Northern District of Ohio, Eastern Division:

“Question 1.

“In Scott-Pontzer v. Liberty Mut. Fire Ins. Co. [85 Ohio St.3d 660], 710 N.E.2d 1116 (Ohio 1999), and Linko v. Indemnity Ins. Co. of N. Am. [90 Ohio St.3d 445], 739 N.E.2d 338 (Ohio 2000), the Ohio Supreme Court analyzed Ohio Rev. Code §3937.18. In both cases, however, the Ohio Supreme Court examined versions of the statute enacted prior to September 3, 1997. Ohio Rev. Code

§3937.18(C) was amended on September 3, 1997, to read, in pertinent part, as follows:

“A named insured’s or applicant’s rejection of [UM/UIM] coverages ..., or a named insured’s or applicant’s selection of [lower amounts of] such coverages ..., shall be in writing and shall be signed by the named insured or applicant. A named insured’s or applicant’s written, signed rejection ... [or] selection of such coverages... shall be effective on the day signed, shall create a presumption of an offer of coverages consistent with division (A) of this section and shall be binding on all other named insureds, insureds, or applicants.’ (Emphasis added.)

“Is the presumption referred to in this statute a rebuttable presumption, or a conclusive presumption?

“Question 2.

“If the answer to question 1 is that the statutory presumption is rebuttable, what measure of proof is needed to rebut the presumption, and who bears the burden of supplying that proof?

“For instance,

“a. Will proof that the insurer made no written offer of coverage be sufficient to rebut the presumption? or,

“b. Will proof that the offer did not include the precise terms referred to in Linko v. Indemnity Ins. Co. of N. Am. [90 Ohio St.3d 445], 739 N.E.2d 338, 342 (Ohio 2000) (‘a brief description of the coverage, the premium for that coverage, and an express statement of the UM/UIM coverage limits’) operate to rebut the presumption? or,

“c. Will the presumption remain as long as the evidence establishes that the insured knowingly chose to reject UM/UIM coverage, regardless of how knowledge that such coverage was available was obtained?”

The court declines to answer the questions. This cause is therefore dismissed.

Moyer, C.J., Douglas, Resnick and Lundberg Stratton, JJ., concur.

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

**01-1502. State ex rel. Untied v. Fifth Appellate Dist. Court of Appeals.**

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.

**01-1520. Woods v. Dinkelacker.**

In Procedendo. 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.

**01-1547. Tomlin v. Ghee.**

On Habeas Corpus. On petition for writ of habeas corpus of Danny Lee Tomlin.  
*Sua sponte*, cause dismissed.

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

**DISMISSALS, SUA SPONTE, NO SUBSTANTIAL  
CONSTITUTIONAL QUESTION AND DISCRETIONARY  
APPEALS, IF APPLICABLE, NOT ALLOWED**

**00-2311. State v. Nields.**

Hamilton App. No. C-990474.

**01-1293. Ball v. Guaranty Natl. Ins. Co.**

Warren App. No. CA2000-12-104.

F.E. Sweeney, J., dissents.

**01-1298. State v. Walker.**

Stark App. No. 2000CA00018.

**01-1299. Capital-Plus, Inc. v. Potter.**

Franklin App. No. 00AP-1353.

**01-1305. Sky Fin. Group, Inc. v. Mogul.**

Trumbull App. No. 2000-T-0038.

**01-1306. State v. McKinzie.**

Franklin App. No. 00AP-1182.

**01-1310. State v. Day.**

Hamilton App. No. C-000723.

**01-1311. Hall v. Wilkinson.**  
Franklin App. No. 01AP-99.

**01-1314. State v. Feathers.**  
Summit App. No. 20532.

**01-1315. State v. Frazier.**  
Cuyahoga App. No. 76775.

**01-1316. Leuvoy v. Leuvoy.**  
Franklin App. No. 00AP-1378.  
Resnick, J., dissents.

**01-1317. Star Bank, N.A. v. Matthews.**  
Greene App. No. 2000CA93.

**01-1318. State v. Ashford.**  
Trumbull App. No. 99-T-0015.

**01-1321. Dorton v. Dorton.**  
Delaware App. No. 00CAF10029.

**01-1329. State v. Brooks.**  
Franklin App. No. 00AP-1406.

**01-1332. State v. Little.**  
Lorain App. No. 01CA007776.

**01-1336. In re Powell.**  
Lake App. No. 2000-L-044.

**01-1341. State v. McKenney.**  
Cuyahoga App. No. 79033.

**01-1342. Kent v. Dawson.**  
Portage App. No. 2000-P-0094.

**01-1343. State v. Millow.**  
Hamilton App. No. C-000524.

**01-1351. State v. Bonilla.**

Greene App. No. 99CA0118.

**01-1355. State v. Johnson.**

Columbiana App. No. 00CO64.

**01-1358. Slimak v. Ohio Dept. of Rehab. & Corr.**

Franklin App. No. 00AP-1424.

**01-1361. State v. Grider.**

Cuyahoga App. No. 78370.

**01-1362. State v. Delagraza.**

Cuyahoga App. No. 78404.

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

**01-1363. State v. Washington.**

Cuyahoga App. No. 77481.

Resnick and Lundberg Stratton, JJ., dissent.

**01-1364. State v. Jeffries.**

Cuyahoga App. No. 78070.

**01-1368. State v. Juhan.**

Cuyahoga App. No. 77973.

**01-1377. McClelland v. McClelland.**

Jefferson App. No. 00JE21.

Resnick, J., dissents.

**01-1382. State v. Bibb.**

Franklin App. No. 00AP-1144.

**01-1384. The Acme Group v. Perry Twp.**

Stark App. No. 2001CA00047.

**01-1390. Ryan v. Hartford Co.**

Butler App. No. CA2000-10-210.

Resnick, J., dissents.

**01-1391. State v. Kajfasz.**

Lucas App. No. L-99-1116.

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

**01-1406. State v. Rackham.**

Franklin App. No. 00AP-531.

**01-1412. State v. Colon.**

Cuyahoga App. No. 78287.

**01-1413. Columbus v. Spingola.**

Franklin App. No. 00AP-293.

**01-1418. State v. Walker.**

Mahoning App. No. 00CA118.

**01-1421. State v. Duff.**

Franklin App. No. 00AP-562.

**01-1434. State v. Haywood.**

Cuyahoga App. No. 78276.

**01-1437. Lioi v. Safturf Internatl. Limited, Inc.**

Stark App. Nos. 2000CA00333 and 2000CA00368.

Lundberg Stratton, J., dissents.

**01-1445. State v. Blackshear.**

Lucas App. No. L-01-1021.

Resnick, J., not participating.

**01-1455. Stischok v. Stischok.**

Franklin App. No. 00AP-696.

**MOTION DOCKET**

**00-1984. Aetna Cas. & Sur. Co. v. Goodyear Tire & Rubber Co.**

Summit App. No. 19121. On motion to present further information regarding the Insurance Environmental Litigation Association. Motion granted.

Moyer, C.J., and F.E. Sweeney, J., dissent.

Cook, J., not participating.

**00-2299 and 01-203. Manigault v. Ford Motor Co.**

Cuyahoga App. No. 73147. On motion to strike portions of appellants' merit brief and supplement. Motion denied.

Moyer, C.J., would grant the motion except regarding the findings of fact and conclusions of law of Judge Calabrese.

Lundberg Stratton, J., would grant the motion as to 1 and 2.

**01-941. State ex rel. Cleveland Business Park, Ltd. v. Cleveland.**

In Mandamus. On answer of respondents. *Sua sponte*, alternative writ granted.

Resnick and Pfeifer, JJ., dissent and would grant a peremptory writ.

**01-1161. State v. Bush.**

Union App. No. 14-2000-44. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at pages 9-10 of the court of appeals' Opinion dated May 25, 2001:

“[W]hether a motion made pursuant to Crim.R. 32.1 is subject to the time constraints contained in R.C. 2953.21 and R.C. 2953.23 and must be treated as a petition for post-conviction relief in the event that the time for direct appeal has passed and the motion is based upon alleged constitutional violations.”

F.E. Sweeney, J., dissents.

*Sua sponte*, cause consolidated with 01-1247, *State v. Bush*, Union App. No. 14-2000-44.

The conflict cases are *State v. Cale* (Mar. 23, 2001), Lake App. No. 2000-L-034, unreported, 2001 WL 285794; and *State v. Talley* (Jan. 30, 1998), Montgomery App. No. 16479, unreported, 1998 WL 31516.

**01-1253. Layne v. Ohio Adult Parole Auth.**

Marion App. No. 9-01-06. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated at page 2 of the court of appeals' Journal Entry dated June 29, 2001:

“Is a plea agreement breached when the Ohio Adult Parole Authority ('APA') classifies an offender, for purposes of its discretionary parole guidelines, according to the nature of the offense rather than the lesser offense to which the plea is entered when the plea agreement has been fully performed by the prosecutor and the sentencing court, and the APA's classification will not result in the offender being incarcerated beyond the maximum sentence under the plea agreement?”

Cook, J., would accept jurisdiction but would address the certified question modified as follows:

~~“Is a plea agreement breached~~ Does an action lie for breach of contract when the Ohio Adult Parole Authority (‘APA’) classifies an offender, for purposes of its discretionary parole guidelines, according to the [true] nature of [his] offense rather than the lesser offense [pleaded to]? ~~when the agreement has been fully performed by the prosecutor and the sentencing court, and the APA’s [actions] will not result in the offender being incarcerated beyond the maximum sentence under the plea agreement?”~~

Douglas, J., dissents because there is no conflict.

*Sua sponte*, cause consolidated with 01-1266, *Layne v. Ohio Adult Parole Auth.*, Marion App. No. 9-01-06, and with 01-1443, *Houston v. Wilkinson*, Marion App. No. 1-01-52.

Douglas, J., dissents.

The conflict case is *Randolph v. Ohio Adult Parole Auth.* (Jan. 21, 2000), Miami App. No. 99CA17, unreported, 2000 WL 43712.

**01-1394. State ex rel. Howard v. Seaway Foodtown, Inc.**

Franklin App. 00AP-1097. On motion for judgment on pleadings, amended motion to vacate, and/or amended motion for stay of court of appeals’ judgment. Motions denied.

Moyer, C.J., would strike the motions.

**01-1403. State v. LaSalle.**

Summit App. No. 20488. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated in the court of appeals’ Journal Entry filed July 30, 2001, at page 2:

“Where an application to seal a criminal conviction is filed before the effective date of an amendment to R.C. 2953.36, which amendment prohibits the sealing of the record of the type of conviction referenced in the application, and the trial court rules on the application after the effective date of the amendment, is the amendment to be applied retroactively to the application made prior to the effective date of the amendment?”

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

The conflict case is *State v. Heaton* (1995), 108 Ohio App.3d 38, 669 N.E.2d 885.

**01-1407. D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health.**

Certified State Law Question, No. 301CV7334. On preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The court will answer the following questions certified to it by the United States District Court for the Northern District of Ohio, Western Division:

“1. Does the *Ohio Revised Code* authorize or delegate to a local board of health of a general health district the authority to prohibit smoking in all public places as defined by the [Clean Indoor Air] Regulation at issue herein?

“2. If the answer to Question 1 is yes, does such a delegation of authority violate the Ohio Constitution?

“3. Does a regulation adopted by a board of health of a general health district, which prohibits smoking in all public places as defined by the Regulation at issue, conflict with, or is it inconsistent with or preempted by the provisions of the *Ohio Revised Code* that already govern the conduct of smoking in places of public accommodation and elsewhere?

“4. To the extent a regulation which prohibits smoking in all public places as defined by the Regulation at issue conflicts with a municipal ordinance regulating the same area, which one prevails pursuant to Section 3, Article XVIII of the Ohio Constitution (relating to home-rule)?”

**01-1443. Houston v. Wilkinson.**

Allen App. No. 1-01-52. On review of order certifying a conflict. The parties are to brief the issue stated in the court of appeals’ Journal Entry dated July 27, 2001, at page 2:

“Is a plea agreement breached when the Ohio Adult Parole Authority (‘APA’) classifies an offender, for purposes of its discretionary parole guidelines, according to the nature of the offense rather than the lesser offense to which the plea is entered when the plea agreement has been fully performed by the prosecutor and the sentencing court, and the APA’s classification will not result in the offender being incarcerated beyond the maximum sentence under the plea agreement?”

Cook, J., would accept jurisdiction but would address the certified question modified as follows:

~~“Is a plea agreement breached~~ Does an action lie for breach of contract when the Ohio Adult Parole Authority (‘APA’) classifies an offender, for purposes of its discretionary parole guidelines, according to the [true] nature of [his] offense rather than the lesser offense [pleaded to]? ~~when the agreement has been fully performed by the prosecutor and the sentencing court, and the APA’s [actions] will not result in the offender being incarcerated beyond the maximum sentence under the plea agreement?”~~

Douglas, J., dissents.

*Sua sponte*, cause consolidated with 01-1253 and 01-1266, *Layne v. Ohio Adult Parole Auth.*, Marion App. No. 9-01-06.

Douglas, J., dissents.

The conflict case is *Randolph v. Ohio Adult Parole Auth.* (Jan. 21, 2000), Miami App. No. 99CA17, unreported, 2000 WL 43712.

**01-1484. State v. Grigsby.**

Montgomery App. No. 18354. On motion for leave to file delayed appeal. Motion denied.

Pfeifer and Lundberg Stratton, JJ., dissent.

**01-1486. State v. Bond.**

Hamilton App. No. C-990195. On motion for leave to file delayed appeal. Motion denied.

**01-1490. Estate of Monahan v. Am. States Ins. Co.**

Certified State Law Question, No. 500CV1191. On preliminary memoranda pursuant to S.Ct.Prac.R. XVIII(6). The court will answer the following question certified by the United States District Court for the Northern District of Ohio, Eastern Division:

“Where parties to an insurance contract negotiate specific clauses limiting UM/UIM coverage by way of an Ohio uninsured motorist coverage form, for instance, a subrogation clause and [an] ‘excess insurance’ clause, but due to a deficiency in the offer, the UM/UIM coverage is provided by operation of law, are the limiting clauses in the Ohio uninsured motorist coverage form rendered invalid or does the provision of the UM/UIM coverage by operation of law only affect the amount of coverage provided?”

Douglas, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

Lundberg Stratton, J., would answer the certified question as modified in the preliminary memorandum of American States Insurance Company et al.

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

**01-1503. State v. Smith.**

Mahoning App. No. 99CA256. On motion for leave to file delayed appeal. Motion granted.

F.E. Sweeney, J., dissents.

**01-1508. State v. Hutchinson.**

Montgomery App. No. 17852. On motion for leave to file delayed appeal. Motion denied.

**01-1533. State v. Vanover.**

Hamilton App. No. C-990104. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., and Douglas, J., dissent.

**01-1544. Family Medicine Found., Inc. v. Bright.**

Franklin App. No. 00AP-1476. On review of order certifying a conflict. The court determines that a conflict exists; the parties are to brief the issue stated in the court of appeals' Judgment Entry filed August 21, 2001:

“Does R.C. 1329.10(C) permit a plaintiff to commence or maintain an action solely against a fictitious name; or must the action be commenced and/or maintained against the user of the fictitious name?”

Cook and Lundberg Stratton, JJ., dissent.

The conflict case is *Martin v. Bedroom Emporium* (Dec. 24, 1997), Summit App. No. 18509, unreported, 1997 WL 803081.

**01-1554. State v. O'Donnell.**

Scioto App. No. 00CA2724. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**01-1556. State v. Barkley.**

Summit App. No. 20278. On motion for leave to file delayed appeal. Motion denied.

Resnick, J., dissents.

**01-1573. State v. Gonzalez.**

Cuyahoga App. No. 77338. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**01-1575. State v. Norman.**

Scioto App. No. 00CA2736. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**01-1584. State v. Herring.**

Summit App. No. 20302. On motion for leave to file delayed appeal. Motion denied.

Resnick and Pfeifer, JJ., dissent.

**01-1598. State v. Bost.**

Franklin App. No. 00AP-506. On motion for leave to file delayed appeal. Motion denied.

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

**01-1622. State v. Clark.**

Cuyahoga App. No. 79375. On motion for leave to file delayed appeal. Motion denied.

Pfeifer, J., dissents.

**01-1624. State ex rel. Howard v. Seaway Foodtown, Inc.**

Franklin App. No. 00AP-1097. On motion to vacate and/or stay journal entry of August 31, 2001, and motion to consolidate case with 01-1394, *State ex rel. Howard v. Seaway Foodtown, Inc.*, Franklin App. No. 00AP-1097. Motions denied.

**01-1637. State v. Merritt.**

Hamilton App. No. C-970479. On motion for leave to file delayed appeal. Motion denied.

Moyer, C.J., dissents.

**DISCRETIONARY APPEALS ALLOWED**

**01-1222. Dardinger v. Anthem Blue Cross & Blue Shield.**

Licking App. Nos. 99CA127 and 99CA136. On discretionary appeal. Appeal allowed.

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

On discretionary cross-appeal. Appeal denied.

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

**01-1247. State v. Bush.**

Union App. No. 14-2000-44. Discretionary appeal allowed and cause consolidated with 01-1161, *State v. Bush*, Union App. No. 14-2000-44.

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

**01-1266. Layne v. Ohio Adult Parole Auth.**

Marion App. No. 9-01-06. Discretionary appeal allowed and cause consolidated with 01-1253, *Layne v. Ohio Adult Parole Auth.*, Marion App. No. 9-2001-06, and with 01-1443, *Houston v. Wilkinson*, Marion App. No. 1-01-52.

Douglas and Resnick, JJ., dissent.

## **DISCRETIONARY APPEALS NOT ALLOWED**

**01-1294. Lesak v. Weiss.**

Lake App. No. 99-L-132. On motion to strike notice of appeal and memorandum in support of jurisdiction. Motion denied.

**01-1296. Holloway v. Holloway Sportswear, Inc.**

Shelby App. Nos. 17-2000-18 and 17-98-20.

Resnick, J., dissents.

**01-1297. Ivkovich v. Steubenville.**

Jefferson App. Nos. 98JE40 and 98JE42.

**01-1301. Kassauei v. Hosseinipour.**

Trumbull App. No. 2000-T-0132.

Lundberg Stratton, J., dissents.

**01-1307. Achauer v. Monroe Guaranty Ins. Co.**

Richland App. No. CT20000038.

Lundberg Stratton, J., dissents.

**01-1313. Midwest Serv. Mgt., Inc. v. Licking Valley Local Bd. of Edn.**

Licking App. No. 00CA108.

Resnick, J., dissents.

**01-1326. Cunningham v. St. Alexis Hosp. Med. Ctr.**

Cuyahoga App. No. 77836.

Lundberg Stratton, J., would allow on Proposition of Law No. I.

Resnick, J., would allow.

**01-1327. Robinson v. Springfield Local School Dist. Bd. of Edn.**

Summit App. No. 20186.

Douglas, J., dissents.

**01-1335. State v. Patton.**

Lorain App. No. 01CA007845.

**01-1340. State v. McDowell.**

Portage App. No. 99-P-0048.

Moyer, C.J., dissents.

**01-1344. York v. Gen. Elec. Co.**

Butler App. No. CA2000-12-241.

Resnick, J., not participating.

**01-1345. Cox v. Barsplice Products, Inc.**

Greene App. No. 2001CA1.

Resnick, J., dissents.

**01-1346. Engleman v. Cincinnati Bd. of Edn.**

Hamilton App. No. C-000597.

Douglas, J., dissents.

**01-1349. Barry v. Kriss.**

Cuyahoga App. No. 78223.

**01-1350. Blanchard Valley Farmers Coop., Inc. v. Carl Niese & Sons Farms, Inc.**

Hancock App. No. 5-2000-42.

Pfeifer and Cook, JJ., dissent.

**01-1359. Progressive Preferred Ins. Co. v. Derby.**

Fulton App. No. F-01-002.

Moyer, C.J., and F.E. Sweeney, J., dissent.

Resnick, J., not participating.

**01-1365. Kitchen v. Welsh Ohio, LLC.**

Franklin App. No. 00AP-1256.

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

**01-1381. State v. Sherman.**

Licking App. No. 01CA3.

Moyer, C.J., dissents.

**RECONSIDERATION DOCKET**

**98-20. State v. Niels.**

Hamilton C.P. No. B9703305. Reported at 93 Ohio St.3d 6, \_\_\_ N.E.2d \_\_\_. On motion for reconsideration. Motion denied.

Pfeifer, J., dissents.

**98-726. State v. Jackson.**

Franklin C.P. No. 97CR041902. Reported at 92 Ohio St.3d 436, \_\_\_ N.E.2d \_\_\_.  
On motion for reconsideration. Motion denied.

**99-1753. State v. Jalowiec.**

Lorain App. No. 96CA006445. Reported at 92 Ohio St.3d 421, \_\_\_N.E.2d \_\_\_.  
On motion for reconsideration and motion to remand. Motions denied.

**99-2122. State ex rel. Johnston v. Conrad.**

Franklin App. No. 98AP-1236. Reported at 92 Ohio St.3d 463, \_\_\_ N.E.2d \_\_\_.  
On motion for reconsideration by Ohio Bureau of Workers' Compensation.  
Motion denied.

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

**00-1786. State ex rel. Highfill v. Indus. Comm.**

Franklin App. No. 99AP-709. Reported at 92 Ohio St.3d 525, \_\_\_ N.E.2d \_\_\_.  
On motion for reconsideration. Motion denied.

**00-2113. State ex rel. Eagle-Picher Industries, Inc. v. Indus. Comm.**

Franklin App. No. 99AP-1069. Reported at 92 Ohio St.3d 537, \_\_\_ N.E.2d \_\_\_.  
On motion for reconsideration. Motion denied.

Douglas, Resnick and F.E. Sweeney, JJ., dissent.

**00-2200. State v. Brooks.**

Cuyahoga App. No. 48914. Reported at 92 Ohio St.3d 537, \_\_\_ N.E.2d \_\_\_. On  
motion for reconsideration. Motion denied.

**01-40. State ex rel. Sherrills v. Franklin Cty. Clerk of Courts.**

Franklin App. No. 00AP-820. Reported at 92 Ohio St.3d 402, \_\_\_ N.E.2d \_\_\_.  
On motion for reconsideration. Motion denied.

**01-539. Post v. Harber.**

Vinton App. No. 00CA541. On motion for reconsideration of Ohio Farmers  
Insurance Company and motion for reconsideration of State Farm Mutual  
Automobile Insurance Company. Motions denied.

Lundberg Stratton, J., dissents.

**01-928. State v. Pudelski.**

Cuyahoga App. No. 77172. Reported at 92 Ohio St.3d 1445, \_\_\_ N.E.2d \_\_\_. On  
motion for reconsideration. Motion denied.