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Tom Enneking, Editor

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Biennial Budget Still Cuts County Law Libraries

Despite the best efforts of the county law libraries and their members, a compromise to stave off funding cuts has fallen through. The budget bill has passed the House, with cuts slated to begin January 1, 2006. It is now before the Senate. If passed, the Cincinnati Law Library would absorb new costs that could total as much as 70% of its current income.

The compromise, arranged by the Ohio State Bar Association and County Commissioners Association of Ohio, would have created a task force and postponed cuts until 2007. Law librarians will be meeting with OSBA and CCAO representatives, as well as judges from the Ohio Judicial Conference, to discuss whether a compromise might be resuscitated. Any compromise would still need to be approved as an amendment to the Senate's bill.

In light of this change, we encourage you to contact your state senator - Senators Mark Mallory and Patricia M. Clancy - to encourage them to support law libraries and eliminate the bill language that will cut our funding. [See page 5 for address information]

Thank you for your continued support to make the Cincinnati Law Library a powerful resource for Hamilton County's citizens, judges, and legal profession.

Let the Builder Beware

William M. Mattes, Esq.
Dinsmore & Shohl, LLP
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Abandoning a long standing rule of law, the Ohio Supreme Court in a 4-3 decision held that a home builder/construction company can be liable to its customers for "emotional distress damages."¹ The Court reversed Ohio's status from being in the majority of States not recognizing emotional damages in breach of contract cases stating: "[T]oday we join the minority of courts that allow emotional distress damages in breach of contract cases involving transactions between vendees and builder-vendors."²

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Builder Beware, cont'd from page 1

In reaching its decision, the Court relied on Section 16, Article I of the Ohio Constitution which states in pertinent part: "every person, for an injury done him... shall have remedy by due course of law."³ Attempting to justify its position, the Court noted that "[T]o continue to disallow emotional distress damages unfairly exposes innocent persons to harm that a wrongdoer has no incentive to avoid or mitigate."⁴ Further, the Court noted that by allowing emotional distress damages, "wrongdoers" now have an "incentive to avoid or mitigate their damages."⁵

Unable to justify their position based on existing Ohio case law,⁶ the Court relied on a legal article written in 1992 in which the commentator put forth the proposition that someone who intentionally breaches a contract "must bear the full burden of the harm caused, and there should be no exception for emotional distress damages."⁷

After recognizing this new cause of action, the Court attempted to limit recovery by relying on a 1981 legal commentary which states: "[R]ecovery for emotional disturbance will be excluded unless the breach also caused bodily harm or the contract or breach is of such a kind that serious emotional disturbance was a particularly likely result."⁸

The Court attempted to appease any critics of the ruling by stating: "[W]e are confident that allowing emotional distress damages in breach of contract actions involving vendees and builder-vendors will not open the floodgates."⁹ While it may not open the floodgates of litigation, it will certainly cause all plaintiffs' attorneys in all breach of contract actions to file a claim for "emotional distress" based on the conduct of the breaching party and the distress suffered by the non-breaching party.

In an obvious attempt to blunt its decision, the Court stated that "proof of emotional distress damages in these cases will be difficult."¹⁰ After recognizing this new form of damages, the Court denied emotional distress damages to the plaintiffs, Donald and Mary Kishmarton. The Court made this ruling despite the fact that the Kishmarton's newly constructed residence leaked "unabated for several years" while the contractor performed numerous repairs to remedy the

situation.¹¹ In denying the damages, the Court overturned a jury award of \$19,000.00 for loss of enjoyment of the residence, annoyance and discomfort.¹²

If a leaking roof on a new home - which continues unabated for several years - is not considered a source of emotional distress to a homeowner, it is unlikely that minor breaches of contract will be serious enough to warrant "emotional distress damages." However, it will take several years of legal decisions to fully understand the impact and limits of this decision.

Plaintiff's attorneys will certainly argue that the bodily harm requirement essential to prove emotional distress damages could come from headaches, heartburn or sleepless nights - all forms of "bodily harm" that a homeowner typically claims to suffer when he is embroiled in a contract dispute with a builder concerning problems with his new home.

Given the Court's ruling, contractors now must take notice when a homeowner approaches him to fix a problem and warns that if he fails to fix it, my spouse will have a "heart attack" or "his blood pressure will go through the roof." These complaints, which every homebuilder has heard multiple times, must be taken very seriously because the contractor may be ultimately liable for not only building a new home but also insuring that the homeowners do not suffer any serious emotional distress along the way.

Determining what types of contract breaches are likely to cause emotional distress and what types of bodily harm qualify for emotional distress damages was not fully explained by the Ohio Supreme Court - leaving trial judges and juries throughout Ohio to decide how much distress is too much. But for now, it is safe to say "let the builder beware."

For more information on this issue, please contact Bill Mattes at (614) 628-6901.

For works cited by the author, please see "Works Cited" on page 3

Buyer Beware, Works Cited, cont'd from page 3

1. Kishmarton v. Wm. Bailey Construction, Inc. (2001), 93 Ohio St.3d 226, 227 (syllabus par. 2).
2. Id at p. 230.
3. Id at p. 225 (quoting, Ohio Constitution, Section 16, Article I).
4. Id at p. 229.
5. Id at p. 229.
6. Id at p. 229 (wherein the Court stated "...there appears to be no case in Ohio...in which a builder-vendor has been found liable for damages in the form of loss of enjoyment, annoyance and discomfort by a new home purchaser").
7. Id at p. 229, (quoting, Whaley, "Paying for the Agony: The Recovery and Emotional Distress Damages in Contract Actions" (1992), *Suffolk U.L. Rev.* 935, 948).
8. Id at p. 230, (quoting, 3 *Restatement of Law 2d*, Contracts (1981), 149, Section 353).
9. Id at p. 230.
10. Id at p. 230.
11. Id at p. 227.

Law Library's Generosity Hits the World's Stage

Throughout its history, the Law Library has accumulated an interesting and unique collection of books that cover many different eras, topics, and geographic regions. One of the most important roles of the Library is to continue to hone its collection for the benefit of its members and the Hamilton County legal community. This sometimes means finding a new home for books that have been in our collection for many years.

In March, the Board of Trustees approved a donation of nearly 120 books on Philippines law to the Supreme Court Law Library of the Philippines.

The librarian there informed us that many of these materials were destroyed in action during WWII and very few Philippine libraries retain copies.

These volumes are valuable in that they will assist The Philippines Supreme Court in the creation of database of Philippines laws and cases from 1901-present for the Philippines Supreme Court Electronic Library.

Did You Know Our Members Receive:

- ❖ **Free Westlaw Access** in the Library
- ❖ **Free Wireless Internet access** on your own laptop or PDA
- ❖ **Free Internet Access** in the Library
- ❖ Free Access to **CD-ROM law libraries and forms**
- ❖ Free **Reference Assistance**, in person, by phone, or via e-mail
- ❖ **Extensive Ohio and Federal primary law** collection in print and electronic formats
- ❖ Practice materials, including:
 - handbooks
 - rules
 - treatises
 - jury verdicts
- ❖ **Borrowing privileges** to nearly all materials in the Library's collection, including CLE materials.
- ❖ **Free daily case update e-mail** of Ohio Supreme Court, appeals court, and US Sixth Circuit appeals decisions.
- ❖ **Free document delivery** by fax or e-mail.



New Titles at the Law Library

- David Wallace. *Prior Conviction in Impaired Driving Prosecutions*. Alexandria VA: American Prosecutors Research Institute, 2004.
- *Crash Reconstruction Basics for Prosecutors*. Alexandria VA: American Prosecutors Research Institute, 2003.
- *Alcohol Toxicology for Prosecutors: Targeting Hardcore Impaired Drivers*. Alexandria VA: American Prosecutors Research Institute, 2003.
- John Bobo. *Overcoming Impaired Driving Defenses*. Alexandria VA: American Prosecutors Research Institute, 2003.
- *Working with Independent Contractors*. Berkely, CA: Nolo, 2005.
- *Breath Testing for Prosecutors: Targeting Hardcore Impaired Drivers*. Alexandria VA: American Prosecutors Research Institute, 2004.
- Brett R. Dick. *U.S. Income Taxation of Foreign Governments, International Organizations, and their Employees*. Washington DC: Tax Management, Inc., 2005.
- Kevin R. Culhane. *Model Interrogatories*. Costa Mesa, CA: James Pub. Group, 1997-.
- James T. O'Reilly. *2005 Ohio Tort Reform Legislation: An Analysis of Senate Bill 80, effective April 7, 2005*. Cincinnati, OH: Lexis Nexis, 2005.
- Randall M. Perla. *Domestic Relations Agreements*. Columbus, OH: OSBA CLE Institute, 2004.
- *Drug Toxicology for Prosecutors: Targeting Hardcore Impaired Drivers*. Alexandria VA: American Prosecutors Research Institute, 2004.

Reference Service via Email

Have you ever found yourself in need of legal information, but couldn't get away from the office or schedule time to visit the library? You can call us, but that may not be the most expeditious way to convey your request, or it may be peppered with numerous citations. In that case, email may be the best vehicle to send your request.

You may do this in one of two ways:

1. You can email the reference desk directly at reference@cms.hamilton-co.org; or
2. You may contact us through the library's online form, found at: <http://www.hamilton-co.org/cinlawlib/interact/contact.html>. Simply select "Reference Question" from the dropdown menu, and fill in the rest of the information, including your question.

If the question fairly simple, we will respond directly to it. If it is more complex, we will contact you, saying that we are working on it and that we will respond later with the requested information.

Contact Your Senators

Let your Senators know that the biennial budget cuts county law library funding support from the counties to dangerous levels.

Senator Mark L. Mallory (9th District)

Senate Building
Room #228, Second Floor
Columbus, Ohio 43215
Telephone: 614/466-5980
Email: SenatorMallory@maild.sen.state.oh.us

Senator Patricia M. Clancy (8th District)

Senate Building
Room #143, First Floor
Columbus, Ohio 43215
Telephone: 614/466-8068
Email: sd08@mailr.sen.state.oh.us

**SAVE COUNTY
LAW LIBRARIES!**

Electronic Resources at the Public Library

Tom Enneking

Ranking behind only to few major library systems, the Public Library of Cincinnati and Hamilton County (<http://www.cincinnati.org>) is one of the largest public library systems in the country, with more than ten million volumes in its collection. Naturally, it is a good place to begin almost any research project. In addition to its paper collection, PLCH also has an impressive and comprehensive array of electronic resources. It is not surprising that some of the databases are useful to the legal researcher. These databases are free to anyone with a PLCH card via the Internet from any computer, whether in the home, office, or Law Library's computer room.

Business Information

Business and Company Resource Center [Galegroup/InfoTrac]
(<http://www.cincinnati.org/resources/galenet.asp?dbid=BCRC>)

This database brings together company profiles, company brand information, rankings, investment reports, company histories, chronologies, and periodicals in a single database. It also contains detailed company and industry news and information.

ReferenceUSA
(<http://www.cincinnati.org/resources/referenceusa.asp>)

ReferenceUSA is divided into residential and business databases, and provides detailed information on nearly 12 million U.S. companies, organizations, and agencies, and 120 million U.S. households. The business database can be searched by company name, sales volume, SIC codes, number of employees, product lines, and more. The residential database can be searched by name, geographical area, or phone number.

Business NewsBank
(<http://www.cincinnati.org/resources/newsbank.asp>)

This business database focuses on company and

business information. Utilizing a variety of resources, including newspapers, newswires and business journals, NewsBank provides full-text articles on companies, industries, executives and products.

General News

ELibrary
(<http://www.cincinnati.org/resources/online.asp?resource=Electric%20Library>)

ELibrary consists of a full-text database of over 800 newspapers and magazines including *USA Today*, *Consumers Digest*, and *Journal of the National Cancer Institute*. The database also contains over 18 reference books such as *Colliers Encyclopedia CD-ROM* and the *World Almanac and Book of Facts*.

ProQuest Historical Newspapers
(<http://www.cincinnati.org/resources/proquest.asp>)

This library offers full-text and full-image articles for the complete backfile (1851–2000) of the *New York Times* and other newspapers. Digital reproductions include news stories, editorials, photographs, graphics, obituaries, legal notices, and advertisements. Non-*New York Times* coverage includes many different geographic areas and disciplines.

Newspaper Source
(<http://www.cincinnati.org/resources/ebSCO.asp>)

Select full-text articles from 200 national, regional, and international newspapers, including *USA Today*, *The Christian Science Monitor*, *The Washington Post*, *The Chicago Tribune*, *The Detroit Free Press*, *The Miami Herald*, *The Times* (London), *The Toronto Star*, etc. It also includes full-text television and radio news transcripts.

InfoTrac OneFile
(<http://www.cincinnati.org/resources/galenet.asp?dbid=ITOF>)

InfoTrac OneFiles provides full-text news and magazine articles on a wide range of topics:

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Electronic Resources, cont'd from page 6

business, current events, economics, education, health care, hobbies, law, literature, politics, science, sports, etc.

Reference, General & Specialized*Expanded Academic ASAP*

(<http://www.cincinnati.library.org/resources/galenet.asp?dbid=EAIM>)

Researchers may access a number of items from this database, including articles from scholarly journals, news magazines, and newspapers. It is designed to serve the needs of students, graduate researchers, and faculty across a wide range of academic disciplines, from arts and humanities to science and technology. This database also has an impressive legal article coverage.

OCLC FirstSearch

(<http://www.cincinnati.library.org/resources/oclcfs.asp>)

OCLC's FirstSearch provides library users with online access to a wide range of subject-specific databases. FirstSearch is flexible enough to satisfy the research needs of both beginning and expert users.

FirstSearch is a multifaceted search interface. The advanced search functions are particularly useful in searching complex issues or specific information. FirstSearch allows you to search a wide array of databases, including:

- *WorldCat*: a database offering the catalogs of all the major libraries in the world. Although contents of books or articles from periodicals cannot be searched, you can easily ascertain library holdings which can help to expedite Inter-Library Loan processing. WorldCat is also useful if you have partial information on a particular title. For example, if just the title or author is known, WorldCat will use that information to locate the complete record. You should be advised that there are possibly more than one record for identical titles; as a result, the user must review each

record's holdings in order to get a complete picture of which institutions possess the item.

- *ArticleFirst*: offers more than 12.7 million records, beginning from 1990, covering the subjects of business, humanities, medicine, popular culture, science, social science, and technology. This broad-based database is a great source for articles, especially because some of them are available in full-text and can be printed from the browser.
- *LegalPeriodical*: this is *Index to Legal Periodicals* on the web. This database is very similar to the database the Law Library provides its members via InfoTrac, (LegalTrac). The two databases are comparable, but not equivalent. There are advantages to LegalPeriodical, including the link to OCLC WorldCat which will identify those libraries that have the particular periodical. For specific holdings and access policies, you would still consult the library.
- *MEDLINE*: this database combines the print indexes *Index Medicus*, *Index to Dental Literature*, and *International Nursing Index* to provide the most comprehensive access to technical medical literature. Produced by the U.S. National Library of Medicine, this database provides access to article abstracts in approximately 9,580 titles covering the broad spectrum of medical and dental subjects starting in the year 1965.

Often overlooked in favor of the Internet and bookstores, public libraries are a valuable resource for procuring free information. PLCH is no exception. The value of PLCH's collection is that it offers many resources online. Because of that fact, researchers may conduct research wherever they have access to a computer with an Internet connection (provided they have a valid library card). Furthermore, the benefits for the Law Library's membership are remarkable because many of these databases offer some degree of legal coverage. Almost unlimited access to free information is a fabulous deal.

Law Library 2005 Annual Meeting

Come for the CLE . . .

Judge Mark Painter of the Ohio First District Court of Appeals will give a CLE on Legal Writing as part of the Cincinnati Law Library's 2005 Annual Meeting. Attendees will receive a free copy of Judge Painter's The Legal Writer, in the just-published third edition. The CLE will be held at the Law Library on **June 2, from 11am to noon**. Members are \$25 and non-members are \$50.

Reserve your place today! Call Madonna @ 946-5300 or register online at <http://www.hamilton-co.org/cinlawlib/cle/>.

Stay for the Meeting!

The Cincinnati Law Library Association is YOUR practice resource. If you have always wanted to know more about the Library, how it runs, and to meet the trustees who comprise the Board, you are cordially invited to attend the Library's annual business meeting. Hear the annual Law Librarian's report and participate in the triennial election of trustees. The meeting is open to all members, and will be held in the Law Library on **June 2, from noon to 1pm**.

**Cincinnati Law Library Association
Hamilton County Courthouse
1000 Main Street, Room 601
Cincinnati, OH 45202**

ADDRESS CORRECTION REQUESTED

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