

WAITE ET AL., APPELLANTS, v. PROGRESSIVE INSURANCE COMPANY, APPELLEE.

[Cite as *Waite v. Progressive Ins. Co.* (1999), ___ Ohio St.3d ____.]

Appeal dismissed as improvidently allowed.

(No. 98-1462 — Submitted May 4, 1999 — Decided June 9, 1999.)

APPEAL from the Court of Appeals for Huron County, No. H-97-036.

Murray & Murray Co., L.P.A., Michael T. Murray, Steven C. Bechtel, Dennis E. Murray, Sr. and W. Patrick Murray, for appellants.

Meyers, Hentemann & Rea Co., L.P.A., Henry A. Hentemann and J. Michael Creagan, for appellee.

Elk & Elk Co., L.P.A., and Todd O. Rosenberg, urging that R.C. 3937.18(H) be found unconstitutional, for amicus curiae, Ohio Academy of Trial Lawyers.

Mark W. Ruf and Jean M. McQuillan, urging that R.C. 3937.18 be found unconstitutional, for amicus curiae, Cleveland Academy of Trial Lawyers.

Betty D. Montgomery, Attorney General, Judith L. French and Kimberly L. Charles, Assistant Attorneys General, urging that R.C. 3937.18(H) be found constitutional, for amicus curiae, Ohio Attorney General.

Vorys, Sater, Seymour & Pease, L.L.P., and John J. Kulewicz, urging that R.C. 3937.18(H) be found constitutional, for amicus curiae, Ohio Insurance Institute.

The appeal is dismissed, *sua sponte*, as having been improvidently allowed.

MOYER, C.J., DOUGLAS, RESNICK, PFEIFER and LUNDBERG STRATTON, JJ., concur.

F.E. SWEENEY, J., dissents and would reverse the judgment of the court of appeals.

COOK, J., dissents and would affirm the judgment of the court of appeals.