



And The Defense Wins

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DRI member [Stu Goldberg](#) of **Eastman & Smith Ltd.** in Toledo, Ohio, teamed with an associate recently to obtain judgment on the pleadings for their client in a wrongful death claim seeking liability against a commercial property owner. The owner was sued for nuisance and negligence in connection with a motorcycle and truck collision that occurred as a truck driver was making a wide right hand turn into the driveway of the business and the motorcyclist was attempting to pass on the right.

The plaintiff claimed the property owner, OmniSource Corporation, was aware that truckers made wide turns into the drive, often stopped for traffic pulling out of the drive and that OmniSource knew or should have known that it needed to direct traffic to avoid accidents like this. Defense counsel argued the premises owner is not responsible for traffic control and cannot be held liable for an accident occurring on the public roads.

The court granted OmniSource Corporation's motion for judgment on the pleadings. See Opinion & Judgment Entry in *Baer v. Bates Recycling, Inc., et al.*, Case no. CI-2010-5195 (Lucas County, Ohio, August 18, 2011).

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