

OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Adam Webber at 937.224.3333 or send an email to arwebber@green-law.com.

Court of Appeals: Seventh District

Case Name: *Byer v. Lucas*, 2009-Ohio-1022

Decided: March 9, 2009

Issue(s): Primary Assumption of Risk and Recreational User Immunity Statute Application to Hayrides

Author's Note: *On Friday, March 6, 2009, we reported on another tort case arising from a hayride-gone-bad in Ohio's Twelfth District Court of Appeals, Brennan v. Schappacher, 2009-Ohio-927.*

Oddly, here we have another in less than a week. It does not appear that either Court knew of the other's decision, but both reached similar conclusions. In cases such as these, where plaintiffs are injured while voluntarily participating in recreational activities with some risks, the law states that they assume the normal risks inherent in the activities.

On summary judgment, a court often makes its own conclusions about whether an injury stemmed from a risk inherent in the activity. These two cases with such similar facts show the problem with this approach; how many more jackknifing hayride cases would we need to see before we could say that it is a risk inherent in the activity?

Summary of Opinion: In this case, the Seventh District Court of Appeals was asked to determine whether the recreational user immunity statute and the doctrine of the primary assumption of the risk applied to a hayride accident. The trial court granted summary

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judgment to the defendants on both questions.

As part of the festivities at a house party, Plaintiff Byer participated in a hayride. The tractor pulling the hay wagon was driven by Defendant Lucas, and the wagon proceeded down a rural road. At one point, Lucas stopped the wagon at the top of a steep hill and advised the passengers that they could get off the wagon and walk down the hill if they felt uncomfortable. Byer remained on the wagon. Due to the rough gravel road and the weight of the hay wagon, Lucas lost control of the tractor. The tractor jackknifed, and Byer was ejected from the wagon, landing in a ditch with a head injury and a broken tailbone.

The Seventh District Court of Appeals was first asked to determine whether a hayride is a recreational activity such that it would fall within the province of the recreational user immunity statute. Lucas asserted that the hayride was a recreational activity held at a social gathering and that the riders were voluntary participants. Lucas also argued that the hayride was the recreational activity, in and of itself, and that its status as a recreational activity was not changed simply because it occurred on a public road.

Byer, on the other hand, argued that although the hay ride was an enjoyable activity, it still involved the use of public roads for transportation and that negligence should apply.

The Seventh District Court of Appeals held that a negligence standard did not apply simply because the farm tractor was operated on a public road. In support of its decision, the Seventh District cited other courts that had found that some activities involving motor vehicles are recreational and that these activities can be recreational, even when they occur on public roads, e.g., operation of an ATV or snowmobile on a public road.

The second issue considered by the Seventh District Court of Appeals was whether Byer's injuries were an inherently foreseeable result of participating on a hayride. The Seventh District confined its analysis to whether the injury Byer sustained was because of a risk inherent in a hayride. The court noted that inherent risks of a hayride might include getting scratched by tree branches, being bounced around on the wagon, and even losing one's balance and falling off the wagon. The fact that the tractor and wagon careened down the hill out of control was not an ordinary risk inherent to hayrides. Therefore, the court held that Byer did not fall within the primary assumption of the risk doctrine because being thrown from a jackknifing hay wagon is not a risk inherent in a hayride. Therefore, the Seventh District reversed the judgment of the trial court and remanded for a new trial.

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