

## 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: Eleventh District

Case Name: *McWreath v. Ross*, 2008-Ohio-5855

Decided: November 7, 2008

Issue(s): Appropriateness of a jury's verdict awarding zero damages in a case where liability is stipulated to.

Summary of Opinion: Defendant Ross rear-ended a vehicle driven by Plaintiff McWreath. McWreath began to experience neck pain and headaches a week after the accident. He received medical treatment and eventually underwent a neck surgery, incurring medical bills totaling \$59,158.53. Eighteen months after the accident, McWreath filed his complaint against Ross, and a jury trial was held. Ross stipulated to her negligence and to the authenticity of the medical bills offered by McWreath. The court instructed the jury as follows:

**There is no dispute as to the fault in this case so the issues for you will be the proximate cause of any injuries and the nature and extent in monetary numbers of the injuries that are proximately caused.**

In closing arguments, plaintiff's counsel asked the jury for an award of \$300,000 for the injury and \$59,000 for the total medical expenses he incurred. Defense counsel argued that the neck surgery was to fix a pre-existing condition and that the need for the surgery was not proximately caused by the accident. Defense counsel told the jury that it should award damages in the amount of only \$6,500 which encompassed \$5,000 for pain and suffering and \$1,400.58 for plaintiff's medical bills unrelated to the neck surgery.

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Following deliberations, the jury returned a verdict of zero damages. The trial court immediately granted plaintiff's motion for a new trial on the ground that, in awarding zero damages, the jury lost its way. The trial court found there was no evidence or testimony to support that verdict.

On appeal, the Eleventh District Court of Appeals noted that a trial judge may be supported in granting a new trial "by his having seen and heard the witnesses and having formed a doubt as to their credibility, or having determined from the surrounding circumstances and atmosphere of the trial, that the jury's verdict resulted in manifest injustice." The trial court's decision must be supported by competent, credible evidence. Moreover, the Eleventh District noted that a reviewing appellate court may not independently assess whether the verdict was supported by the evidence, because the issue is not whether the verdict is supported by competent, credible evidence, but rather whether the trial court's decision to grant a new trial is supported by competent, credible evidence.

In this case, the appellate court found that the testimony that the accident caused disc herniation is uncontroverted because defendant failed to present any rebuttal evidence through her cross-examination of plaintiff's expert. Defendant's counsel had only succeeded in eliciting from plaintiff's expert some concessions that herniation of discs can occur due to degeneration as well as trauma and that it was *possible* that the disc herniation as a result of degeneration. Noting that this was hardly affirmative evidence showing a pre-existing condition, the appellate court concluded that the trial court's decision to grant plaintiff a new trial was supported by competent and credible evidence. The appellate court noted that, "Although the facts in the instant case could be used to explain a minimal award of damages far short of what was requested by [plaintiff], they cannot support an award of zero damages."

Court of Appeals: Sixth District

Case Name: *Smith v. Safe Auto Ins. Co.*, 2008-Ohio-5806

Decided: November 7, 2008

Issue(s): Insurer is equitably estopped from denying coverage due to expired driver's license.

Summary of Opinion: Lisa and Shane Smith were involved in a single car accident. At the time of the accident, Shane was driving a vehicle that was owned jointly by Shane and Lisa. The Smiths received personal injuries, and the car was damaged. Lisa Smith was the named insured under an automobile insurance policy issued by State Auto

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Insurance Company. That policy covered the vehicle and listed Shane Smith as an additional driver. In the general provisions section of the auto policy, it states that

**No coverage is afforded under any section of this policy if the covered auto is being operated by a person who is not a qualified, licensed driver or is without a valid driver's license, or whose driver's license is expired, revoked, or suspended or is in violation of any condition of their driving privileges, or is without privileges to drive for any reason.**

Shane Smith's driver's license expired on his birthday, June 20<sup>th</sup>. He did not renew his driver's license until July 7<sup>th</sup>, three days after the accident. When Safe Auto learned that Shane's driver's license was expired at the time of the accident, they denied the claim.

The Smiths initiated a lawsuit seeking a declaratory judgment setting forth the rights and obligations of the parties under the insurance contract and a judgment on the grounds of equitable estoppel. Subsequently, Safe Auto filed a motion for summary judgment that asserted that, pursuant to the clear and unambiguous exclusion for the expired licenses, the Smiths were not entitled to collision coverage or UM/UIM coverage. In opposition, the Smiths asserted that, at the time of the accident, Shane was a valid insured because under Ohio Revised Code 4507.10(B), a driver whose license has expired can renew his driver's license within six months of the expiration date without penalty. Because Shane renewed his license within the grace period, the Smiths asserted that they were entitled to coverage under their insurance policy.

Citing the Supreme Court's decision in *Kaplysh v. Takieddine*, the Sixth District Court of Appeals held that, based on the ordinarily accepted meaning of the words "licensed" and "expire" Shane Smith was not a licensed driver at the time of the accident and the fact that he subsequently renewed his license within the statutory grace period was irrelevant. Thus, the court held, the clear and unambiguous language of the insurance contract showed that the Smiths were not entitled to collision coverage for the damages they sustained as a result of the accident.

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