

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: Supreme Court of Ohio

Case Name: *Torchik v. Boyce*, 2009-Ohio-1248

Decided: March 25, 2009

Issue(s): Liability of independent contractors whose negligence causes injury to police officers or firefighters and the applicability of the “Fireman’s Rule”

Summary of Opinion: Plaintiff Torchik was a deputy sheriff for Ross County. While on patrol, he was dispatched to investigate an activated home burglar alarm. He had been to the residence several times before. He went to the back of the house and climbed steps of a wooden deck to check the rear windows and doors. As he walked down the deck steps, the steps collapsed, and he was injured. Torchik sued the owner of the property and the contractor who built the house deck and stairs.

The trial court granted summary judgment for both defendants on the grounds that the “Fireman’s Rule” barred liability for Torchik’s injury. On appeal the Fourth District Court of Appeals affirmed on the same grounds.

The Fireman’s Rule is a principle that limits a landowner’s duty to police officers and firefighters in certain circumstances. Under the rule an owner or occupier of private property can be liable to a firefighter or police officer who enters the premises and is injured in the performance of his or her official job duties only if:

1. the injury was caused by the owner’s or occupier’s willful or wanton misconduct or affirmative act of negligence;

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2. the injury was a result of a hidden trap on the premises;
3. the injury was caused by the owner's or occupier's violation of a duty imposed by statute or ordinance enacted for the benefit of firefighters or police officers; or
4. the owner or occupier was aware of the firefighter's or police officer's presence on the premises but failed to warn them of any known, hidden danger thereon.

If none of these four conditions applies, a landowner or occupier owes no duty to a firefighter or police officer who is injured while performing official duties on the premises. The appropriate avenue of relief for an injured firefighter or police officer would then be to seek compensation under the Worker's Compensation system.

The Supreme Court of Ohio first discussed the origin of the Fireman's Rule. It originated because of the difficulty of classifying firefighters and police officers. They are not quite licensees because they do not come upon the private property by invitation. But they also are not trespassers, either. The fact that land owners or occupiers cannot anticipate the presence of safety officers on the premises is one of the policy justifications underpinning the rule.

While a landowner has a right to control who enters the property, an independent contractor has no property interest in the premises and has no right to exclude others. Therefore, the contractor's duty to an injured party depends on the foreseeability of the injury. In *Simmers v. Bentley Construction Company* (1992), 64 Ohio St.3d 642, the Supreme Court held that "an independent contractor who creates a dangerous condition on real property is not relieved of liability under the doctrine which exonerates an owner or occupier of land from the duty to warn those entering the property concerning open and obvious dangers on the property."

Once an independent contractor has completed a project, the contractor's duty is set with respect to all who may be foreseeably injured due to the contractor's negligence. The Court concluded by holding that "it would be illogical to insulate an independent contractor from a negligence claim simply because the person injured happened to be a police officer or firefighter acting in the scope of his or her official duties." Therefore, the Supreme Court held that independent contractors are liable when their negligence causes injury to police officers or firefighters acting in the scope of their official duties, even though the owner of the premises is immune.

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