

OHIO CASE SUMMARIES

A SERVICE OF
GREEN & GREEN, LAWYERS
A Legal Professional Association

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: Twelfth District

Case Name: *Koop v. Speedway SuperAmerica, L.L.C.*, 2009-Ohio-1734

Decided: April 13, 2008

Issue(s): The Admissibility of Employee Incident Reports in Premises Liability Cases

Summary of Opinion: This case began with a coffee spill on the floor of a Speedway store. Shortly after the coffee was mopped up by a Speedway employee, plaintiff entered the store. As she was walking towards the check-out counter, she slipped and fell. She could not identify the cause of her fall, but she relied on the store's incident report and witness statements wherein employees noted she fell where coffee had been spilled.

Plaintiff filed suit against Speedway, and it sought summary judgment on the grounds that plaintiff could not identify the cause of her fall. In her memorandum in opposition to the motion for summary judgment, plaintiff attached Speedway's incident report and corresponding witness statements. In granting summary judgment, the trial court specifically noted that it did not consider the witness statement because the documents were not admissible for summary judgment purposes.

The Twelfth District Court of Appeals held that the trial court properly refused to consider the incident report and witness statements taken from Speedway employees. In order for the documents to be considered admissible evidence for summary judgment purposes, they must be accompanied by a personal certification that the documents were, in fact, genuine. The court held that, "Documents submitted in opposition to a motion for summary judgment that are neither sworn or certified, nor authenticated by affidavit, have

GREEN & GREEN, Lawyers represents select insurance clients in all aspects of insurance litigation, from complex coverage questions to more routine torts. We will see to it that your file will be handled only by a competent, seasoned attorney who will work diligently to obtain the best result possible.

As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate decisions on cases of interest to our insurance clients. No opinion as to the legal import of the cases summarized is intended. Any questions regarding the information contained in this transmission should be directed at any time to one of the attorneys of the firm.

no evidentiary value and may not be considered by the trial court in ruling on a motion for summary judgment.” In this case, the documents that Plaintiff purported were an employee witness statements were neither sworn nor certified and they were not established as authentic via affidavit.

The Twelfth District Court of Appeals also rejected Plaintiff’s argument that the document constituted a “business record” and was therefore admissible for summary judgment purposes under Evidence Rule 803(6). Although the Incident Report could be considered an exception to the hearsay rule, the Report still needed to be properly incorporated into an affidavit by a person with knowledge of the circumstances surrounding the preparation of the Report. Because this was not done, it could not be considered admissible evidence, regardless of whether it was hearsay or not.

GREEN & GREEN, Lawyers represents select insurance clients in all aspects of insurance litigation, from complex coverage questions to more routine torts. We will see to it that your file will be handled only by a competent, seasoned attorney who will work diligently to obtain the best result possible.

As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate decisions on cases of interest to our insurance clients. No opinion as to the legal import of the cases summarized is intended. Any questions regarding the information contained in this transmission should be directed at any time to one of the attorneys of the firm.