

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: Third District

Case Name: *McCoy v. Murray*, 2009-Ohio-1658

Decided: April 6, 2009

Issue(s): The Sudden Medical Emergency Defense to Negligence

Summary of Opinion: Murray was driving his vehicle in Defiance County when he suddenly lost vision and consciousness and his vehicle left the highway. Murray then continued some distance through a cornfield before his vehicle crashed into the McCoy's parked vehicle. The McCoy's vehicle was pushed into the McCoy's home, injuring Wayne McCoy. Murray had experienced a cardiac arrhythmia.

Upon being sued by the McCoy's, Murray asserted the defense of sudden medical emergency and moved for summary judgment. The sudden medical emergency defense was first stated by the Supreme Court in, *Lehman v. Haynam* (1956), 164 Ohio St. 595. The rule was articulated as follows:

An operator of a motor vehicle who, while driving, becomes suddenly stricken by a fainting spell or loses consciousness from an unforeseen cause, and is unable to control the vehicle, is not chargeable with negligence or gross negligence . . . if such loss of consciousness was not foreseeable.

The party asserting the sudden medical emergency defense bears the burden of proof and must prove he was unconscious and that the unconsciousness was not foreseeable.

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.

To this end, Murray submitted an affidavit of his physician that stated he had no history of heart problems or exhibited any symptoms that indicated a heart related condition. His doctor further opined that his sudden loss of vision due to a cardiac arrhythmia was a result of severe coronary artery disease, which had been asymptomatic until that moment.

In the motion in opposition, the McCoys argued that Murray was a “time bomb” with a long history of high blood pressure, high cholesterol, non-compliance with medication guidelines, chest pains, and smoking. The McCoys also presented a physician’s affidavit stating that his risk of a heart attack or a cardiac arrhythmia was extraordinarily high and that the episode was foreseeable and likely to occur.

The Third District Court of Appeals held that although one can look at Murray’s medical history and determine that he was bound to suffer a heart condition, it would have been impossible to predict how and when such a condition might occur. There is nothing in Murray’s history, the court held, that would lead a reasonable person to believe they were in danger of suffering a loss of consciousness. Accordingly, the Third District upheld the trial court’s finding that summary judgment was appropriately granted in favor of the defendant on the sudden medical emergency defense.

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.