

## 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 Sean McCormick at 937.224.3333 or send an email to [smccormick@green-law.com](mailto:smccormick@green-law.com).**

Court of Appeals: Supreme Court of Ohio

Case Name: *Sullivan v. Anderson Twp.*, 2009-Ohio-1971

Decided: May 9, 2009

Issue(s): Appealing a Trial Court's Order That Denies a Political Subdivision Immunity from Liability

Summary of Opinion: George Sullivan sued Anderson Township because it allegedly damaged his property during a road widening project. The Township responded by asserting political subdivision immunity under R.C. Chapter 2744. The Township moved for judgment on the pleadings on the basis that, even if the allegations in Sullivan's complaint were true, they would not give rise to liability because of the immunity provided in R.C. Chapter 2744 for political subdivisions.

The trial court concluded that judgment on the pleadings was not appropriate because Sullivan asserted facts sufficient to sustain potential claims for breach of contract and negligence. The Township immediately appealed, asserting that the trial court should have granted judgment on the pleadings on the basis of political subdivision immunity. The First District Court of Appeals held that it lacked jurisdiction to hear the appeal, because a trial court order that disposes of fewer than all the claims against all the parties and that does not make the express determination required by Civ. R. 54(B) that there is no just reason for delay, is not a final appealable order.

The Supreme Court of Ohio took up the question of whether the trial court's denial of immunity under R.C. Chapter 2744 is a final, appealable order. Ordinarily, Civ. R. 54(B) requires that a trial court order that disposes of fewer than all claims against all parties in

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a lawsuit include a determination that “there is no just reason for delay” for the order to be deemed a final, appealable order. R.C. §2744.02(C) provides “An order that denies a political subdivision or an employee of a political subdivision the benefit of an alleged immunity from liability as provided in this chapter or any other provision of the law is a final order.” The question before the Supreme Court is how to resolve this tension between the statute and the civil rule.

The Supreme Court held that courts should look to the statute for substance and the civil rule for procedure. In the ordinary case, it held, the civil rule’s “magic words” demonstrate that the trial court has determined that an interlocutory order should be immediately appealable, in order to further the efficient administration of justice. In this case, however, no such determination by the trial court was necessary because the Ohio legislature expressly made that determination via R.C. § 2744.02(C).

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