

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.

Court of Appeals: Supreme Court of Ohio

Case Name: *Lang v. Holly Hill Motel Inc.*, 2009-Ohio-2495

Decided: June 3, 2009

Issue(s): Open and Obvious Doctrine and Administrative Codes

Summary of Opinion: Mr. Lang fell and broke his hip in a failed attempt to climb steps at the Holly Hill Motel (Holly Hill). Mr. Lang was 78 years old, and as a result of his fall, died three months later. Mrs. Lang sued Holly Hill for negligence, asserting that the step Mr. Lang tripped over exceeded the height limitations in the Ohio Basic Building Code, and the lack of hand rails also violated the Building Code.

Holly Hill moved for summary judgment, arguing that even if the step was constructed in violation of the Building Code, it was an open-and-obvious hazard and therefore, it owed no duty of care to the Langs. The trial court granted Holly Hill's motion and Mrs. Lang appealed.

The Fourth District Court of Appeals first determined the step was an open and obvious condition, but soon recognized that there was a conflict among the appellate districts regarding whether Building Code violations *prohibit summary judgment when a hazard is open-and-obvious*. Nevertheless, the court affirmed the trial court's judgment, and it certified its decision as being in conflict with the First and Tenth Appellate Districts.

The Ohio Supreme Court held that administrative-rule violations do not constitute negligence *per se*, and that the open-and-obvious doctrine may be asserted as a defense to a claim arising out of such a violation. The Court distinguished administrative rules from

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statutes reasoning that if a violation of an administrative rule was considered negligence *per se*, administrative agencies would have the power to change proof requirements between litigants. The Court explained that altering proof requirements is a public policy determination that appropriately rests with the General Assembly.

In addition, the Court reasoned that the number of administrative rules adopted each year is astronomical, making compliance with all of them nearly impossible. The Court concluded that applying negligence *per se* standards in such situations would turn any agency subject to administrative rules into *insurers of third party safety*, which is exactly what the open-and-obvious doctrine seeks to avoid.

In a scathing dissent, Justice Pfeifer argued that the Court was clinging to an antiquated paradigm in continuing to apply and expand the open-and-obvious doctrine. He explained that the modern trend of the law across the country is moving away from the open-and-obvious doctrine, reasoning that a risk is not necessarily reasonable to persons exercising ordinary care simply because it is open-and-obvious.

The judgment of the court of appeals was affirmed.

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