

**OHIO CASE SUMMARIES**  
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**Ohio case summaries are brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. Except for holidays, these summaries will be provided Wednesday and Friday of each week. To discontinue receiving this service, please call Jared Wagner at 937-224-3333 or email Jared at [jawagner@green-law.com](mailto:jawagner@green-law.com).**

Court of Appeals: First District

Case Name: *Strasel v. Seven Hills OB-GYN Assoc., Inc.*, 2007-Ohio-171

Decided: January 19, 2007 (posted January 19, 2007)

Issue(s): Negligent Infliction of Emotional Distress

Summary of Opinion: Plaintiff went into the Defendant ob-gyn clinic (the "clinic") for an initial pregnancy appointment. She was misdiagnosed as having a blighted ovum and was given a dilation and curettage procedure (the "procedure"), which is essentially the same as an abortion. Several weeks after the procedure, she revisited the clinic and it was determined that she had been misdiagnosed and was thirteen weeks pregnant. The effects of the procedure on the health of the baby could not be determined prior to birth, but it was highly likely that the procedure had caused at least some harm to the baby. Prior to the birth, Plaintiff experienced recurring nightmares and panic attacks. Plaintiff delivered a healthy baby, but continued experiencing nightmares and panic attacks due to her concern over the effects of the procedure and would continuously lick the baby to determine if the skin was salty due to her conviction that the procedure had resulted in the baby developing cystic fibrosis. Plaintiff sued the clinic and the doctor who had misdiagnosed her, seeking damages for negligent infliction of emotional distress. After a trial, a jury awarded Plaintiff \$372,000.00 on her claim. On appeal, the clinic and doctor argued that an award for negligent infliction of emotional distress was improper under the facts of this case because the procedure had no affect on Plaintiff's baby and any psychological harm and emotional injuries arose from the fear of a non existent peril. In support of this position, they cited the line of cases stating that negligent infliction of emotional distress is improper where a plaintiff has been improperly diagnosed as having a disease such as AIDS and the misdiagnosis never put them in any actual physical peril. In affirming the jury's verdict, the First District distinguished the line of cases cited by

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Defendants on the basis that Plaintiff's baby had actually been put in peril by the procedure. Thus, Plaintiff was a bystander to a family member being put in danger and was entitled to damages for negligent infliction of emotional distress. Despite the fact that the procedure had not resulted in any physical damage to the baby, negligent infliction of emotional distress is appropriate where there is possibility of physical damage.

Court of Appeals: Eighth District

Case Name: *Allstate Ins. Co. v. Cleveland Elec. Illum. Co.*, 2007-Ohio-157

Decided: January 18, 2007 (posted January 18, 2007)

Issue(s): Subrogation / Electrical Fire / PUCO Jurisdiction

Summary of Opinion: Plaintiff's insureds had contacted Defendant and informed them that a tree limb had fallen on a power line and was threatening to snap the line. Defendant classified the situation as "low priority" and failed to respond in a timely manner. As a result of its untimely response, the line eventually snapped and caused a fire, which seriously damaged the homes of Plaintiff's insureds. Plaintiff brought this claim as a subrogation action, seeking reimbursement for the amounts it had paid out to its insureds as a result of the fire. Defendant moved to dismiss the case, arguing that the Public Utility Commission of Ohio (PUCO) had exclusive subject matter jurisdiction over such claims. The trial court disagreed and refused to dismiss the case, finding that this action was essentially a common law tort action. On appeal, a majority of the panel found that Plaintiff's claims arose out of the allegedly poor service of Defendant. Therefore, they held that PUCO had exclusive subject matter jurisdiction over the claim and that the trial court had erred by not dismissing the case.

One judge dissented, and stated that she would have held that this claim was not within PUCO's exclusive jurisdiction because the resolution of the claim does not require PUCO's expertise and the failure to timely respond to an emergency situation is not a practice normally authorized by a public utility.

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