

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 Travis Vieux at 937-224-3333 or email Travis at tjvieux@green-law.com.

Court of Appeals: Fifth District

Case Name: Osborne v. McCalla
(2007-Ohio-3887)

Decided: July 30, 2007 (Posted July 30, 2007)

Issue: Mutual Mistake and Accord and Satisfaction re: Insurance Claims

Summary of Opinion: The Fifth District heard this appeal from a Summary Judgement Motion on the issues of Mutual Mistake and Accord and Satisfaction regarding an adjuster's settlement of an insurance claim.

Plaintiff Osborne and Defendant McCalla were involved in a motor vehicle accident. Osborne received lacerations to his arms and head that required stitches. He was treated and released that day. The next day, the insurance adjuster for McCalla's insurance contacted plaintiff and asked to meet. The adjuster offered plaintiff \$800 over the plaintiff's medical expenses. Plaintiff refused this offer indicating that he had missed some work, as well. The adjuster then offered \$1000 and up to \$500 to cover plaintiff's medical expenses for the next 30 days. Plaintiff accepted and signed a "Full Release of All Claims with Indemnity" that included standard language that settlement was a full compromise of the claim. The adjuster presented plaintiff with a \$1000 check the next day, which plaintiff cashed that same day.

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Three weeks later plaintiff returned to the hospital with complaints of neck and back pain. Plaintiff then began a 6 month course of treatment with a chiropractor. The following year plaintiff brought suit to recover compensation for his injuries.

The trial court granted summary judgement stating that plaintiff had failed to allege any form of fraud, misrepresentation or other misconduct and had simply failed to read the release before signing it and before cashing the check.

Plaintiff appealed asserting the theory of Mutual Mistake and that the trial court erred in accepting defendant's defense of Accord and Satisfaction as a bar to the action.

The Fifth Circuit stated that Mutual Mistake requires a mistake by both parties regarding the same fact. The Court then listed 7 factors in determining the intent of the parties at the time the release is executed: 1. The absence of bargaining and negotiation; 2. The releasee (insurance company) is clearly liable; 3. An absence of discussion regarding injuries; 4. A reasonable contention that the existence of injuries were unknown at the time of the release; 5. An inadequate amount of consideration (value) received versus the risk of unknown injuries; 6. Haste in securing the release; and 7. The terms of the release specifically exclude the injuries alleged.

Applying the above factors, the Court found that no evidence of mutual mistake existed where the plaintiff simply failed to read the release before signing and accepting the funds.

The Court next addressed the issue of Accord and Satisfaction, noting that it is a valid defense in any claim for monetary damages. There are three elements to the defense of Accord and Satisfaction: 1. The defendant must show an accord, i.e. an offer and acceptance. 2. The defendant must show the accord was executed and carried out. And 3. The defendant must demonstrate that the accord and satisfaction was supported by consideration.

There are two "safeguards" for the application of the defense of Accord and Satisfaction: There must be a good-faith dispute about the debt and the creditor must have reasonable notice that the consideration is intended to be full satisfaction of the debt.

The Court found that Accord and Satisfaction applied in this case where there had been a negotiation between the plaintiff and the adjuster, the adjuster presented the check to plaintiff, specifically marked as "full/final release" and where plaintiff cashed the check.

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