

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 Adam Webber at 937.224.3333 or send an email to arwebber@green-law.com.

Court of Appeals: Third District

Case Name: Wireman v. Hench Enterprises, 2008-Ohio-1151

Decided: March 17, 2008

Issue(s): Slip & Fall; Constructive Notice of the Hazard

Summary of Opinion: Mr. Wireman was injured when he walked through automatic sliding doors at Ray's Supermarket in Lima, Ohio. The doors closed on him and he fell. The only evidence Wireman presented that Ray's Supermarket was aware of the alleged defect in the doors was a comment made by a cashier that the automatic doors had been malfunctioning for a week prior to the accident.

The court ruled that Wireman could not state a claim for negligence because the statement by the cashier was inadmissible hearsay. Although the statement was offered against the interest of Ray's Supermarket by a Ray's Supermarket employee, the statement was a matter outside the scope of that employee's employment. Ray's Supermarket submitted proof that it does not maintain the doors; rather, it hires an independent contractor to repair and maintain the automatic doors. It also produced affidavits and testimony that the duties and scope of employment of the cashier has nothing to do with the maintenance or inspection of the automatic doors. The court agreed and held that the statement was inadmissible as a matter of law.

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As a service to our clients, we provide weekly summaries of the most recent Ohio Supreme Court and appellate court 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.

Court of Appeals: Eleventh District

Case Name: Bowling v. Wal-Mart Stores, 2008-Ohio-1129

Decided: March 14, 2008

Issue(s): Slip & Fall; Constructive Notice of the Hazard

Summary of Opinion: Ms. Bowling was using the restroom at a Wal-Mart store, but upon flushing the toilet, the restroom stall began to flood with water. When she tried to exit the stall, she slipped in the water and fell. After exiting the restroom, she reported the incident to an unnamed employee working in the Layaway Department. That employee indicated an awareness of “problems in the restroom.” When the assistant manager was notified, she stated she also knew “something was wrong with the restroom.” Bowling contended that the toilet leak created an unsafe condition that Wal-Mart employees knew of. In support of this, she could only cite the statements of the Wal-Mart employees.

Wal-Mart maintained that the statements by its employees were hearsay. The court held that the statement by the Layaway Dept. employee was not admissible because it had not been shown that her duties included oversight and awareness of bathroom maintenance or conditions. In contrast, however, the court held that the assistant manager’s statement was admissible because an assistant manager’s duties have a broader, more general scope of employment. It held that the conditions in the restrooms are part of her domain as an assistant manager.

The court, however, ultimately ruled against Bowling because it found that the assistant manager’s statement was insufficiently detailed. Although that assistant manager acknowledged that she knew that “something was wrong with the restroom”, this does not specifically define the nature of the alleged problem. The court said that there needed to be some evidence that the assistant manager not only knew that there was “something wrong with the restroom” but that she had knowledge of a toilet problem or a leak. The court held that this statement alone, given its vagueness and ambiguity, was inadequate to allow Bowling to sustain her claim.

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Court of Appeals: Fourth District

Case Name: Hickman v. Wal-Mart Stores, 2008-Ohio-1221

Decided: March 13, 2008

Issue(s): Slip & Fall; Source of the Hazard and Constructive Notice

Summary of Opinion: After purchasing several items at Wal-Mart, Mrs. Hickman, and her husband, were walking toward the exit. Mrs. Hickman fell on a clear, waxy substance on the floor. The store manager testified that he found Mrs. Hickman on the floor directly in front of the Rug Doctor display, and he noted a clear, slick substance on the floor. The store manager also testified that, earlier in the day, he saw a Rug Doctor employee servicing machines directly in front of the display. He believed that the substance on the floor was left there by the Rug Doctor service technician. Immediately after the fall, however, Mr. Hickman said that two unidentified female Wal-Mart employees informed him that the substance on the floor was caused by the spilling of some floor stripper by a Wal-Mart employee.

Rug Doctor requested summary judgment, and it was granted by the trial court. Reversing summary judgment, the appellate court held that the trial court had incorrectly dismissed the testimony of the Wal-Mart store manager as “conjecture .” The appellate court held that the store manager, the Rug Doctor service technician, and Mr. Hickman all offered differing testimony as to the source of the hazard that led to Mrs. Hickman’s injury. The court held that the store manager’s testimony created a genuine issue of material fact as to the source of the hazard that caused the slip and fall.

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