

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: Supreme Court of Ohio

Case Name: Turner v. Ohio Bell Telephone, 2008-Ohio-2010

Decided: May 7, 2008

Issue(s): Liability of Public Utility for Pole Placement

Summary of Opinion: On a foggy morning, Bryan Hittle and Ryan Turner were on their way to work when they drove off the road and slammed into a utility pole. The pole was set 3'9" from the white line of the road. Turner was killed.

Turner's estate sued Ohio Bell for negligent placement of the utility pole. Two expert witnesses testified that the pole could have, and should have, been moved back from the roadway. The trial court granted summary judgment to the utility on the grounds that there was no evidence of a breach of the duty care—e.g. the pole was not dangerous to anyone using the highway properly.

The Eighth District reversed and held that it was for the jury to decide whether the pole was placed unreasonably close to the highway. It suggested an 8-prong test be instituted to account for, among other things: the contours of the road, any warning signs, whether the utility had prior notice of similar accidents, and the availability of less-dangerous placement options.

The Supreme Court held that utility companies generally have a statutory right to place utility poles along public rights-of-way. That statutory right, however, is limited to the degree that the poles may not interfere with the public's right to use that right-of-way. "The traveling public", however, "has no right to drive upon that portion of a public highway which is not dedicated, improved, and made passable for vehicular use." The Court rejected the Eighth District's proposed test and held that "when a vehicle collides with a utility pole located off the improved portion of the roadway but within the right-of-way, a public utility is not liable, as a matter of law, if the...pole does not interfere with the usual and ordinary

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course of travel.”

Importantly, the Court also extended this rule to municipalities’ and land-owners’ duty to keep roadways free of obstructions, and it held that municipalities and land-owners do not have a duty to remove off-road hazards that only render off-road travel unsafe. To hold otherwise, the Court noted, would have the effect of creating liability for every rock and tree that sits alongside every road. Landowners, utilities, and municipalities only have a duty to protect the public’s right to travel on the right-of-way as it was intended to be used.

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