

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: Rogers v. City of Dayton, 2008-Ohio-2336

Decided: May 21, 2008

Issue(s): Municipalities as Automobile Self-Insurers

Summary of Opinion: In this case, the Supreme Court resolves a conflict amongst the Second and First District Courts of Appeal in *Rogers v. City of Dayton*, 2007-Ohio-673 and *Safe Auto Ins. Co. v. Corson*, 2004-Ohio-249.

In 2002, a City of Dayton employee struck the plaintiff's vehicle while in the course of his employment and while driving a city-owned vehicle. The trial court found that the City was uninsured for the purposes of the plaintiff's UM/UIM coverage under his personal insurance policy. The City had no insurance policy or certificate of self-insurance. As a municipality, however, R.C. §4509.72 exempts municipalities from having to register as self-insurers.

The City of Dayton did not purchase insurance to cover the vehicles it owned, but pursuant to state law, it annually set aside public funds to be used to pay claims and judgments. The City contended that it was uninsured under the financial responsibility law of Ohio, and therefore, the injured drivers' insurance should provide UM/UIM coverage.

The Supreme Court held that The City of Dayton's vehicle was not "uninsured" for the purposes of the UM/UIM statute. The Court held that self-insurers who are not required to obtain certificates of self-insurance, are nevertheless deemed self-insured for the purposes of the UM/UIM statute.

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Court of Appeals: Fourth District - Ross County

Case Name: Hansen v. Wal-Mart Stores, Inc., 2008-Ohio-2477

Decided: May 20, 2008

Issue(s): Premises Liability - Product Displays

Summary of Opinion: Plaintiff Hansen and her 4-year-old child were shopping in a Wal-Mart store when a stacked display of “screened houses” toppled onto the child. Hansen did not witness the collapse, and she did not witness what caused the stacks to fall. Plaintiff claimed that Wal-Mart was negligent in constructing, inspecting, and maintaining the display. The trial court granted summary judgment against Plaintiff.

The appellate court held that the grant of summary judgment was correct. A business owner has a legal duty to not expose its customers to unreasonable dangers and to inspect the premises for unknown dangers. This same duty extends to the manner in which a business stacks and markets goods so that they are not likely to be dislodged.

Plaintiff, however, had not shown that the items were stacked in a way that made them foreseeably unstable and dangerous. Nor was there evidence that showed that prior customers had made the stacks unstable. Moreover, because Plaintiff did not witness the collapse, there was no evidence as to what caused the stacks to fall at the precise time Plaintiff’s child was walking past. Plaintiff’s failure to explain the cause, combined with their failure to eliminate all potential causes unrelated to Wal-Mart’s actions, also precluded their *res ipsa loquitur* claim. As the appellate court correctly held, a showing of negligence via *res ipsa loquitur* requires proof that the instrumentality (here: the stacks) was under the sole influence of the defendant. Plaintiff could not prove that her child or another customer did not cause the collapse of the display.

Court of Appeals: First District - Hamilton County

Case Name: Bruckner v. Proscan Imaging, LLC, 2008-Ohio-2468

Decided: May 23, 2008

Issue(s): Premises Liability - Product Displays

Summary of Opinion: Plaintiff was injured when she sat on a bench in a changing room at Defendant’s medical facility. The bench broke, causing her injuries. Defendant sought

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summary judgment on the grounds that it had no notice of the defect in the bench.

The Appellate Court held that summary judgment was inappropriate because the bench had been constructed by the Defendant. The court held that the issue of notice is irrelevant because “one who created the condition is presumed to know what it created.” Plaintiffs had presented evidence that Proscan, or its agent, had built the bench, and the court held, therefore, this evidence created a genuine issue of material fact for trial.

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