

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: Court of Appeals for Montgomery County

Case Name: Howard v. Miami Twp. Fire Div.

Decided: June 18, 2008

Issue(s): Municipal liability for roadway obstructions

Summary of Opinion: In January 2004, the Miami Township Fire Department conducted a day long training exercise. The training involved various crews and exercises responding to real fires deliberately set by fire officials in a abandoned dwelling. The exercise area sat on an elevated location above a twisting rural road.

Before they left, the firefighters spread a five gallon bucket of salt where water had run down onto the roadway. The firefighters returned to the site an hour and a half later and checked the road for water and ice. They found none. Later that evening, however, sixteen year old Christopher Howard attempted to negotiate the curve while traveling at approximately 65 miles per hour—twice the speed recommended for the curve. Plaintiff lost control, crashed, and died. The first police officer to respond to the scene found water running onto the road that had frozen.

A law suit was brought against Miami Township, and the Township moved for summary judgment on the grounds that it was immune from liability by operation of R.C. §2744.02, the Political Subdivision Tort Liability Act. Plaintiff asserted that R.C. §2744.02(B)(3) provided an exception to immunity because the Township had negligently failed to “keep public roads in repair and...to remove obstructions from public roads.”

The Ohio Supreme Court held that the plain meaning of the word “obstruct” means

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to impede, to block, or to stop passage on a roadway. The Court found that the prior version of R.C. § 2744.02(B)(3) stated that political subdivisions were required to keep their public roads “open, in repair, and free from nuisance.” The Court found that the legislature had purposely replaced the phrase “free from nuisance” with “other negligent failure to remove obstructions”, and the Court held that this was a deliberate effort to limit or minimize political subdivisions’ liability for injuries and death on roadways. It held that Miami Township was immune and entitled to summary judgment because it found that the existence of ice on the road was not an “obstruction”.

Court of Appeals: Tenth Appellate District

Case Name: Smith, et al. v. Martin, et al.

Decided: June 19, 2008

Issue(s): Municipal liability for roadway construction

Summary of Opinion: Defendant Martin contended that while driving, he struck a concrete bus stop pad located just off his right hand side of the roadway. His impact with the bus stop pad allegedly caused his vehicle to strike the vehicle driven by Plaintiff Smith. The bus stop pad was constructed and maintained by Central Ohio Transit Authority (“COTA”). The drivers contend that COTA’s placement and maintenance of the bus stop pad was negligent and constituted a hazard.

COTA raised the defense of political subdivision immunity pursuant to R.C. §2744.03. The drivers contended that the exception set forth in R.C. §2744.02(B)(2) applied. That exception states that “political subdivisions are liable for injury, death, or loss of persons or property caused by the negligent performance of acts by their employees with respect to proprietary functions of political subdivisions.”

The Tenth District Court of Appeals found that COTA’s placement and maintenance of the bus stop pad constituted a proprietary function. The Court held that COTA’s establishment and maintenance of the bus stop pad was a proprietary function. The Court also held that its placement resulted from a COTA employee’s exercise of discretion or judgment in determining how to use equipment, personnel, and materials—all of which are functions entitled to immunity under R.C. §2744.03.

The Court could find no evidence in the record, however, from which reasonable minds might conclude that COTA’s exercise of its discretion in placing and maintaining the bus stop pad was negligent. Therefore, the Tenth District Court of Appeals held, COTA was immune from liability. Had there been evidence of negligent placement or maintenance, COTA would have been liable.

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