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: Second District Court of Appeals

Case Name: Cincinnati Ins. Co. v. Allen, 2008-Ohio-3720

Decided: July 25, 2008

Issue(s): The "sudden medical emergency" defense to negligence

Summary of Opinion: Defendant James Allen was driving home after eating lunch when he began to experience lightheadedness and sickness in his stomach. Approximately one minute later, Allen claimed he became unconscious. His vehicle struck a fence and damaged a church. The church's insurer filed a negligence action against Allen seeking compensation for damage to the property. Allen denied liability on the grounds that he suffered a sudden medical emergency, and he moved for summary judgment.

Under the "sudden medical emergency" defense, a driver is not chargeable with negligence when they are suddenly struck by a period of unconsciousness and the unconsciousness could not reasonably be foreseen. The Ohio Supreme Court has stated that in most cases where a sudden medical emergency is raised as a defense, the case is unsuitable summary judgment or a directed verdict because "it is incumbent upon the factfinder to determine whether the requirements of the defense have been met."

The Second District Court of Appeals began its analysis by noting that the Supreme Court's general rule against summary judgment is not an absolute bar. In its summary judgment motion, the insurer did not contest that Allen might have been unconscious at the time of the accident, and it only argued that a material fact existed as to whether Allen should have reasonably foreseen the unconsciousness. Allen's affidavit indicated that he

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was suddenly struck with a medical condition that caused him to lose consciousness, but he admitted that he had a history of lightheadedness and problems with his equilibrium.

The Second District Court of Appeals held that Allen's history of lightheadedness and problems with equilibrium did not make the blackout foreseeable. The Court noted that there was no evidence that Allen had ever lost consciousness due to lightheadedness prior to the accident. It therefore held that the trial court was correct in granting summary judgment.

Court of Appeals: Twelfth Appellate District

Case Name: Kublius v. Owens, 2008-Ohio-3728

Decided: July 28, 2008

Issue(s): Is it an error for a jury to award medical expenses, but not pain and suffering damages?

Summary of Opinion: Kublius and Owens were involved in an automobile accident. Owens stipulated to liability, and a jury trial was held to determine the amount of damages. The jury awarded Kublius a judgment in the amount of $3,711, detailed in interrogatories as $386 in lost earnings and $3,325 for medical and hospital expenses. The jury awarded zero dollars for pain and suffering.

Kublius immediately objected to the jury award, claiming that the verdict of zero dollars for pain and suffering was inconsistent with the verdict in his favor. He immediately requested that the jury be sent back for additional deliberations. Owens' counsel also agreed with the objection, stating "I would prefer the jury award a nominal amount now, rather than get an appeal on a new trial later. But I mean, - - I mean, I defer to the Court." The trial court denied this joint objection. Kublius appealed on the grounds that the jury's verdict was against the manifest weight of the evidence.

The Twelfth District Court of Appeals held that if a jury awards the amount of medical expenses as damages, it is required to award some amount for pain and suffering. The Court held that this is particularly true when the defense did not deny that there was some pain and suffering. In this case, Owens' counsel argued in his closing argument that the jury should *limit* the amount in accordance with Defendants' expert testimony. Specifically, during closing arguments, Owens' counsel stated "what do I believe the evidence supports was done to Mr. Kublius in this minor fender bender? A left shoulder strain. There is no dispute about that . ... Mr. Kublius suffered only a minor strain from this accident and [] he is not entitled to all the damages he claims from Ms. Owens."

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The Twelfth District held that because the jury awarded medical expenses as damages, it was required to award an amount for pain and suffering. It also held that there was uncontroverted evidence that Appellant suffered pain as a result of the accident. Therefore, it held, an award of zero dollars was against the manifest weight of the evidence, and it remanded the matter to the trial court for a new trial to determine the amount of pain and suffering.

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