

OHIO CASE SUMMARIES

A SERVICE OF
GREEN & GREEN, LAWYERS
A Legal Professional Association

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 Sean McCormick at 937.224.3333 or send an email to smccormick@green-law.com.

Court of Appeals: Tenth District Court of Appeals

Case Name: *Mills v. Best Western Springdale*, 2009-Ohio-2901

Decided: June 18, 2009

Issue(s): Premises Liability/Breach of Contract

Summary of Opinion: Katrena Mills and her infant son stayed overnight at a Best Western Hotel, and thereafter both manifested symptoms of “scabies.” Scabies is an intense itching caused by mites burrowing into a person’s skin.

Mills filed a complaint alleging that Best Western: (1) breached its express and/or implied contractual obligation to provide them with a suitable, clean, and habitable hotel room; (2) breached its duty to provide them with a room that complied with Ohio statutory and regulatory cleanliness requirements; (3) and failed to resolve Mills’s complaints, constituting unfair, deceptive, and unconscionable practices in violation of the Consumer Sale Practices Act (CSPA).

Best Western moved for summary judgment on all claims, and the trial court granted its motion holding that the record contained no evidence that mites were present in Mills’s hotel room. Mills appealed

The Tenth District Court of Appeals explained that Mills had failed to present any evidence, even of a circumstantial nature, from which a jury could find in favor of her without engaging in improper speculation. The court concluded that at best, the evidence established that neither Mills nor her son had *manifested symptoms of scabies prior to their hotel stay*. Furthermore, since Mills had provided no expert testimony regarding what

GREEN & GREEN, Lawyers represents select insurance clients in all aspects of insurance litigation, from complex coverage questions to more routine torts. We will see to it that your file will be handled only by a competent, seasoned attorney who will work diligently to obtain the best result possible.

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

scabies was, how it was contracted, what its symptoms were, or when its symptoms manifest, a reasonable juror could not conclude that Mills and her son were scabies free before their hotel stay without stacking inference upon inference.

The court dismissed Mills's claim that Best Western was negligent *per se* because there was no evidence of infestation. Finally, the court concluded that the doctrine of *res ipsa loquitur* was inapplicable to this case because a juror could reasonably infer that Mills and her son had contracted scabies from a cause other than Best Western's alleged negligence. Additionally, the court explained that no evidence existed that any items infested with mites were under the exclusive control of Best Western.

Lastly, the court did not address Mills's CSPA claim because she had not made an argument of error directed to it.

The judgment was affirmed.

GREEN & GREEN, Lawyers represents select insurance clients in all aspects of insurance litigation, from complex coverage questions to more routine torts. We will see to it that your file will be handled only by a competent, seasoned attorney who will work diligently to obtain the best result possible.

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