

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 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: *Ohio Cent. RR. Sys. v. Mason Law Firm Co., L.P.A.*, 2009-Ohio-3238

Decided: June 30, 2009

Issue(s): SIR/Subrogation/Joinder/Legal Malpractice

Summary of Opinion: An employee of Ohio Central Railroad Systems (OCRS) suffered severe injuries when he fell attempting to board a rail car that was not equipped with the required grab bars. OCRS maintained a liability insurance policy that was underwritten by Lloyds London (Lloyds), and administered by Railway Claims Services Inc. (RCS). Thereafter, RCS, acting as an agent for Lloyds, hired the Mason Law Firm (Mason) to represent OCRS in the employee's injury action.

The aforementioned litigation resulted in a judgment against OCRS in excess of \$1.3 million, which Lloyds paid. Thereafter, OCRS filed suit to recover damages suffered due to Mason's negligence in legal representation, in the amount of \$860,000. Mason counterclaimed for unpaid legal fees, and filed a motion for summary judgment with respect to OCRS's legal malpractice claim. The trial court granted Mason's motion for summary judgment, and it denied OCRS's motion for reconsideration and the motion to add Lloyd's as a party. OCRS appealed.

First, the Tenth District Court of Appeals held that the collateral source rule did not apply to this case, and that OCRS was only the sole real party in interest with respect to its deductible (\$100,000), while Lloyds was the sole real party in interest with respect to the amounts it paid pursuant to its contract with OCRS. For this reason, the court explained, OCRS was not entitled to seek recovery in amounts Lloyds paid.

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Second, the court held that the trial court did not abuse its discretion in refusing to allow a ratification to permit the addition of Lloyds as a party pursuant to Civ.R. 17(A). The court explained that Civ.R. 17 requires every civil action to be prosecuted in the name of the real party in interest, and since Lloyds paid the entire amount of the judgment, and was subrogated to that claim, it was the sole real party in interest in any action brought to recover the amount of that loss.

Further, the court instructed that ratification is an alternative to dismissal for failure to name the real party in interest. However, in this case, the trial court had no authority to dismiss because OCRS had every right to sue to recover damages for which it was the sole real party in interest, and therefore, the court had no basis to allow ratification. Additionally, the court pointed out that even if the trial court did have the authority to dismiss, it still could not allow ratification in this case because the failure to ascertain Lloyds as a proper party was not the excusable result of an honest mistake. The court reasoned that the purpose of this rule was to prevent the real party in interest from controlling litigation from behind the scenes without being subject to costs, sanctions, and/or certain discovery procedures that may only be used against actual parties to the lawsuit.

Lastly, the court held that the trial court did have a duty to determine whether the defect of parties could be cured under Civ.R. 19. The court concluded that the trial court had failed to address whether or not Lloyds was indispensable to the action, whether it was subject to service of process, and whether the nonjoinder issue had been waived. The court reasoned that such a summary disposition of joinder issues, and dismissal of the action, warranted reversal and remand to determine whether Lloyds should have been joined.

The judgment was affirmed in part, reversed in part, and the cause remanded for further proceedings consistent with this opinion.

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