

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 Appellate District

Case Name: *Allstate Insurance Co. v. Campbell*, 2009-Ohio-6055

Decided: November 24, 2009

Issue(s): Liability Policy Exclusion

Summary of Opinion: A group of high school boys stole a target deer and placed it in the travel lane of a rural highway. Several of the boys then drove back and forth on the road to see how other motorists would react to the fake deer in the middle of the road. At least two motorists approached the deer, navigated around it, and continued on their way. However, a third vehicle, traveling at a high rate of speed, swerved to avoid the deer, and careened into an adjacent field. As a result, both the driver and the passenger sustained serious physical injuries from the crash.

Subsequently, the injured motorists filed negligence actions against the boys. The boys' insurers filed declaratory judgment actions seeking declarations that they had no obligation to defend them in the negligence actions or indemnify them against any liability imposed by such actions. The insurers argued that coverage was excluded under various provisions that did not provide coverage for injuries caused by intentional acts or acts reasonably expected to result from the intentional or criminal acts or omissions of any insured.

The trial court granted the insurers' motion for summary judgment finding that placing the target deer in the middle of a country road, at night, with a speed limit of 55 mph created a situation where injuries were substantially certain to occur, and, therefore, the policy exclusion applied. The injured motorists appealed.

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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.

The Tenth District Court of Appeals agreed that the boys' conduct of placing the target deer in the road was intentional, but it concluded that there were genuine issues of material fact as to whether or not that act supported an inference of an intent to injure. The court explained that the boys testified that their only desire was to watch motorists' reactions to the deer, and that they expected that motorists would stop, maneuver around it, and travel on. The court explained that this belief was at least partially confirmed when the first two motorists successfully avoided the deer.

Additionally, the court found that even if the boys expected motorists to hit the deer, it could not conclude as a matter of law that harm was substantially certain to result because the target was made of Styrofoam and weighed about 10 pounds. Lastly, there was also evidence to suggest that the injured driver was traveling at an excessive rate of speed, perhaps as fast as 80 mph, and, therefore, reasonable persons could conclude that speed may have been a factor contributing to the accident.

The judgment was reversed and remanded.

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