

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: First Appellate District

Case Name: *Mincy v. Farthing*, 2009-Ohio-5245

Decided: October 7, 2009

Issue(s): Ohio's Assured-Clear-Distance Statute

Summary of Opinion: Kenneth Farthing was traveling eastbound on Interstate 275 in Springdale, Ohio when he lost control of his car while passing a garbage truck, and it slammed into the concrete median before flipping to a stop on the highway. Although Farthing escaped the wreckage with minor injuries, the car continued to block two lanes of traffic in driving conditions that were dark, foggy, and rainy.

Minutes later, Mincy Sanders approached the crash site at a speed of approximately 55 mph and even though she slammed on her brakes the moment she saw Farthing's car, she quickly realized she could not avoid hitting it. Instead of veering into the other car traveling on her right, Sanders swerved left, striking the median wall. Consequently, Sanders was taken to a local hospital by members of her family.

Sanders filed a negligence action against Farthing, and she also named her insurance carrier, State Auto Insurance Company ("State Auto"), as a defendant. State Auto cross claimed against Farthing, and he moved for summary judgment on the basis that his care was a reasonably discernable object as a matter of law and Sanders' actions had thus violated R.C. 4511.21(A), Ohio's Assured-Clear-Distance Statute. The trial court granted Farthing summary judgment and State Auto appealed.

The First District Court of Appeals reasoned that a strict application of R.C.

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.

4511.21(A) was inappropriate because Sanders did not collide with Farthing's car when she hit the median wall. However, the court concluded that the statute may be violated when a driver has an accident after taking evasive action to avoid crashing into an object if all the applicable elements of the statute are otherwise satisfied.

Applying this slightly modified standard to the facts at hand, the court determined that conflicting evidence existed as to whether or not Farthing's car was "reasonably discernable" given the poor driving conditions and a disagreement as to whether Farthing's car's headlights were still operating. Further, the court dismissed Farthing's argument that Sanders' alleged violation of the statute would have necessarily broken the chain of causation because the statute only establishes a duty of care, it does not resolve the question of liability.

The judgment was reversed and remanded.

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.