

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: Eleventh Appellate District

Case Name: *Currier v. Penn-Ohio Logistics*, 2010-Ohio-195

Decided: January 22, 2010

Issue(s): Indemnification/Vicarious Liability/Negligence

Summary of Opinion: Raymond Queen operated an overhead crane which he used to stack steel bundles on the floor of a warehouse. One day, he had stacked over 800,000 pounds on the floor of this warehouse when the floor caved into the basement below. Mr. Queen suffered serious injuries in the fall, which ultimately caused his death. At the time of the accident, Mr. Queen worked for Penn-Ohio Logistics ("Penn"), who leased the building from American Steel City Industrial Leasing, Inc. ("American").

The Administrator of Mr. Queen's estate filed a wrongful death action against Penn and American alleging negligence against both and also claiming employer intentional tort against Penn only. Subsequently, Erie Insurance Exchange intervened and sought a declaratory judgment that it had no duty to defend or indemnify either defendant. All parties filed motions for summary judgment.

Thereafter, the estate voluntarily dismissed its claims against Penn. In granting summary judgment in favor of American on the estate's negligence claim, the trial court found that American was a lessor out of possession and control of the warehouse, and it owed no duty to Penn or its employees regarding the condition of the premises. The court also granted Erie summary judgment because the additional insured coverage, which American obtained from Penn under the lease, only covered American for vicarious liability and not independent acts of negligence. American appealed (The estate appealed in a

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separate action).

Primarily, American argued that as an additional insured to Penn's policy, it was entitled to coverage under the premises portion of the policy for its independent acts of negligence because they allegedly occurred in the warehouse. However, the Eleventh District Court of Appeals disagreed.

In this case, the court found that the policy identified American as an additional insured, but only with respect to vicarious liability. First, the court determined that the phrase "arising out of" related to Penn's operations within the warehouse. Therefore, the policy only covered American in situations where liability arose from American's relationship with Penn. Additionally, the endorsement contained no language indicating that American was insured for its independent negligent acts under the policy.

Second, the court explained that Erie charged Penn the nominal amount of \$30 to include American as an additional insured, which demonstrated that the parties did not intend for coverage to extend to any independent acts of negligence by American. As a result, the estate's claim against American was not within the scope of the policy.

Finally, the court dismissed American's claim that Erie should be equitably estopped from denying it coverage because Erie affirmatively misrepresented to American that it was fully covered as an additional insured. First, the estoppel shield was never raised at trial and therefore American failed to preserve it for appeal. Second, the parol evidence rule prohibited using extrinsic evidence to interpret a contract when the policy at issue was clear and unambiguous.

The judgment was affirmed.

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