

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: Second Appellate District

Case Name: *Tausch v. Riverview Health Inst.*, 2010-Ohio-502

Decided: February 12, 2010

Issue(s): Medical Malpractice and Vicarious Liability

Summary of Opinion: On August 18, 2005, Edward Tausch underwent a surgical procedure on his back, which was performed by Dr. Lawrence Rothstein at the Dayton Laser Spine Center (“Spine Center”). Riverview Health Institute, L.L.C. (“Riverview”) owned and operated the Spine Center. Dr. Rothstein was an employee of the Greater Cincinnati Pain Management Centers, but he was credentialed and had surgical privileges at Riverview.

After surgery, Tausch experienced a pain and paralysis in his leg known as “drop foot.” Dr. Rothstein assured him it would heal over time. The two men terminated their physician-patient relationship on January 23, 2006. Thereafter, other physicians diagnosed Tausch’s condition as permanent.

Prior to terminating his relationship with Dr. Rothstein, Tausch had sent “180 day letters” (authorized by statute) to Riverview and Dr. Rothstein notifying each that he was considering legal action. Riverview received the letter on November 17, 2006. On May 14, 2007, one hundred and eighty-one days after Riverview had received the letter, Tausch filed an action against Dr. Rothstein and Riverview alleging negligence, vicarious liability, negligent credentialing, and negligent supervision. Riverview moved for summary judgment.

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.

The trial court overruled the motion on the negligent supervision and credentialing claims because those claims were governed by the two-year statute of limitations, and therefore, were timely filed. However, the court granted Riverview's motion on the claims of lack of informed consent and vicarious liability because those claims were governed by the one-year statute of limitations. The court determined that since Tausch's "180 day letters" (which toll the statute) were received over a year after the surgery, these claims were untimely. Tausch appealed.

The Second District Court of Appeals explained that under Ohio law, a cause of action for medical malpractice accrues when either: (a) the patient discovers or should have reasonably discovered the resulting injury; or (b) when the physician-patient relationship terminates, whichever occurs later. However, that statute of limitations is tolled when malpractice claims against the hospital derive from the negligence of one of its physicians.

The court explained that Tausch terminated his relationship with Dr. Rothstein on January 23, 2006, and he sent his "180 day letters" on November 16, 2006, which extended his filing term until May 14, 2007. On that day, Tausch filed actions against both Dr. Rothstein and Riverview. Therefore, it appeared that both actions were timely filed under the statute. However, the court found that a genuine issue of material fact existed as to whether Tausch acted reasonably in not having discovered that his injury was permanent over a year after surgery.

If a jury determined that Tausch should have reasonably recognized that his condition was permanent shortly after surgery, then his "180 day letters" would have been late because they had to be sent within a year of discovery of the injury. In that case, his action against both parties needed to have been filed by January 23, 2007, a year after termination of the physician-patient relationship. Since his action was not filed until May 14, 2007, it would have been untimely.

On the other hand, if a jury determined that Tausch's delay in realizing his injury was permanent was justified, then presumably, the statute of limitations would not have run until after he sent his "180 day letters." In that context, he would have bought himself the extra time needed to make his filing timely.

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.

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.