

AMICUS CURIAE NEWS

RECENT RULINGS IN SUPPORTED CASES

Sullivan v. Anderson Township

Opinion: 2009-Ohio-1971.

Ruling: Political Subdivision May Appeal Denial of Immunity Without Civ.R. 54(B) Certification

As urged by OACTA, the Supreme Court ruled that an order denying immunity to a political subdivision is a final appealable order, even when the order lacks a Civ.R. 54(B) certification of "no just cause for delay." Frank Scialdone, of Mazanec, Raskin, Ryder & Keller Co., L.P.A., authored OACTA's *amicus* supporting the Appellant, Anderson Township. As Frank argued, the Court reasoned that R.C. § 2744.02(C) authorizes an immediate appeal, stating a "trial court has no discretion to determine whether to separate claims or parties and permit an interlocutory appeal." *Sullivan* at ¶ 12. The ruling is crucial for public entities and OACTA members who defend them, says Scialdone. "A public entity's right to immunity is meaningless if a trial court can deny an immediate appeal of an adverse immunity ruling. Today's decision properly recognizes the Legislature's intent to provide an absolute right to an immediate appeal, without regard to the trial court's discretion."

NEW CASES ACCEPTED FOR PARTICIPATION

1) *Estate of Jillian Graves v. City of Circleville*

Supreme Court Case No. 2009-0014

Supported Party: City of Circleville (Frank Scialdone, Esq. & Jim Climer, Esq.)

OACTA's *amicus* brief: Brian Wildermuth, Esq.

OACTA is participating in this case to preserve the common-law "Public Duty Rule." The rule prohibits a private right of action against a public official who breaches a duty owed to the general public. *Graves* involves claims against the City of Circleville and individual police officers, who released an impounded vehicle to a repeat DUI offender without the required court order. The DUI offender then caused a fatal accident. On April 8, 2009, the Supreme Court of Ohio agreed to review the decision by the Fourth Appellate District, which denied immunity and, for the first time in Ohio, created a "wanton and reckless" exception to the Public Duty Rule. Additionally, the Court of Appeals held that R.C. § 2744.03 abrogated the Public Duty Rule for personal liability of public employees.

2) *The Estate of Jeffrey K. Heintzelman, et al. v. Air Experts, Inc., et al.*

Ohio Supreme Court Case No. 2008-2173

Supported Party: American Family Insurance (Bruce Curry, Esq.)

OACTA's *amicus* brief: (Shawn Blatt, Esq., Freund, Freeze and Arnold)-- filed on April 10, 2009

This appeal concerns whether it is necessary to include a claimant in a declaratory judgment action, or whether a judgment between an insured and insurer has binding preclusive effect upon a judgment creditor of the insured in a subsequent supplementary complaint, even if the claimant/judgment creditor was not a party to the declaratory judgment action.

The case arises out of the electrocution death of Jeffrey Heintzleman, when he tried to adjust an air conditioner installed by contractor Tom Martel. Martel was insured by American Family Insurance. While defending Martel, American Family sought a declaratory judgment of no coverage and did not include the Estate as a party. Martel defaulted in that action and the court entered judgment in favor of American Family. After the Estate recovered judgment against Martel in the tort action, it filed a supplemental action against American Family. The trial court held that the declaratory judgment was binding as to the Estate, even though Martel had defaulted and the Estate had not been made a party. The Fifth Appellate District reversed.

Despite the potential sympathy for a claimant when the coverage decision was “defaulted” and arguably not fully litigated, OACTA’s position is that the declaratory judgment statute requires a court to issue a decision based on a full review of the insurance contract. Whether an insured defaults does not alter the court’s analytical duty or result in a “rubber stamp” judgment. As such, the coverage decision is on the merits and binding.

3) *Hanners v. Ho Wa Genting Wire & Cable SDN*

Court of Appeals, Tenth Appellate District, No. 09AP-361

Supported Party: Ho Wa Genting Wire & Cable SDN (Richard Garner, Esq.)

Amicus Author: J.Huebert, Esq.

This case appeals a decision that R.C. 2315.21(B), granting the right to bifurcation of punitive damages at trial, is unconstitutional. Due to the significant effect such a decision may have upon other pending cases prior to review by the Supreme Court of Ohio, the OACTA Board has authorized a rare attempt to seek leave as *amicus curiae* before the Court of Appeals of Ohio to preserve the constitutionality of this vital tort reform statute.

If you are aware of any case being appealed to the Ohio Supreme Court on matters of interest to OACTA and its members, please contact Kurt Anderson at 440-838-7600 or Kurt.Anderson@janiklaw.com, or Brian Wildermuth at (937) 427-8800 or Bwildermuth@swdohiolaw.com.

--The OACTA *Amicus Curiae* Committee