

Case Name: Ohio Central Railroad System, et al., v Mason Law Firm Co., L.P.A. et al.

Date Decided: June 30th, 2009

Originally Filed in: ()

Decided by: (State)

Court: Court of Appeals of Ohio, Tenth District, Franklin County

Judge: Judge Sadler

Citation: 2009 WL 1911835

Background:

Railroad operated filed a legal malpractice action against a law firm that represented operator, Ohio Central Railroad System ("Ohio Central"), in an action involving a former employee who was injured during the course of his employment. Employee brought the action pursuant to the Federal Employer's Liability Act. On May 15, 2002, Ohio Central's former employee was injured in the course of his employment when he fell while attempting to board a rail car that was not equipped with the required grab bars. The employee was forced to amputate his leg. Ohio Central had purchased a policy of liability insurance from US Fidelity & Guaranty ("USF & G"). The policy was underwritten by nonparty Certain Underwriters at Lloyds London ("Lloyds"). Railway Claims Services administered the policy to a contractual agreement between RCS and Lloyds. RCS, acting as an agent for Lloyds engaged the Mason Law Firm to represent Ohio Central in connection with anticipated litigation related to the injury. Ohio Central alleged that Mason advised them they could terminate the employee's employment because he had failed to return to work at some point after his injury. Employee then sued under the Federal Safety Appliance Act, and the FELA. The employee voluntarily dismissed his complaint then refiled and included a claim for wrongful discharge. Ohio Central filed a third-party claim against Norfolk Southern Railway ("NSR") alleging that NSR was the entity responsible for ensuring the safety of the railcar upon which the employee was injured. The policy covered 100,000 in self-insurance retention meaning that Ohio Southern was responsible for paying the first \$100,000 of any liability under the policy. Following the litigation, a jury verdict awarded the employee \$1.3 million against Ohio Central. Ohio Central then filed this suit to recover damages it alleged it suffered due to Mason's negligence in their legal representation. Ohio Central alleged that Mason failed to properly evaluate their liability in the litigation, failed to properly develop a settlement and trial preparation strategy, failed to properly evaluate and preserve claims for contribution and indemnification, and failed to correctly advise Ohio regarding the employee's termination.

Issue:

Did the Trial Court err in granting Mason's motion for summary judgment?

Overall Issues Discussed or Touched Upon in this Case:

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Held:

The damages Ohio Central seeks are. (1) The 100,000 self-insurance retention and (2) the remaining damages it seeks, were incurred by Lloyds. Ohio Central's argument are focused on the damages paid by Lloyds. Ohio argued that the collateral-source rule demands that the trial court ignore the fact that Lloyds paid any amounts under the policy in connection with the litigation. It argued that when the collateral source rule is applied the fact that the damages were paid pursuant to the policy is irrelevant and, as such, genuine issues of material fact regarding causation and damages exist that preclude summary judgment. The Collateral source rule has been defined as the judicial refusal to credit the benefit of the wrongdoer money or services received in reparation of the injury caused which emanates from sources other than the wrongdoer. It is an exception to the general rule in tort actions that the measure of the plaintiff's damages he is entitled to make the plaintiff whole. The Court found that the collateral-source rule had no application to the plaintiff-insured. Accordingly, this Court found that the plaintiff cannot recover for damages that the insurer has incurred. This Court held that it is not possible for the plaintiff to recover for the money paid by the insurer. However it may be able to recover the Self insured retention of \$100,000. This Court further found that the failure of Mason to name the real party in interest with respect to the claim losses other than the Self-insured retention (SIR) it was a result of an honest mistake under the circumstances. Accordingly, the trial court's refusal to allow ratification was not an abuse. However, this Court found that the trial court failed to properly join Lloyd's as an indispensable party and accordingly sustained Ohio Central's appeal on the issue.

Comments:

At issue here was whether Ohio Central could recover from the Mason Law Firm, damages that their insurer, Lloyd's had paid. The Court held that Ohio Central could not recover what it had incurred in damages themselves. However, it also found that it was an honest mistake that Lloyd's was not joined in the original action in the first place. Accordingly this Court remanded on the issue whether Lloyd's was an indispensable party and sent the case back to the lower court. Steve Gordon <http://www.Gordon-Elias.com>