

[Cite as *Fuchs v. Univ. of Akron*, 2002-Ohio-5396.]

IN THE COURT OF CLAIMS OF OHIO

TERRANCE L. FUCHS	:	
1039 Brown Street	:	
Akron, Ohio 44301	:	Case No. 2002-05867-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
UNIVERSITY OF AKRON	:	
Defendant	:	

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For Defendant: Michael D. Sermersheim  
Associate Vice President and  
Deputy General Counsel  
Office of General Counsel  
The University of Akron  
Akron, Ohio 44325-4706

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{¶1} Plaintiff, Terrance L. Fuchs, alleged that on April 16, 2002, he suffered a personal injury while attending a self-defense class held on the premises of defendant, University of Akron. Plaintiff filed a complaint supplying the following statements:

{¶2} "Plaintiff Fuchs attended a self defense class at the University of Akron (Defendant) on April 16, 2002. The class instructor, Steve Bunn, told another student to roll and throw Plaintiff over head as part of curriculum. Under the direct supervision of the instructor, Plaintiff was flipped in an improper manner and sustained injuries to his sternum upon impact. Upon medical examination, at Summa Hospital Emergency Room, Plaintiff's sternum was fractured and suffered great pain. He was unable to

work for a period of three weeks, from April 17, 2002 to May 6, 2002."

{¶3} Plaintiff seeks recovery of damages in the amount of \$2,185.00. The damage claim amount represents \$1,935.00 for work loss, plus \$265.00 for medical expenses incurred not covered by insurance. Plaintiff submitted the filing fee with the complaint.

{¶4} Plaintiff did not submit any evidence, other than his own assertions, indicating he suffered an injury while taking a class offered at defendant's university. Plaintiff did not submit any corroborating evidence establishing injury, work loss resulting from an injury, and medical expenses incurred to treat an injury.

{¶5} Defendant filed a document captioned investigation report. This document contains the following responses to plaintiff's complaint:

{¶6} "Defendant neither admits nor denies Plaintiff's claim of injury.

{¶7} Defendant consents to any judgment this Court may render as to liability in this matter.

{¶8} Plaintiff's complaint, at item #14, seeks damages in the amount of \$2,185.

{¶9} Plaintiff sets forth a deductible amount under his insurance policy of \$250 plus \$15 co-pay.

{¶10} Ohio Revised Code § 3345.40(B)(2) provides that:

{¶11} 'If a plaintiff receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits shall be disclosed to the court, and the amount of the benefits shall be deducted from any award against the state university or college recovered by plaintiff.'

{¶12} Plaintiff's collateral source insurance precludes his receipt of any sum greater than the deductible amount of his

insurance, in addition to the co-pay amount and court costs.

{¶13} Defendant submits that even in the event this Court finds for the Plaintiff, it is appropriate to award an amount of \$265.00 (the deductible plus the co-pay) in addition to court costs."

{¶14} Defendant did not forward any additional documentation relevant to events occurring on April 16, 2002 involving the parties to this action. The file is devoid of any additional information from defendant.

{¶15} Plaintiff subsequently filed a statement contained on a response form. This statement consists of modified damages claim and includes the following:

{¶16} "ORC§3345.40(B)(2) does not apply to the portion of Plaintiff's claim that is his lost wages of \$1,650.00. Plaintiff was not paid by his employer under any sick pay or workers' compensation program.

{¶17} Therefore, in addition to the \$265.00 for the deductible plus the co-pay and court costs, Plaintiff is entitled to lost wages for the period of time that his broken sternum rendered him incapable of working or the sum of \$1,650.00 plus \$265.00, for a total of \$1,915.00, plus court costs."

{¶18} Plaintiff has failed to produce sufficient evidence to prove he suffered a broken sternum while taking a class on defendant's premises under the supervision of defendant's personnel. Plaintiff has failed to offer sufficient evidence to show he incurred medical expenses and work loss resulting from an injury that was proximately caused by a negligent act or omission on the part of defendant's staff. Plaintiff has failed to establish liability.

{¶19} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶20} IT IS ORDERED THAT:

{¶21} 1) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶22} 2) The court shall absorb the court costs of this case in excess of the filing fee.

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DANIEL R. BORCHERT  
Deputy Clerk

RDK/laa  
9/20  
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