

Court of Claims of Ohio

The Ohio Judicial Center
65 South Front Street, Third Floor
Columbus, OH 43215
614.387.9800 or 1.800.824.8263
www.cco.state.oh.us

REGGIE JACKSON

Case No. 2007-03102-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

MEMORANDUM DECISION

NORTHEAST PRE-RELEASE CTR.

Defendant

FINDINGS OF FACT

{¶1} 1) On February 22, 2006, a vehicle owned by plaintiff, Reggie Jackson, was damaged when it was struck by a malfunctioning automatic gate/fence located at the front entrance of defendant, Northeast Pre-Release Center.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$617.26, the total cost of vehicle repair resulting from the February 22, 2006, incident. Plaintiff acknowledged the damage vehicle was covered under an insurance policy with a \$500.00 deductible provision. Additionally evidence has been presented to show reimbursement of \$117.26 was received from an insurance carrier for automotive repair costs. Under statute, plaintiff's damages shall be limited to \$500.00.¹ The filing fee was paid.

{¶3} 3) Defendant filed an investigation report admitting liability for plaintiff's property damage. Defendant seemingly acknowledged plaintiff suffered damages in the amount of \$500.00, his insurance deductible.

{¶4} 4) Plaintiff filed a response expressing his agreement with the findings

¹ R.C. 2743.02(D) states:

"(D) Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant. This division does not apply to civil actions in the court of claims against a state university or college under the circumstances described in section 3345.40 of the Revised Code. The collateral benefits provisions of division (B)(2) of that section apply under those circumstances."

R.C. 2743.02(D) limits any recovery for property damage plaintiff may receive to his insurance coverage deductible.

contained in defendant's investigation report.

CONCLUSIONS OF LAW

{¶15} 1) The traffic gate and the mechanism which governs it is under the exclusive control of defendant. Thus, defendant will be liable for any malfunction which causes damage. *Han v. Traffic Department, Ohio State University* (1981), 81-04575-AD.

{¶16} 2) However, plaintiff has the burden of proving, by a preponderance of the evidence, that the particular traffic gate malfunctioned during normal and intended use. *Saunders v. The Ohio State University* (1993), 93-05245-AD. To make such a showing, plaintiff must produce sufficient evidence or documentation to satisfy the trier of fact. *Saunders*.

{¶17} 3) After review of the plaintiff's complaint, the defendant's investigation report and other evidence in the case file, the court makes the following determination. The court concludes plaintiff has proven his vehicle was damaged by a malfunctioning traffic gate arm located on the premises of the defendant. *Consortium Communications, Inc. v. Ohio Department of Youth Services* (2002), 2002-01420-AD. Therefore, defendant is liable to plaintiff for damages of \$500.00, plus the \$25.00 filing fee, which may be reimbursed as compensable costs pursuant to R.C. 2335.19. See *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.



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ENTRY OF ADMINISTRATIVE
DETERMINATION

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$525.00, which includes the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Reggie Jackson
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RDK/laa
9/6
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