

[Cite as *W. Am. Ins. Co. v. Ohio Dept. of Transp.*, 2008-Ohio-1759.]

Court of Claims of Ohio

The Ohio Judicial Center
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WEST AMERICAN INSURANCE
COMPANY

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2007-05521-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF DISMISSAL

{¶1} On June 7, 2007, plaintiff, Ohio Casualty Group, filed a complaint against defendant, Department of Transportation. On October 19, 2007, plaintiff, West American Insurance Company filed an amended complaint with the use of counsel. Plaintiff alleges that it compensated its insured, Ronald Raifsnider, for damages to his vehicle in the amount of \$643.75, and to Elite Collision and Frame in the amount of \$269.01 and became subrogated to that amount. Plaintiff alleges the subrogated damages were incurred as the result of negligence on the part of defendant.

{¶2} On November 16, 2007, defendant filed a motion to dismiss. In support of the motion to dismiss, defendant stated in pertinent part:

{¶3} “Defendant contends that West American’s claim should be dismissed because West America lacks standing to bring this claim against defendant since West American is not entitled, as a matter of law, to bring this subrogation action. R.C. 2843.02(D) states, in pertinent part:

{¶4} “Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant. ***

{¶5} “This statute makes is clear that a claimant’s award against the state shall be reduced by any benefit received from an insurance policy or other collateral source. As such, it follows that this statute prohibits an insurer from bringing a subrogation claim against the state. *Community Insurance Company v. Ohio Dept. of Transportation* (2001), 92 Ohio St. 376.

{¶6} “West American has asserted a subrogation claim against the defendant. By definition, a subrogee has only those rights its insured has. An insured cannot transfer a right of recovery which such insured does not have. *Grange Mut. Cas. Co. v. Columbus* (1989), 49 Ohio App. 3d 50. Under R.C. 2743.02(D), an insured has no right to recover any amount such insured had received through insurance or other collateral sources. It follow then that the insurer has no subrogation right. *Chemtrol Adhesives, Inc. v. America Mfrs. Mut. Ins. Co.* (1989), 42 Ohio St. 3d 40, paragraph one of the syllabus (an insurer-subrogee cannot succeed to acquire any right or remedy not possessed by its insured-subrogor).”

{¶7} On December 3, 2007, Mary Moriarty filed a notice of substitution of

counsel replacing Eric L. Dauber as counsel for plaintiff. However, plaintiff did not respond to defendant's motion to dismiss.

{¶8} R.C. 2743.02(D) in pertinent part states:

{¶9} "Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant . . ."

{¶10} The Ohio Supreme Court in *Community Insurance Company v. Dept. of Transportation*, 92 Ohio St. 3d 376, 37-379, 2001-Ohio-208, 750 N.E. 2d 573 stated:

{¶11} "We have previously recognized that the state's purpose in waiving political subdivision immunity was twofold: to compensate uninsured victims while also preserving public resources. The 'state can make the rational determination to permit recovery by an unprotected victim but deny subrogation to insurance carriers who can make actuarial computations and adjust premiums to compensate for payments to policyholders who suffer damage at the hands of a political subdivision.' *Menefee v. Queen City Metro* (1990), 49 Ohio St. 3d 27, 29, 550 N.E. 2d 181, 183.

{¶12} "Even if it were appropriate in this case to inquire into legislative intent to resolve a statutory ambiguity, we find no support for concluding that the General Assembly intended that subrogation claims against the state should be treated differently from subrogation claims against political subdivisions. Nor do we believe that R.C. 2743.02(D) was intended to operate in such a way as to shift financial risk to the state and away from insurers, such as Community.

{¶13} "We therefore hold that an insurer who has been granted a right of subrogation by a person on whose behalf the insurer has paid medical expenses incurred as the result of tortious conduct of the state is subject to R.C. 2743.02(D), which mandates reduction of recoveries against the state by the 'aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant.'"

{¶14} Accordingly, in conjunction with the Supreme Court's holding in

Community, I find plaintiff has failed to state a cause of action against the defendant and, accordingly, defendant's motion to dismiss is granted.

{¶15} Having considered all the evidence in the claim file and, for the reasons set forth above, defendant's motion to dismiss is GRANTED. Plaintiff's case is DISMISSED. Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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