

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

JENNIFER ARTHURS

Plaintiff

v.

OHIO UNIVERSITY PARKING SERVICES

Defendant

Case No. 2009-08845-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On either October 19, 2009 or October 23, 2009, plaintiff, Jennifer Arthurs, parked her 2004 Honda Civic at the south green garage under the Nelson dining hall on the campus of defendant, Ohio University. Plaintiff related that she went to the parking garage the next day “I looked at my car to see spots of paint looking markings.” Apparently, plaintiff’s 2004 Honda Civic had been damaged by a caustic liquid substance dripping from pipes on the ceiling of the parking garage. Plaintiff asserted her car was damaged as a proximate cause of negligence on the part of defendant in maintaining a hazardous condition on university premises and she has consequently filed this complaint seeking to recover \$2,002.70, the total cost of automotive repair needed resulting from the described incident. In her complaint, plaintiff provided evidence that she maintains insurance coverage for automotive damage with a \$500.00 deductible provision. The filing fee was paid.

{¶ 2} 2) Defendant filed an investigation stating “Ohio University does not contest liability” in this matter. Defendant pointed out plaintiff carries insurance

coverage for automotive damage with a \$500.00 deductible.

{¶ 3} 3) Plaintiff filed a response expressing her agreement with defendant's position. Plaintiff noted she "will not be filing a claim with the insurance company" to cover her automotive damage expenses. Plaintiff explained she did not want to file an insurance claim because she believed her premiums would increase if she pursued the matter through her insurer.

CONCLUSIONS OF LAW

{¶ 4} 1) Sufficient proof has been offered to establish the damage to the vehicle was proximately caused by negligence on the part of defendant. *Lee v. University of Akron* (1998), 97-12441-AD; *Warren v. University of Akron* (1999), 99-01683-AD; *Miller v. University of Akron* (2001), 2001-04140-AD; *Swigart v. Ohio Univ., Ct. of Cl. No. 2009-01581-AD, 2009-Ohio-2771.*

{¶ 5} 2) R.C. 2743.02(D) provides:

{¶ 6} "(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."

{¶ 7} Also, R.C. 3345.40(B)(2) states in pertinent part:

{¶ 8} "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."

{¶ 9} 3) Defendant is liable to plaintiff for his insurance coverage deductible, \$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:

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RDK/laa
2/23
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