

[Cite as *Moss v. Univ. of Akron*, 2002-Ohio-5399.]

IN THE COURT OF CLAIMS OF OHIO

DENISE M. MOSS	:	
2741 Smith Road	:	
Akron, Ohio 44333	:	Case No. 2002-06189-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
THE UNIVERSITY OF AKRON	:	
Defendant	:	

: : : : : : : : : : : : : : :

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

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FINDINGS OF FACT

{¶1} On June 11, 2002, plaintiff, Denise M. Moss, parked her car in a designed parking space adjacent to the student services building on the campus of defendant, University of Akron. Plaintiff related she was subsequently informed by defendant's personnel that her car had been damaged when a ladder fell from the roof of the student services building onto the hood of plaintiff's vehicle. University police were contacted and a report of the ladder falling incident was completed. Neither the actual report nor a copy of the report were submitted. Plaintiff maintained she contacted defendant's Risk Management Department and was directed to file a complaint in this court. Plaintiff asserted defendant has admitted liability for the damage to her vehicle, but has

disputed the amount of damages claimed. In her complaint plaintiff originally requested \$1,207.56 or \$920.05 for car repair costs. Plaintiff also sought damages of \$175.00 for car rental expenses and \$25.00 for filing fee reimbursement. Plaintiff acknowledged she carries insurance for her vehicle with a \$500.00 deductible provision.

{¶2} Defendant filed a document captioned "Investigation Report." Defendant made the following responses in reference to plaintiff's claim:

{¶3} "Defendant neither admits nor denies Plaintiff's claim of damage.

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

{¶5} Plaintiff's complaint, at item #14, seeks damages in the amount of \$1,120.00, plus \$175.00 for car rental and \$25.00 or a claim report.

{¶6} Plaintiff sets forth a deductible amount under his insurance policy of \$500.

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

{¶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 benefits shall be deducted from any award against the state university or college recovered by the plaintiff.'

{¶9} 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.

{¶10} Defendant submits that in the event this Court finds for the Plaintiff, it is appropriate to award an amount of \$700.00 (the deductible plus the car rental and cost for claim report which are not covered by insurance) in addition to court costs."

{¶11} Defendant did not file any additional documents. Defendant did not offer any further contentions.

{¶12} Plaintiff filed a response. Plaintiff expressed her willingness to accept \$700.00 in damages as total compensation for her loss.

{¶13} After considering the facts of this case, plaintiff has established negligence on the part of defendant. *Faulkner v. University of Akron* (1998), 98-06240-AD. Defendant is liable to plaintiff in the amount of \$700.00 with consideration to the damage limiting factors provided in R.C. 3345.40(B)(2).

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

{¶15} IT IS ORDERED THAT:

{¶16} 1) Plaintiff's claim is GRANTED and judgment is rendered in favor of the plaintiff;

{¶17} 2) Defendant (University of Akron) pay plaintiff (Denise M. Moss) \$700.00 and such interest as is allowed by law;

{¶18} 3) Court costs are assessed against defendant.

DANIEL R. BORCHERT  
Deputy Clerk

RDK/laa  
9/25  
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