

[Cite as *Rust v. Miami Univ.*, 2005-Ohio-1248.]

IN THE COURT OF CLAIMS OF OHIO

MICHAEL GENE RUST :
Plaintiff :
v. : CASE NO. 2005-01226-AD
MIAMI UNIVERSITY : MEMORANDUM DECISION
Defendant :
: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) On January 10, 2005, plaintiff, Michael Gene Rust, filed a complaint against defendant, Miami University, alleging his automobile was damaged as a result of negligence on the part of defendant's employee in conducting lawn maintenance activity on University grounds.

{¶ 2} 2) Plaintiff sought damages in the amount of \$408.11, his cost for automotive repair. Plaintiff acknowledged he carries insurance coverage for automotive property damage with a \$500.00 deductible provision. The \$25.00 filing fee was paid.

{¶ 3} 3) On January 31, 2005, defendant filed an investigation report admitting liability for plaintiff's property damage, but asserting his recovery should be limited to his collateral source recovery.

CONCLUSIONS OF LAW

{¶ 4} 1) Defendant was charged with a duty to exercise reasonable care for the protection of plaintiff's property while performing lawn maintenance. In regard to the facts of this claim, negligence on the part of defendant has been shown. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v.*

Ohio National Guard (1979), 78-0342-AD;

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

{¶ 6} 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.

{¶ 7} Thus, pursuant to the statutory requirement of R.C. 3345.40(B)(2), compensation for the automotive repair expenses is subject to available collateral sources.

{¶ 8} 3) Plaintiff has suffered damages in the amount of \$408.11, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

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MICHAEL GENE RUST	:	
Plaintiff	:	
v.	:	CASE NO. 2005-01226-AD
MIAMI UNIVERSITY	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

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

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 \$433.11, which includes the filing fee. Court costs are

assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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Plaintiff, Pro se

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