

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

MARK W. POSTEL

Plaintiff

v.

OHIO UNIVERSITY

Defendant

Case No. 2010-12320-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶ 1} 1) On October 26, 2010, plaintiff, Mark Postel, sustained property damage to his automobile while the vehicle was parked on a lot owned and operated by defendant, Ohio University. Specifically, the car suffered damage to the electrical system when the parking lot flooded after a heavy rain. Apparently, plaintiff parked his vehicle over the storm drain which had been clogged with debris allowing rain water to back up and flood the lower portion of plaintiff's car. Plaintiff pointed out he maintains insurance coverage for the vehicle with a \$500.00 deductible. The filing fee was paid.

{¶ 2} 2) Plaintiff filed an amended complaint seeking to recover \$ 525.00, the cost of his insurance deductible and reimbursement of the filing fee.

{¶ 3} 3) On January 3, 2011, defendant submitted an investigation report wherein defendant does not oppose plaintiff's claim for reimbursement of property damage.

CONCLUSIONS OF LAW

{¶ 4} 1) Defendant was charged with a duty to exercise reasonable care for

the protection of plaintiff's property. The facts of the present claim indicate defendant knew or should have known about the clogged drain and the foreseeable hazards presented from this condition. In regard to the facts of this claim, negligence on the part of defendant has been shown. *Hails v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2001-05634-AD, *Laskey v. Univ. of Toledo*, Ct. of Cl. No. 2005-06490, 2005-Ohio-3975.

{¶ 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 shall be limited to \$ 500.00, plaintiff's stated insurance deductible.

{¶ 8} 3) Plaintiff has suffered damages in the amount of \$ 500.00, 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, 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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Athens, Ohio 45701

George T. Wendt
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SJM/laa
3/23
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