



# 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

ELIZABETH MILENKOVICH

Plaintiff

v.

OHIO DEPT. OF TRANSPORTATION

Defendant

Case No. 2011-06129-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶1} Plaintiff, Elizabeth Milenkovich, filed this action against defendant, Department of Transportation (ODOT), contending that her 2010 Buick Enclave was damaged as a proximate result of negligence on the part of ODOT in performing painting operations in a construction area on Interstate 77 in Cuyahoga County. Plaintiff requested damages in the amount of \$269.37, the cost to repair the damaged areas of her vehicle. The \$25.00 filing fee was paid.

{¶2} On June 2, 2011, plaintiff submitted photographs of the damage and requested they be made a part of her complaint. The request is deemed to be a motion to add additional evidence and is GRANTED.

{¶3} ODOT filed an investigation report requesting that plaintiff's claim be dismissed, advising that the claim was paid and settled by ODOT contractor, A&A Safety, Inc. Defendant provided a copy of check number 53905 issued to plaintiff on June 3, 2011, by A&A Safety, Inc., in the amount of \$269.37. Consequently, defendant pointed out plaintiff's entire damage claim was covered by a collateral source and is

{¶4} subject to the provisions of R.C. 2743.02(D).<sup>1</sup> ODOT stated “[i]n sum, defendant respectfully requests that the present action be dismissed because plaintiff has been fully compensated by a collateral source.” Defendant did not address reimbursement of the filing fee paid by plaintiff.

#### CONCLUSIONS OF LAW

{¶5} Plaintiff has the burden of proving, by a preponderance of the evidence, that she suffered a loss and that this loss was proximately caused by defendant’s negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. However, “[i]t is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, he fails to sustain such burden.” Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, 30 O.O. 415, 61 N.E. 2d 198, approved and followed.

{¶6} Defendant has the duty to maintain its highways in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335, 3 O.O. 3d 413, 361 N.E. 2d 486. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189, 678 N.E. 2d 273; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723, 588 N.E. 2d 864.

{¶7} Plaintiff has the burden of proof to show her property damage was the direct result of failure of defendant’s agents to exercise ordinary care in conducting roadway painting operations. *Brake v. Ohio Department of Transportation* (2000), 99-12545-AD. In the instant claim, sufficient evidence has been submitted to show plaintiff’s vehicle was damaged as a result of negligent acts or omissions on the part of defendant’s agents. However, any damage claim plaintiff is entitled to receive is subject to the collateral source recovery provision of R.C. 2743.02(D). Therefore, defendant is not liable for any damages claimed but is liable for the \$25.00 filing fee which may be reimbursed as compensable costs. See *Bailey v. Ohio Department of Rehabilitation*

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<sup>1</sup> R.C. 2743.02(D)

“(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

*and Correction* (1990), 62 Ohio Misc. 2d 19, 587 N.E. 2d 990.

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apply under those circumstances.”



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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 \$25.00, which represents the filing fee. Court costs are assessed against defendant.

DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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SJM/laa

6/21

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