

[Cite as *Am. Natl. Property & Cas. Co. v. Ohio Dept. of Transp.*, 2016-Ohio-5061.]

AMERICAN NATIONAL PROPERTY AND  
CASUALTY COMPANY

Plaintiff

v.

OHIO DEPARTMENT OF  
TRANSPORTATION

Defendant

Case No. 2016-00176-AD

Clerk Mark H. Reed

MEMORANDUM DECISION

{¶1} On March 8, 2016, American National Property and Casualty Company (hereinafter “plaintiff”), on behalf of Jeffrey Fischer, brought this action against the Ohio Department of Transportation (hereinafter “ODOT”) to recover damages which allegedly occurred as a result of Mr. Fischer’s vehicle striking an exposed manhole cover while he was traveling on North 4<sup>th</sup> Street in Columbus, Franklin County, Ohio on October 6, 2015. The complaint alleges that the vehicle belonging to Fischer suffered damages in the amount of \$1,247.70, of which the plaintiff paid Fischer the sum of \$747.70 as Fischer’s automobile collision policy had a \$500.00 deductible provision.

{¶2} On March 16, 2016, ODOT filed a Motion to Dismiss the within complaint. As grounds for this Motion, ODOT argues that the plaintiff lacks standing to bring what is in reality a subordination action against a state agency. In particular, ODOT points to ORC 2743.02(D) which requires that all recoveries against the state be reduced by insurance proceeds, disability awards, or other collateral sources. As authority for this position, ODOT cites the case of *Community Insurance Company v. Ohio Department of Transportation* (2001), 92 Ohio St.3d 376, which held that in light of the above statute, that an insurer is prohibited from bringing a subrogation claim against the state.

{¶3} The Court finds the Motion by ODOT to be well taken. Present Ohio law is absolutely clear that a matter such as that advanced here by the plaintiff in their

complaint is not actionable and is barred by the plain language of ORC 2743.02(D). Therefore, the complaint filed March 8, 2016 is hereby DISMISSED.

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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 defendant. Court costs shall be absorbed by the Court.

MARK H. REED  
Clerk

Entry cc:

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