

IN THE COURT OF CLAIMS OF OHIO

MAHLE BEHR DAYTON, LLC., et al.

Plaintiffs

v.

OHIO BUREAU OF WORKERS'
COMPENSATION

Defendant

Case No. 2021-00706JD

Judge Dale A. Crawford

DECISION

{¶1} This matter is before the Court on Defendant's Motion for Summary Judgment. Defendant issued several rebates to employers due to a surplus of earned premiums over losses. Plaintiffs allege in their Complaint that when Defendant issued the rebates Defendant did not correctly apply the premium rebate formula to the claim loss reimbursements paid by Plaintiffs who participated in the large deductible premium programs. As a result Plaintiffs maintain they incorrectly received smaller rebates than companies that participated in the retrospective rating programs. Plaintiffs bring unjust enrichment and equal protection claims.

{¶2} In its Motion for Summary Judgment, Defendant argues that Plaintiffs' claims regarding the 2012 and 2013 rebates are time barred, Plaintiffs' Complaint fails to state a legal claim, Defendant was not unjustly enriched, Plaintiffs' implicit request for a declaratory judgment fails, Defendant is precluded from liability under the discretionary function doctrine, and Plaintiffs' equal protection claims fail because they are not similarly situated to employers participating in the other program and Defendant had a rational basis. Defendant's Motion for Summary Judgment is now before the Court for a non-oral hearing pursuant to Civ.R. 56 and L.C.C.R. 4. For the reasons set forth below, Defendant's Motion will be granted.

Standard of Review

{¶3} Civ.R. 56(C) states, in part, as follows:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

{¶4} “[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim.” *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 662 N.E.2d 264 (1996). A “movant must be able to point to evidentiary materials of the type listed in Civ.R. 56(C).” *Id.* “If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied.” *Keaton v. Gordon Biersch Brewery Rest. Group*, 10th Dist. Franklin No. 05AP-110, 2006-Ohio-2438, ¶ 15.

{¶5} When the moving party makes a properly supported motion for summary judgment, the adverse party may not rest upon the mere allegations or denials in the pleadings but “by affidavit or as otherwise provided in [Civ.R. 56] must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.” Civ.R. 56(E). In seeking and opposing summary judgment, parties must rely on admissible evidence and evidentiary material as provided in Civ.R. 56(E). *Keaton* at ¶ 18. The court must resolve all doubts and construe the evidence in favor of the nonmoving party. *Pilz v. Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 04AP-240, 2004-Ohio-4040, ¶ 8.

Facts

{¶6} In support of its Motion Defendant submitted an affidavit describing the process of issuing rebates and authenticating various documents. With their Memorandum Contra Plaintiffs submitted affidavits from individuals who worked on Plaintiffs' finances and further documents.¹ The evidence submitted, viewed in a light most favorable to Plaintiffs, shows the following:

{¶7} The Ohio Bureau of Worker's Compensation Fund (Fund) is intended to be revenue neutral. (Sendelbach Affidavit, ¶ 3.) For the policy years ended on June 30, 2012, June 30, 2013, and June 30, 2016, Defendant's Board of Directors determined that there was a surplus larger than necessary to safeguard the solvency of the private employers' state insurance fund. (Sendelbach Affidavit, ¶ 5.) Accordingly, the Board of Directors approved rebates to participating Ohio private employers. (Sendelbach Affidavit, ¶ 5.) The total rebate amount was approximately \$1 billion for each of policy years 2012, 2013, and 2016. (Sendelbach Affidavit, ¶ 7.) The rebates were issued in the subsequent years: 2013, 2014, and 2017. (Sendelbach Affidavit, ¶ 7.)

{¶8} There are multiple workers' compensation programs in which private employers can participate. Two programs at issue in this case are the large deductible program and the individual retrospective rating program. Both Plaintiffs participated in the large deductible program. (Sendelbach Aff., ¶ 9.) MAHLE Behr Dayton LLC (MAHLE Behr) participated therein for the July 1, 2015 to June 30, 2016 policy year; CPC Parts Delivery LLC (CPC Parts) participated therein from July 1, 2011 through at least June of 2022. (Tompkins Aff., ¶ 2; Case Aff., ¶ 2.)

{¶9} Defendant's employee, Michael Sendelbach, described the large deductible program thus:

Employers in the large deductible program pay a guaranteed premium, which offers the certainty of a preset, fixed cost over a future coverage period. A guaranteed premium policy is prospective, calculated prior to the policy taking effect, and charges the employer a predetermined, fixed rate for coverage throughout the policy term. The guaranteed policy is

¹ Along with Plaintiffs' evidence submitted in opposition to Defendant's Motion for Summary Judgment, it appears that Plaintiffs inadvertently submitted a subpoena from a civil case in Licking County Court of Common Pleas. The subpoena was not considered in rendering this decision.

unaffected by claims experience during the coverage period. However, claims experience during the policy year may affect the premium charged in subsequent policy years. BWC's deductible program offers an up-front premium discount since program participants agree to take on a per claim deductible.

(Sendelbach Aff., ¶ 10.)

{¶10} The other program at issue in this case is the individual retrospective rating program. Sendelbach described the retrospective program thus:

Retrospective coverage has a loss-sensitive premium, with the final premium calculation performed at the close of the coverage period. In a retrospective policy, the employer assumes a portion of the risk in exchange for a reduction in premium. The exact cost of a retrospective premium for any policy year cannot be determined until the end of the policy's term when claims experience can be tallied. BWC charges an initial, estimated premium for a retrospective policy that can be adjusted to a minimum or maximum premium calculated by a pre-set formula that factors in claims experience during the policy year.

(Sendelbach Aff., ¶ 13.)

{¶11} When Defendant calculated the rebates for employers participating in the various programs, for each of the three rebates, it used different formulas to calculate the rebates for the different programs. "Because deductibles are not defined as premiums, when calculating the rebates for all the large deductible plan participants, in each of the rebate years, the BWC Board of Directors did not use the deductible amount when determining the premium rebates to the large deductible plan participants, including Plaintiffs." (Sendelbach, ¶ 12.)

Law and Analysis

{¶12} Defendant asserts that there is no genuine issue of material fact and it is entitled to judgment as a matter of law on Plaintiffs' unjust enrichment and equal protection claims. Defendant first argues that Plaintiffs' claims for larger 2012 and 2013 rebates are time barred by R.C. 2743.16(A). Second, Defendant argues that none of

Plaintiffs' claims are plead as legal claims over which this Court has jurisdiction. Third, Defendant argues that Plaintiffs' unjust enrichment claims should be dismissed because Plaintiffs cannot establish the elements of an unjust enrichment claim.

{¶13} Because it concerns this Court's jurisdiction, the Court shall begin by addressing Defendant's second argument.

Subject Matter Jurisdiction

{¶14} Defendant argues that this Court does not have jurisdiction over Plaintiffs' equal protection and unjust enrichment claims. The Tenth District Court of Appeals has held that "claims alleging violations of due process and/or equal protection are not actionable in the Court of Claims." *Hamilton v. Ohio Dept. of Rehab. and Corr.*, 10th Dist. Franklin No. 06AP-916, 2007-Ohio-1173, ¶ 14. Therefore, the Court is bound by mandatory authority to dismiss Plaintiffs' equal protection claims.²

{¶15} Regarding Plaintiffs' unjust enrichment claims, this Court has jurisdiction over unjust enrichment claims that sound in law. See *Cirino v. Ohio Bur. of Workers' Comp.*, 153 Ohio St.3d 333, 2018-Ohio-2665, 106 N.E.3d 41 (holding that Cirino's unjust enrichment claim sounded in law, not equity, and thus fell within the jurisdiction of the Court of Claims). Defendant's argument that Plaintiffs plead their unjust enrichment claims as equitable claims—despite arguing in another court that they were plead there as legal claims—is unpersuasive. As the Second District Court of Appeals held, Plaintiffs' unjust enrichment claims sound in law. Therefore, they fall within the jurisdiction of this Court.

Statute of Limitations

{¶16} Defendant argues that Plaintiffs' claims for larger 2012 and 2013 rebates are time barred by R.C. 2743.16(A). Revised Code 2743.16(A) establishes the statute of limitations for claims against the state in the Court of Claims: "civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced

² Even if the Court had jurisdiction to consider the merits of Plaintiffs' equal protection claims, the Court believes that the materials provided to the Court exemplify a rational basis for treating the worker's compensation programs differently.

no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties.” R.C. 2743.16(A). “Generally, a cause of action accrues at the time the wrongful act is committed.” *Mason v. Bowman*, 10th Dist. Franklin No. 09AP-995, 2010-Ohio-2325, ¶ 9, citing *Harris v. Liston*, 86 Ohio St.3d 203, 205, 1999-Ohio-159, 714 N.E.2d 377 (1999).

{¶17} Plaintiffs’ causes of action for their unjust enrichment claims based on the 2012 and 2013 rebates accrued when the rebates were disbursed in 2013 and 2014, respectively. It is at that time that Defendant allegedly unjustly retained or failed to distribute the full amount of rebate Plaintiffs claim they should have received. Plaintiff MAHLE Behr filed its original complaint in the Montgomery County Court of Common Pleas in 2018. (Bickel Aff., ¶ 11.) Plaintiff CPC Parts filed an intervening complaint in that action on May 31, 2019. (Bickel Aff., ¶ 11.) Therefore, both Plaintiffs filed their original actions against Defendant well beyond the two-year statute of limitations, as concerns the 2012 and 2013 rebates. Accordingly, summary judgment will be granted to Defendant on Plaintiffs’ unjust enrichment claims based on the 2012 and 2013 rebates.

Elements of Unjust Enrichment

{¶18} Defendant argues that Plaintiffs cannot establish the elements of an unjust enrichment claim. “To succeed in a claim for unjust enrichment, the trial court must find: ‘(1) a benefit conferred by the plaintiff on the defendant, (2) knowledge of the benefit by the defendant, and (3) retention of the benefit by the defendant in circumstances where it would be unjust to do so.’” *Longmire v. Danaci*, 2020-Ohio-3704, 155 N.E.3d 1014, ¶ 32 (10th Dist.), quoting *Lundeen v. Smith-Hoke*, 10th Dist. No. 15AP-236, 2015-Ohio-5086, ¶ 51.

{¶19} When Defendant decided to distribute rebates out of \$1 billion of excess money for policy year 2016, it created a metaphorical pie of money. Defendant then cut slices of the \$1 billion pie, sized according to the calculation methods to which Plaintiffs object, and distributed them to the participating private employers. Defendant fully distributed the pie; Plaintiffs do not assert that Defendant kept any of the \$1 billion that Defendant decided to distribute as rebates. Therefore, even though the money that

Defendant designated for rebates may be partly composed of the premiums paid to Defendant by Plaintiffs, Defendant has not retained any of that money.

{¶20} Plaintiffs argue that Defendant unjustly retained its premiums. If Defendant had used the formula to calculate rebates for both the individual retrospective rating program and large deductible program, then Plaintiffs would have each gotten a bigger slice of the metaphorical pie. And, correspondingly, the private employers enrolled in the individual retrospective rating program would have gotten smaller slices of pie. However, the inverse is also true: if Plaintiffs were given what they assert are too small of pieces, then the employers in the individual retrospective rating program received too large of pieces. Put more simply, Defendant did not retain any benefit; it instead distributed any such benefit to other employers.

{¶21} Plaintiffs' allegations do not meet the elements of a claim for unjust enrichment. Therefore, the Court will grant summary judgment to Defendant on Plaintiffs' unjust enrichment claims stemming from the rebate for policy year 2016.

Declaratory Judgment

{¶22} Defendant argues that Plaintiffs implicit request for a declaratory judgment fails because Plaintiffs fail to state a legal claim for relief. The Court notes, initially, that Plaintiffs did not explicitly request a declaratory judgment. Plaintiffs' Complaint does not contain the words "declaratory judgment," nor do Plaintiffs explicitly request declaratory judgment in their request for relief. However, Plaintiffs' Complaint states that Defendant interpreted the relevant statutes and administrative code provisions incorrectly and unconstitutionally.

{¶23} This Court does not have jurisdiction to declare that a statute or a provision of the administrative code is unconstitutional. *Estate of Tokes v. Dept. of Rehab. and Corr.*, 10th Dist. Franklin No. 18AP-723, 2019-Ohio-1794, ¶ 9, 20 (holding that a claim challenging the constitutionality of a statute was not actionable in the Court of Claims). Therefore, to the extent that Plaintiffs implicitly request for the Court to declare unconstitutional a statute or administrative code provision, or Defendant's interpretation of either, this Court lacks jurisdiction to consider such a request for relief.

{¶24} Defendant also advances several other arguments why it should be granted summary judgment on Plaintiffs' claims. However, because the Court concludes that all of Plaintiffs' claims should be dismissed or summary judgment thereon should be granted to Defendant for the reasons set forth above, the Court will not address Defendant's remaining arguments.

Conclusion

{¶25} Construing the evidence most strongly in Plaintiffs' favor, the Court finds that there are no genuine issues of material fact relevant to the arguments Defendant presents in its Motion for Summary Judgment. This Court does not have jurisdiction over Plaintiffs' equal protection claims or any implicit request in Plaintiffs' Complaint for a declaratory judgment regarding the constitutionality of any statutes or Ohio Administrative Code provisions. Therefore, the equal protection claims will be dismissed without prejudice. The Court will grant summary judgment to Defendant on Plaintiffs' unjust enrichment claims because, as explained above, they are barred by the statute of limitations or fail to set forth a claim for unjust enrichment. In conclusion, Defendant's motion shall be granted in full.

DALE A. CRAWFORD
Judge

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JUDGMENT ENTRY

{¶26} A non-oral hearing was conducted in this case upon Defendant's Motion for Summary Judgment. For the reasons set for in the decision filed concurrently herewith, Defendant's Motion for Summary Judgment is GRANTED. Plaintiffs' equal protection claims are DISMISSED without prejudice. The Court GRANTS summary judgment to Defendant on Plaintiffs' unjust enrichment claims. Court costs are assessed against Plaintiffs. The Clerk shall serve upon all parties notice of this judgment and its entry upon the journal.

DALE A. CRAWFORD
Judge