

[Cite as *In re White*, 2006-Ohio-2163.]

IN THE COURT OF CLAIMS OF OHIO

VICTIMS OF CRIME DIVISION

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IN RE: CORLISS D. WHITE	:	Case No. V2005-80541
CORLISS D. WHITE	:	<u>OPINION OF A THREE-</u>
Applicant	:	<u>COMMISSIONER PANEL</u>
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{¶ 1} On September 24, 2004, the applicant filed a supplemental compensation application seeking reimbursement of expenses incurred with respect to a November 19, 2003 hit and skip incident. On April 5, 2005, the Attorney General granted the applicant an award in the amount of \$366.38 for unreimbursed economic loss. On April 26, 2005, the applicant filed a request for reconsideration. On July 1, 2005, the Attorney General issued a Final Decision indicating that the previous decision warranted no modification. On July 20, 2005, the applicant filed a notice of appeal to the Attorney General's Final Decision. Hence, this matter was heard before this panel of three commissioners on December 7, 2005 at 10:30 A.M.

{¶ 2} Neither the applicant nor anyone on her behalf appeared at the hearing. Attorney General Jim Petro, Assistant Attorney General Jonathan Bowman, and Assistant Attorney General Alice Robinson-Bond attended the hearing and presented testimony, exhibits, and oral argument. Mr. Petro provided an opening statement concerning his internal policy for compensating those persons injured as a result of hit and skip incidents. He also gave some legislative background concerning the passage of R.C. 2903.08, aggravated vehicular assault and

vehicular assault. He argued it was the General Assembly's intent to cover hit-skip accidents under this statutory provision.

{¶ 3} Sergeant Joe Dyer of the Los Angeles County Sheriff's Department testified concerning DUI and hit and skip statistics in California. Tilde Bricker, a Victim Services Specialist with MADD, testified that alcohol related accidents were reduced by 50 percent when open container laws were enacted. Jill Atkins, the mother of Ryan Hewitt, testified that her son was severely injured by a hit and run driver. Dan Eddy, Executive Director of National Association of Crime Victim Compensation Boards, testified that most states now compensate those persons injured as a result of hit and skip incidents, but he also noted that most states include that particular provision within the state statute. Brigette Charles, a captain with the Ohio State Highway Patrol, testified that there are a variety of reasons why a driver would leave the scene of an accident. Randall Snider, a detective with the City of Whitehall, testified that he believes that most hit and skip incidents are alcohol related, but also noted that there are a number of reasons why an individual would leave the scene of a collision. Mr. Snider noted that a hit and skip driver can behave negligently or recklessly.

{¶ 4} Mr. Bowman stated in his closing argument that the current victims' statute warrants no modification, because hit and skip incidents fall squarely within the listed motor vehicle exceptions contained in R.C. 2743.51(C)(1). Mr. Bowman asserted that a hit and skip motorist acts recklessly when he injures someone and leaves the scene of the incident.

{¶ 5} From review of the file and with full and careful consideration given to all the information presented at the hearing, this panel makes the following determination. We find that

this applicant fails to qualify as a victim of criminally injurious conduct under any of the motor vehicle exceptions listed in R.C. 2743.51(C)(1).

{¶ 6} In July of 1990, the Ohio General Assembly amended R.C. 2743.51(C)(1) to include four motor vehicle exceptions. Currently, an injured party who qualifies as a victim of criminally injurious conduct, as the term is defined in R.C. 2743.51(C)(1), may participate in the program.

{¶ 7} Revised Code 2743.51(L) states:

(L) "Victim" means a person who suffers personal injury or death as a result of any of the following:

- (1) Criminally injurious conduct;
- (2) The good faith effort of any person to prevent criminally injurious conduct;
- (3) The good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct.

{¶ 8} R.C. 2743.51(C)(1) states:

(C) "Criminally injurious conduct" means one of the following:

(1) For the purposes of any person described in division (A)(1) of this section, any conduct that occurs or is attempted in this state; poses a substantial threat of personal injury or death; and is punishable by fine, imprisonment, or death, or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle, except when any of the following applies:

(a) The person engaging in the conduct intended to cause personal injury or death;

- (b) The person engaging in the conduct was using the vehicle to flee immediately after committing a felony or an act that would constitute a felony but for the fact that the person engaging in the conduct lacked the capacity to commit the felony under the laws of this state;
- (c) The person engaging in the conduct was using the vehicle in a manner that constitutes an OVI violation;
- (d) The conduct occurred on or after July 25, 1990, and the person engaging in the conduct was using the vehicle in a manner that constitutes a violation of section 2903.08 of the Revised Code.

{¶ 9} Based upon the above, if an injury or death is caused by the use of a motor vehicle, no criminally injurious conduct occurs unless the offending driver, while using the motor vehicle: 1) intended to cause personal injury or death; 2) was fleeing after committing a felonious act; 3) was driving under the influence of alcohol and/or drugs; or 4) was engaging in conduct (recklessness), on or after July 25, 1990, that constituted a violation of R.C. 2903.08 (aggravated vehicular assault and vehicular assault). The four exceptions to the motor vehicle exclusion are separate and distinct provisions.

{¶ 10} In *In re Ward*, V04-61136tc (4-8-05), 2005-Ohio-2581, the panel denied the claim of a person injured as a result of a hit and skip incident. The panel stated that:

“Victims of hit and run accidents typically do not qualify as victims of criminally injurious conduct under the motor vehicle exception, since the offending driver is almost never captured and therefore no evidence of the offender's intent, possible fleeing due to prior felonious conduct, or alcohol and/or drug use can usually be obtained. Although the Attorney General recently announced a change in his policy concerning victims of hit and run accidents under the Ohio Victims of Crime Compensation Program, we however note that such changes, in order to be lawful and effective, must be made by the Ohio General Assembly and not administratively by the Attorney General. Therefore, even though we believe Mr. Ward should be compensated by the program and is a true victim of crime, this panel is nevertheless bound by the law that excludes Mr. Ward from the program.

The Attorney General should petition the legislature to amend the statute retroactively to allow Mr. Ward and other similarly situated to qualify for compensation under the victim's program.” *Id. at 6.*

{¶ 11} On July 27, 2005, the court affirmed the panel's decision and stated that there is no authority to support the Attorney General's finding that persons injured in motor vehicle collisions caused by a hit and skip motorist qualify as victims of criminally injurious conduct. *In re Ward*, V04-61136jud (7-27-05), 2005-Ohio-4231.

{¶ 12} At the present time there is no remedy available for people who are injured in a hit and run accident unless one of the aforementioned exceptions applies. While worthy of consideration, the evidence offered by the Attorney General's office to support the applicant's claim is speculative at best and, therefore, does not rise to the standard required for the applicant to prevail. It is within the sole discretion of the legislature to amend the statute.

{¶ 13} Moreover, it should be noted that one would expect the applicant to argue the position taken by the Attorney General. Should the panel embrace the Attorney General's proposed additional exception, it would blatantly ignore those people in similar circumstances who may find themselves dealing with a different Attorney General and a different internal policy, that being to impose the law as it stands.

{¶ 14} While sympathetic to hit-skip victims and while the Attorney General presented a very thoughtful and well reasoned argument to find that hit-skip accidents are compliant with the present statute, we find otherwise and rely on *Ward*. As much as this panel might wish to encourage the legislature to establish new parameters for eligibility for an award of reparations by modification of R.C. 2743.52(C)(1) in accordance with the present Attorney General's

internal policies, we must find that no actual evidence was presented to demonstrate that the offending motorist engaged in conduct listed in the statute to permit this applicant to qualify as a victim of criminally injurious conduct. The offender was not captured and there were no witnesses to the accident. Therefore, we are bound to conclude that the July 1, 2005 decision of the Attorney General shall be affirmed and the claim denied.

THOMAS H. BAINBRIDGE
Commissioner

CLARK B. WEAVER, SR.
Commissioner

LLOYD PIERRE-LOUIS
Commissioner

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IT IS THEREFORE ORDERED THAT

- 1) The Attorney General's December 2, 2005 motions for telephone testimony are hereby GRANTED;
- 2) The July 1, 2005 decision of the Attorney General is AFFIRMED, albeit pursuant to R.C. 2743.52(A);
- 3) This claim is DENIED and judgment is rendered for the state of Ohio;

- 4) Costs are assumed by the court of claims victims of crime fund.

THOMAS H. BAINBRIDGE
Commissioner

CLARK B. WEAVER, SR.
Commissioner

LLOYD PIERRE-LOUIS
Commissioner

ID #\1-dld-tad-121405

A copy of the foregoing was personally served upon the Attorney General and sent by regular mail to Cuyahoga County Prosecuting Attorney and to:

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