

IN THE COURT OF CLAIMS OF OHIO

PAMELA MCGUIRE, et al. :
 14650 U.S. 50 :
 Chillicothe, Ohio 45601 : Case No. 2002-03830-AD

Plaintiffs : MEMORANDUM DECISION

v. :

OHIO DEPT. OF PUBLIC SAFETY :

Defendant :

: : : : : : : : : : : : : : :

For Defendant: Colonel Kenneth L. Morckel, Superintendent
 Ohio State Highway Patrol
 P.O. Box 182074
 Columbus, Ohio 43218-2074
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FINDINGS OF FACT

{¶1} On October 31, 2001, a motor vehicle collision occurred involving a car owned by defendant, Department of Public Safety, and a truck owned by Michael W. McGuire and operated by plaintiff, Adam McGuire. This complaint was subsequently filed whereby plaintiffs sought to recover out-of-pocket expenses for vehicle repairs resulting from the October 31, 2001 collision.

{¶2} Defendant has requested the instant claim be dismissed since the damages of plaintiff, Pamela McGuire, have been paid through the state self-insurance program. Defendant submitted a copy of a check issued to plaintiff, Pamela McGuire.

CONCLUSIONS OF LAW

{¶3} 1) R.C. 2743.16(B) states:

{¶4} "(B) If a person suffers injury, death, or loss to person

or property from the operation of an automobile, truck, motor vehicle with auxiliary equipment, self-propelling equipment or trailer, aircraft, or watercraft by an officer or employee of the state while engaged in the course of his employment or official responsibilities for the state, the person or the representative of that person or of the estate of that person shall attempt, prior to the commencement of an action based upon the injury, death, or loss, to have the claim based upon that injury, death, or loss compromised by the state or satisfied by the state's liability insurance.

{¶5} "If the state, upon a request of the person or of his or his estate's representative to compromise such a claim, does not compromise the claim within a reasonable time after the request is made and at least sixty days prior to the expiration of the applicable period of limitations for commencement of an action based upon the injury, death, or loss, or if the amount of the claim is in excess of the state's liability insurance coverage, the person or his or his estate's representative may commence an action in the court of claims under this chapter to recover the claim or the unpaid amount of the claim from the state. Neither the person nor his or his estate's representative shall commence an action against the officer or employee to recover damages for the injury, death, or loss until after he commences the action in the court of claims against the state and the action in that court is terminated. If the court of claims determines that the state is not liable for the injury, death, or loss caused by the officer's or employee's operation of the automobile, truck, motor vehicle with auxiliary equipment, self-propelling equipment or trailer, aircraft, or watercraft, the person or his or his estate's representative is not prohibited by this division from commencing an action against the officer or employee to recover the claim or the unpaid amount of the claim based upon the injury, death, or loss.

{¶6} "If a person or his or his estate's representative attempts, pursuant to this division, to have a claim compromised by the state or satisfied by the state's liability insurance, and if the state determines not to compromise the claim, the state's liability insurance will not cover the claim, or the claim is in excess of the state's liability insurance coverage, then the state shall so notify the person or his or his estate's representative in writing. The notice shall be provided as soon as possible after the state determines not to compromise the claim or it is determined that the state's liability insurance will not cover either the claim or the entire claim."

{¶7} 2) R.C. 2743.02(D) states in pertinent part:

{¶8} "(D) Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant."

{¶9} The reimbursement from the state self-insurance program represents a collateral recovery.

{¶10} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶11} IT IS ORDERED THAT:

{¶12} 1) Plaintiffs' claim is DENIED and judgment is rendered in favor of defendant;

{¶13} 2) Court costs are assessed against plaintiffs.

DANIEL R. BORCHERT
Deputy Clerk