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IN THE COURT OF CLAIMS OF OHIO

DARLENE LANE FERRARO,)
)
 Plaintiff,)
) **ORIGINAL**)
 vs.)
)
 THE OHIO STATE UNIVERSITY)
 MEDICAL CENTER)
)
 Defendant.)

CASE NO. 2011-10371

JUDGE ALAN C. TRAVIS

PLAINTIFF'S REPLY
REGARDING AUTHORITY TO
ISSUE IMMUNITY
DETERMINATION

REPLY

Plaintiff, Darlene Lane Ferraro, individually and as the fiduciary of the Estate of Junior Lee Lane, Deceased, submits this Reply in accordance with this Court's entry of May 16, 2012. Defendant, Ohio State University Medical Center, submitted a Brief Regarding Authority to Issue Immunity Determination on June 25, 2012 ("Defendant's Brief") which explores at length whether Dr. Rolf Barth is entitled to immunity with regard to the fatal automobile accident he had caused in Cuyahoga County. That analysis is largely immaterial, as Dr. Barth is not a defendant in these proceedings. While he has been sued in connection with the accident in Cuyahoga County, that lawsuit has been stayed pending a resolution of the instant proceedings in the Court of Claims. *Cuyahoga C.P. Case No. 733430.*

Likewise, there appears to be little point to Defendant's discussion of the collateral benefit offsets that are available through R.C. §2743.02(D) and §3345.40(B)(2). That topic can be broached if and when an award of damages is imposed against Defendant.

ON COMPUTER

Although difficult to decipher, Defendant appears to be in agreement that under R.C. §2743.02(A)(1), the state can be held derivatively liable for Dr. Barth's negligence

if he was operating his vehicle in the course and scope of his employment with The Ohio State University Medical Center. Plaintiff agrees that this fact-intensive issue must be resolved by this Court. If Dr. Barth is found to have been driving his Mercedes “manifestly” outside the course and scope of his employment, then the waiver set forth in R.C. §2743.02(A) will have no application. If he was fulfilling a state function at the time, however, then Defendant can be held liable in this Court.

As he acknowledged during his deposition, Dr. Barth was merely driving to a Cleveland Clinic Foundation seminar at the time of the fatal accident. *Deposition of Rolf F. Barth M.D. taken December 6, 2011 pp. 16-17, pertinent portions attached as Exhibit A.* The session was not scheduled to start until the next day and he was spending the night in a hotel. *Id., p. 15.* Dr. Barth was utilizing his own personal automobile. *Id., 13-14.* A legitimate factual disagreement therefore exists over whether he was acting in the course and scope of employment at the time of the collision, which requires further investigation and a final adjudication.

CONCLUSION

For the foregoing reasons, this Court possess jurisdiction to determine whether Dr. Barth was acting in the course and scope of his employment at the time of the accident and, if so, whether his negligence entitles Plaintiff to a recovery of damages against Defendant. *R.C. §2743.02(F)*.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Reply** has been served by regular U.S. Mail, on this 3rd day of July, 2012 upon:

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- 1 A. Yes, it was.
- 2 Q. And this accident occurred on what
3 roadway?
- 4 A. Interstate on I-71 northbound.
- 5 Q. And do you know what was the closest exit
6 you had passed south of the accident scene before the
7 accident?
- 8 A. I believe it was Brookview.
- 9 Q. Brook Park Road?
- 10 A. It could have been.
- 11 Q. Okay. Do you recall passing a Snow Road
12 before the accident?
- 13 A. I do not.
- 14 Q. Do you know what city the accident
15 happened in?
- 16 A. Brook Park I believe.
- 17 Q. And at the time of the accident, what kind
18 of vehicle were you driving?
- 19 A. A Mercedes Benz C240.
- 20 Q. And how long had -- Was that your own
21 personal vehicle?
- 22 A. It's my own vehicle.
- 23 Q. As part of your employment with The Ohio
24 State University, do they provide you with a vehicle

1 as well or no?
2 A. No.
3 Q. Are you reimbursed mileage on behalf of
4 The Ohio State University?
5 A. If I had chosen to be reimbursed, I could
6 have been reimbursed. I do not choose to be
7 reimbursed.
8 Q. Okay. Do you choose to be reimbursed
9 normally as part of your job duties?
10 A. For?
11 Q. Mileage.
12 A. For mileage?
13 Q. Yes.
14 A. Local mileage, no.
15 Q. Okay. How about non local mileage?
16 A. Rarely.
17 Q. Okay.
18 A. Because I -- I don't use my car for
19 anything other than basically a -- what would be a
20 short trip.
21 Q. Sure. Let's say in 2009 to the present.
22 A. Yes.
23 Q. Have you ever sought reimbursement for
24 mileage from The Ohio State University?

- 1 A. No, I have not.
- 2 Q. So there's a pro -- There's a process in
3 place that would allow you to do it?
- 4 A. Yes, there is.
- 5 Q. And I take it you -- Well, you're paid
6 like a flat cents per mile?
- 7 A. I know exactly what it is.
- 8 Q. What is it?
- 9 A. It's 52 cents a mile, because we had a
10 visitor that just came here today.
- 11 Q. And what you're saying is that any time,
12 say, from January 1 of '09 to the present, you've
13 never sought reimbursement for mileage?
- 14 A. To the best of my recollection, no.
- 15 Q. Did you -- The night of the accident, did
16 you stay in Cleveland; or did you return to Columbus?
- 17 A. I stayed in Cleveland.
- 18 Q. Okay. Where did you stay that evening?
- 19 A. At the Ritz.
- 20 Q. And were you reimbursed for your stay at
21 the Ritz?
- 22 A. That was provided by the organizer of the
23 meeting.
- 24 Q. Okay. Were you reimbursed for any

1 expenses in traveling to Cleveland by The Ohio State
2 University for the trip that you were involved in
3 when the accident occurred?

4 A. No, I was not.

5 Q. No expense reimbursement?

6 A. None.

7 Q. And are there measures here in place at
8 The Ohio State University if the trip is taken for
9 business purposes that would allow you to be
10 reimbursed?

11 A. Yes, it would.

12 Q. And that includes mileage, lodging if it's
13 incurred and meals?

14 A. Yes.

15 Q. And what you're saying is your lodging was
16 picked up by another organization?

17 A. Correct. Yes. And the meals as well.

18 Q. All right. And your mileage, you chose
19 not to be reimbursed?

20 A. Yes.

21 Q. And what organization hosted you in
22 Cleveland?

23 A. It was the Cleveland Clinic.

24 Q. And what type of function was going on

1 that you attended?

2 A. It was a meeting on direct delivery of
3 drugs to the brain.

4 Q. And was this a -- some type of -- Well,
5 describe what type of event it was, if you could.

6 A. It was an international meeting.

7 Q. Okay.

8 A. And there were approximately 50
9 participants.

10 Q. So 50 attendees?

11 A. There may have been more attendees, but --

12 Q. Okay. And these would be physicians
13 throughout the world?

14 A. Yes.

15 Q. Okay. And was this in your -- within your
16 specialty or --

17 A. Yes.

18 Q. -- within various subspecialties?

19 A. In my special research interest.

20 Q. Okay. And then was the meeting scheduled
21 to take place the next day following the accident
22 that --

23 A. Yes, it was.

24 Q. Did you attend the meeting?

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July 3, 2012

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Attn: Clerk of Courts

FILED
COURT OF CLAIMS
OF OHIO
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Re: **Ferraro v. The Ohio State University Medical Center,**
Court of Claims of Ohio, Case No. 2011-10371

Dear Sir/Madam:

Enclosed please find an original plus two copies of Plaintiff's Reply Regarding Authority to Issue Immunity Determination. Please file these documents in your customary manner and return a time-stamped copy back to my office in the enclosed self-addressed stamped envelope. *ja*

Very truly yours,



Paul W. Flowers

PWF/cls
Enclosure

Cc: Jeffrey L. Maloon, Esq. (w/enclosure)
Shawn R. Pearson, Esq., Esq. (w/enclosure)
Mitchell A. Weisman, Esq. (w/enclosure)