

ORIGINAL

COURT OF CLAIMS
OF OHIO

IN THE COURT OF CLAIMS
FOR THE STATE OF OHIO

2014 JUN -9 AM 11: 12

WILLIAM ANDREW CAMPBELL	:	CASE NO. 2013-00502
Plaintiff	:	Mag. Anderson M. Renick
vs.	:	PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT (Proposed First Amended Complaint Attached Hereto)
THE OHIO DEPARTMENT OF NATURAL RESOURCES	:	
Defendant	:	

Now comes the Plaintiff, William Andrew Campbell, pursuant to Rule 15(A) of the Ohio Rules of Civil Procedure, who hereby request this court for leave to file a first amended complaint, a copy of which is attached hereto. The purpose of filing the first amended complaint is to join the Ohio Bureau of Workers' Compensation as a party defendant in light of its potential subrogation status under R.C. 4123.931(I). Plaintiff will be requesting this court to formally determine the BWC subrogation status as it applies to an employer intentional tort claim.



Mark B. Weisser
Attorney for Plaintiff
600 Vine Street, Suite 1920
Cincinnati, Ohio 45202
513-721-3236

ON COMPUTER

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion was sent to the following by U.S. mail

service this the 5 day of June, 2014.

Brian M. Kneafsey, Jr.
Assistant Attorney General
Court of Claims Defense Section
150 E. Gay Street, 18th Floor
Columbus, Ohio 43215



Mark B. Weisser (0023676)
Attorney for Plaintiff

**IN THE COURT OF CLAIMS
FOR THE STATE OF OHIO**

WILLIAM ANDREW CAMPBELL	:	CASE NO. 2013-00502
476 Warren Avenue	:	
Portsmouth, Ohio 45663	:	Mag. Anderson M. Renick
	:	
Plaintiff	:	
	:	PLAINTIFF'S FIRST
vs.	:	AMENDED COMPLAINT
	:	
THE OHIO DEPARTMENT OF	:	
NATURAL RESOURCES	:	
2045 Morse Road	:	
Columbus, Ohio 43229-6693	:	
	:	
and	:	
	:	
OHIO BUREAU OF WORKERS'	:	
COMPENSATION	:	
30 West Spring Street	:	
Columbus, Ohio 43215-2256	:	
	:	
Defendants	:	
	:	

COUNT ONE

1. On or about August 29, 2011, Plaintiff William Andrew Campbell was employed as a natural resource specialist for the Defendant The Ohio Department of Natural Resources (hereinafter referred to as ODNR)
2. Specifically, Plaintiff William Andrew Campbell was employed at Shawnee State Park located in Scioto County, Ohio. His primary job duties involved maintenance and

- agricultural work at the golf course located at the Shawnee State Park.
3. William Andrew Campbell was hired on March 18, 2011. On or about August 29, 2011, William Andrew Campbell was instructed by his supervisor, Matthew Bourne, to seed the fairway on the No. 9 hole at the Shawnee State Park Golf Course. He was instructed to use a John Deere 1070 tractor with an attached Jacobsen slit seeder.
 4. While performing his job task during the morning of August 29, 2011, William Andrew Campbell exited the tractor to check on the seed levels of the Jacobsen slit seeder. After this was done, Plaintiff William Andrew Campbell attempted to clean dirt/sod off the slit seeder where it attached to the John Deere tractor. During this cleaning process, William Andrew Campbell's sweatshirt became entangled in an unguarded portion of the slit seeder near the point of its connection with the PTO shaft of the John Deere tractor.
 5. Immediately after the clothing of William Andrew Campbell became tangled in the PTO shaft/Jacobsen slit seeder, William Andrew Campbell sustained traumatic injuries to his left arm and hand. At the time that William Andrew Campbell sustained his injuries, he was left hand dominant. The aforementioned injuries resulted in the complete amputation of William Andrew Campbell's left hand and several other injuries throughout his left arm and body.
 6. William Andrew Campbell has undergone over ten surgical procedures addressing the injuries he sustained on August 29, 2011. He has incurred medical expenses presently totaling \$175,000.00. He has incurred a complete loss of income and has sustained a permanent loss of his income earning capacity. He has incurred psychological trauma. His physical and psychological injuries are permanent. William Andrew Campbell has sustained extensive pain and suffering and will continue to do so in the future.
 7. Prior to August 29, 2011, the Defendant, The Ohio Department of Natural Resources, by and

through its employees and agents, engaged in several unsafe acts which proximately caused the injuries sustained by William Andrew Campbell. Specifically, the seat on the John Deere 1070 tractor that he was operating was wired to bypass the safety feature. Specifically, the John Deere 1070 tractor was designed so that when an operator stood up from the seat, the power to the tractor would be disengaged. This safety feature was disabled and bypassed so that when William Andrew Campbell stood up from the seat of the John Deere 1070 tractor on August 29, 2011, the power was not disengaged.

8. The ODNR, through its employees and agents, also removed at least three guards from the Jacobsen slit seeder. These included guards involving the PTO shaft, the gear box on top of the aerator, as well as the seeder itself. The removal of these guards proximately caused the injuries sustained by William Andrew Campbell.
9. The aforementioned acts in Paragraphs seven and eight were performed by the Ohio Department of Natural Resources without the knowledge of the Plaintiff, William Andrew Campbell. These acts in bypassing safety devices and/or guards and the actual removal of guards were the proximate cause of the injuries sustained by William Andrew Campbell.
10. As a result of the aforementioned conduct, The Ohio Department of Natural Resources committed an intentional tort as defined by R.C. 2745.01 of the Ohio Revised Code.

WHEREFORE, plaintiff prays for damages against Defendant Ohio Department of Natural Resources for compensatory damages in an amount greater than \$25,000.00, together with interest, costs, and such further relief as he may be entitled to.

COUNT TWO

11. Plaintiff hereby reiterates Count One through Ten of this Complaint as if fully rewritten herein.

12. ORC 4123.931(I)(3) provides for subrogation on behalf of the Bureau of Workers' Compensation with respect to intentional tort claims. Accordingly, the Ohio Bureau of Workers' Compensation may have a statutory subrogation claim in this matter.

WHEREFORE, Plaintiff William Andrew Campbell prays the Ohio Bureau of Workers' Compensation be joined as a party to determine whether such a subrogation claim exists, and if so, for what amount.

COUNT THREE

13. Plaintiff hereby reiterates Count One through Twelve of this Complaint as if fully rewritten herein.

14. Pursuant to Rule 57 of the Ohio Rules of Civil Procedure, as well as R.C. 2721.01, Plaintiff requests a declaratory judgment be entered by this court to the effect that the subrogation claim by the Ohio Bureau of Workers' Compensation as codified in O.R.C. 4123.931((I)(3) does not apply in employer based intentional tort cases. This is for the reason that an employer is not a third party (as defined by the Ohio Workers' Statute 4123.93). The Bureau of Workers' Compensation is only entitled to assert subrogation claims against third parties pursuant to statute.

15. The Plaintiff further contends that O.R.C. 4123.931(I)(3) is unconstitutional. The section which provides for subrogation in employer intentional tort claims violates plaintiff's equal protection rights and due process rights as codified in the Constitution of the State of Ohio and the United States

WHEREFORE, Plaintiff requests a declaratory judgment from this court finding that the Ohio Bureau of Workers' Compensation does not have rights of subrogation as to Plaintiff's cause of action for an employer based intentional tort.

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2014 JUN 9 AM 11:11
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June 3, 2014

Court of Claims
Clerk of Courts
Ohio Judicial Center
65 S. Front Street
Columbus, Ohio 43215

RE: *Campbell v. The Ohio Department of Natural Resources*

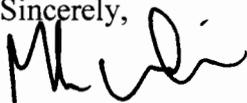
Dear Sir or Madam:

Enclosed please find the original and two copies of the Plaintiff's Motion For Leave To File First Amended Complaint and Plaintiff's First Amended Complaint for filing on behalf of my client, William Andrew Campbell.

If you would please send me a filed copy of these pleadings, it would be greatly appreciated.

A self addressed envelope enclosed for your convenience. Thank you for your attention to this matter. Should you have any questions or concerns, please call me.

Sincerely,



Mark B. Weisser

MBW/jb
Enc.