

ORIGINAL

FILED
COURT OF CLAIMS
OF OHIO

2014 JUN 19 PM 3: 32

IN THE COURT OF CLAIMS OF OHIO

WILLIAM ANDREW CAMPBELL

Plaintiff,

v.

OHIO DEPARTMENT OF NATURAL
RESOURCES

Defendant.

:
: Case No. 2013-00502
:
: Judge Patrick M. McGrath
:
: Magistrate Anderson M. Renick
:
:
:
:
:

**MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE
TO FILE FIRST AMENDED COMPLAINT**

Plaintiff Campbell alleges that on August 29, 2011, he put his hand into the moving parts of seed slitting machine while he was working at Shawnee State Park, a golf course located on the premises of the defendant Ohio Department of Natural Resources ("ODNR"). At the time of his accident, Mr. Campbell was an employee of ODNR. (see Complaint) Plaintiff has since received payments from the Bureau of Worker's Compensation (BWC) for his alleged injuries. Plaintiff's current motion is an attempt to bring Ohio Bureau of Workers' Compensation (BWC) into this action as he believes BWC has a "potential subrogation interest" to be a "real party in interest" and indispensable to this action. Plaintiff's motion is without merit and should be denied.

Plaintiff essentially argues that BWC, as a subrogee, is a real party in interest, and thus is a proper party for what would be an involuntary joinder. Plaintiff couches his argument by attempting to name BWC as a party defendant, when, in fact, they would be a party plaintiff, claiming subrogation from ODNR. While the reasoning for this motion is unknown (and none is really stated in the legally unsupported seven line motion), it is believed to present a waste of the court's time and resources to include BWC as a party to litigation for which they would have no

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role. Since plaintiff, in his motion, cites no law related to the facts and circumstances of this action, and it is premature, his motion should be denied.

As the Court is aware, this matter was bifurcated per the Court's January 8, 2014 entry. Because of that, damages will not be addressed until/if plaintiff prevails at the liability trial scheduled to begin on October 6, 2014. Plaintiff's motion should be denied on the grounds alone that it is grossly premature.

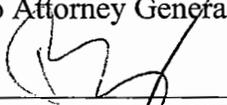
What plaintiff is really attempting to do by its "Motion for Leave to File First Amended Complaint" is to have BWC intervene as what would have to be a party plaintiff. Thus, the current plaintiff would have one state entity suing another in the Court of Claims. In *Ohio Dept. of Human Services v. Ohio Dept. of Transportation*, 78 Ohio App. 3d 658 (10th Dist. 1992), the Tenth District Court of Appeals held that the Department of Human Services (DHS) could not recover in its subrogation claim against two other state departments to recover medical expenses paid by DHS. The court concluded all the parties were members of the 'state' and that it is "axiomatic that a party cannot sue itself." *Id.*, at 661.

Very similar issues (denying BWC from exercising subrogation against another state agency) have recently been decided by this judge and court. *Gugar v. Univ. of Akron*, Ct. of Cl. No. 2010-11129 (Jan. 25, 2013), and *Hansen v. Bowling Green St. Univ.*, Ct. of Cl. No. 2013-00050 (Feb. 11, 2014)

Therefore, for all the reasons stated above, Defendant ODNR respectfully requests that the Court deny plaintiff's motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendant's *Memorandum in Opposition...*
was sent by regular U.S. Mail, postage prepaid, this 19th day of June, 2014 to:

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