

State Ex Rel., Rosanna L. Miller,
Relator,

-vs-

Ann E. Beck, Judge, et al.,
Respondents.

Case Number: 15-0087

Original Action in Mandamus

**RESPONDENT OHIO PLAN RISK
MANAGEMENT, INC.'S MOTION
TO DISMISS**

Filing Party: Respondent, The Ohio Plan
Risk Management, Inc.

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Relator

THE OHIO SUPREME COURT

State Ex Rel., Rosanna L. Miller,) Case No. 15-0087
)
Relator,) Judge
)
-vs-) **RESPONDENT OHIO PLAN RISK**
) **MANAGEMENT, INC.'S MOTION**
Ann E. Beck, Judge, et al.,) **TO DISMISS**
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Respondents.) Michael G. Sanderson (0008521)
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) Attorneys for Respondent,
) The Ohio Plan Risk Management, Inc.

* * *

The Ohio Plan Risk Management, Inc. ("Ohio Plan") moves to dismiss the "Amended Writ of Error" ("Amended Writ") filed by Relator on or about January 29, 2015. The Amended Writ incorrectly joins the Ohio Plan as a Respondent without any substantive allegation against the Ohio Plan. As no allegation is made as to why relief would be proper against the Ohio Plan, there is no basis for a claim for relief and the Ohio Plan is entitled to dismissal as a matter of law. If this Court were to read into the Amended Writ any claim against the Ohio Plan as coverage

provider to Bellefontaine, the claims still should be dismissed as Relator lacks standing to assert those claims. This motion is supported by the Affidavit of William Petro and the following memorandum of law.

/s/ Michael G. Sanderson
Michael G. Sanderson
SHUMAKER, LOOP & KENDRICK, LLP

Attorneys for Respondent,
The Ohio Plan Risk Management, Inc.

MEMORANDUM IN SUPPORT

Relator filed an initial "Writ of Error" on January 16, 2015, which was served by Summons on Respondent Judge Beck on or about January 22, 2015. Relator subsequently filed the Amended Writ, which improperly added the Ohio Plan as a Respondent. The Amended Writ, other than naming the Ohio Plan in the caption, does not make a single allegation against the Ohio Plan. As such, the Ohio Plan is entitled to a dismissal for failure to state a claim for relief. Further, to the extent that Relator is suing the Ohio Plan as a self-insured pool for coverages provided to Bellefontaine, Relator lacks standing to assert the claims. For the reasons more fully stated in this memorandum, the Ohio Plan should be dismissed.

The Amended Writ Fails To State A Claim For Relief

The Amended Writ lists the Ohio Plan as a Respondent. This is purportedly the reason for the filing of the Amended Writ, where the first line states that it has been amended "to include OHIO PLAN Risk Management as respondent." The allegations in the Amended Writ relate to actions allegedly taken by Respondent Judge Beck of the Bellefontaine Municipal Court. Further allegations relate to the decision by the Third District Court of Appeals on Relator's previous mandamus action. The prayer for relief asks for a "Writ of Prohibition" issued

to Judge Ann Beck and refers to an unknown counterclaim for damages. There is not one reference to the Ohio Plan in the body of the Amended Writ. The caption merely adds the Ohio Plan as an additional party and lists its contract number by which it provides coverage to Bellefontaine (*see* Affidavit of William Petro, attached as Appendix A).

The verified affidavit does not provide any further cogent information. All of the specific allegations again relate to actions allegedly taken by Judge Beck in the Bellefontaine Municipal Court. There is not one allegation nor reference as to what role conceivably, if any, the Ohio Plan could have played in Relator's litany of events.

The Amended Writ and the Affidavit contain no allegations against the Ohio Plan, and seeks no relief from the Ohio Plan. The Ohio Plan should be dismissed as a matter of law.

Relator Would Have No Standing For Claims Against The Ohio Plan

Alternatively, if the Court were to "read between the lines," that Relator is attempting to assert claims against the Ohio Plan as a coverage provider to Bellefontaine, the Amended Writ should still be dismissed.

The Ohio Plan is a joint self-insured pool formed under R.C. §2744.081 (*see* Petro Affidavit, attached as Appendix A). Prior published opinions in the courts of Ohio have recognized its status as a joint self-insured pool. *See, e.g., Wikstrom v. Hilton* (Lucas Cty. 2003), 2003-Ohio-4725, ¶27; *Ohio Government Risk Management Plan v. County Risk Sharing Authority* (Fulton Cty. 1998), 130 Ohio App.3d 174, *appeal not allowed*, 84 Ohio St.3d 1505 (1999). Coverage provided by the Ohio Plan through its contract with its members, such as Bellefontaine, is analogous to insurance and insurance law is applied in interpreting its terms. *See Ohio Government Risk Management Plan v. County Risk Sharing Authority*, 130 Ohio App.3d at 180.

Ohio law is very clear that a third-party claimant has no standing to assert claims against the insurer of an alleged tortfeasor if the third party is not a party to the contract or an assignee of rights under that contract. *See, e.g., Chitlik v. Allstate Ins. Co.* (Cuyahoga Cty. 1973), 34 Ohio App.2d 193 (plaintiff is not a third-party beneficiary to insurance contract); *Inter-City Auto Sales, Inc. v. Evans* (Cuyahoga Cty. 2011), 2011-Ohio-1378, ¶¶22-24; *Hamrick v. Safe Auto Ins. Co.* (Franklin Cty. 2009), 2009-Ohio-1380, ¶10. The proper course of action for a party to directly proceed against an alleged coverage provider, such as the Ohio Plan, is to first obtain a judgment against the claimed wrongdoer and then file supplemental proceedings. *See McLynes v. Karr* (Franklin Cty. 2004), 2004-Ohio-3597, ¶¶16, 28-29. This same rule would apply to Relator asserting claims against the Ohio Plan. Relator is not a party to the contract between the Ohio Plan and Bellefontaine.

Even if Relator were to make allegations against the Ohio Plan because of its role as providing coverages to Bellefontaine, she would lack standing for those claims and they would be subject to being dismissed as a matter of law. The Ohio Plan requests that this Court enter judgment in its favor, dismissing it as a party.

/s/ Michael G. Sanderson
Michael G. Sanderson
SHUMAKER, LOOP & KENDRICK, LLP

Attorneys for Respondent,
The Ohio Plan Risk Management, Inc.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Respondent Ohio Plan Risk Management, Inc.'s Motion to Dismiss was served this 17th day of February, 2015, by ordinary United States mail upon:

Rosanna L. Miller, Relator
10469 Westfall Road
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Lynnette Dinkler, Esq.
5335 Far Hills Avenue, Suite 123
Dayton, OH 45429
Counsel for Respondent, Ann E. Beck, Judge

/s/ Michael G. Sanderson

Michael G. Sanderson

Attorneys for Respondent,
The Ohio Plan Risk Management, Inc.

THE OHIO SUPREME COURT

State Ex Rel., Rosanna L. Miller,) Case No. 15-0087
)
Relator,) Judge
)
-vs-) **AFFIDAVIT OF WILLIAM PETRO**
)
Ann E. Beck, Judge, et al.,) Michael G. Sanderson (0008521)
) SHUMAKER, LOOP & KENDRICK, LLP
Respondents.) North Courthouse Square
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) E-Mail msanderson@slk-law.com
) Attorneys for Respondent,
) The Ohio Plan Risk Management, Inc.

* * *

STATE OF OHIO)
) **ss:**
COUNTY OF LUCAS)

Being first duly sworn, William Petro states as follows:

1. I am the Claims Manager for Hylant Administrative Services, the third-party administrator of the Ohio Plan Risk Management, Inc.

2. The Ohio Plan Risk Management, Inc., formerly named the Ohio Government Risk Management Plan ("Ohio Plan") is a joint self-insured pool formed under R.C. §2744.081. As a self-insured pool, it provides coverages to its members similar to traditional insurance coverages through a written contract.

3. The City of Bellefontaine was a member of the Ohio Plan pursuant to Contract No. OH1010268-P14, which was in effect as of the date of the alleged activities referenced in the caption of the Amended Writ.

4. Relator is not a party to that contract nor any other contract with the Ohio Plan.
Further affiant sayeth naught.

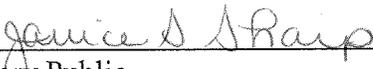


WILLIAM PETRO

Sworn to before me and subscribed in my presence this 13th day of February, 2015.



JANICE S. SHARP
NOTARY PUBLIC - OHIO
MY COMMISSION EXPIRES 02-09-2019



Notary Public