

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE
MIDDLE DIVISION

FILED

AUG 31 2009

Tennessee Claims Commission
CLERK'S OFFICE

LIFEGUARD AMBULANCE SERVICE)
OF TENNESSEE, LLC,)
)
CLAIMANT,)
)
VS.)
)
STATE OF TENNESSEE,)
)
DEFENDANT.)

CLAIM NO. K20090464

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ORDER ON MOTION TO DISMISS

Claimant, Lifeguard Ambulance Service of Tennessee, LLC, ("Lifeguard"), has filed this claim seeking payment for non-emergency transportations services, which it contends it provided to enrollees in TennCare, the State's Medicaid managed care program. Lifeguard alleges that its services were solicited by four Community Service Agencies ("CSAs"), which arranged non-emergency transportation services with Lifeguard over a period of time from January 1, 2003, and December 31, 2007. Lifeguard then submitted claims for payment to the CSAs, to be sent to the appropriate Managed Care Organization (MCO) for payment.

Lifeguard contends, however, that because the CSAs did not submit the claims timely, it was denied payment of \$109,664.79.

In its original complaint, filed March 16, 2009, Lifeguard sued for breach of contract and unjust enrichment, alleging that it had entered into a contract with the State to provide services, which had been breached by the CSAs and that the CSAs had been unjustly enriched by the benefit conferred by Lifeguard, for which it had not been compensated. The State moved to dismiss the original complaint for lack of subject matter jurisdiction because the Claims Commission's jurisdiction over actions for breach of contract is limited to claims for "breach of a written contract between the claimant and the state which was executed by one (1) or more state officers or employees," Tenn. Code Ann. § 9-8-307(a)(1)(L), and because the Commission lacked authority to adjudicate quasi-contract or equitable claims such as unjust enrichment.

In response to the State's motion to dismiss, Lifeguard has abandoned its breach of contract and unjust enrichment claims and has amended its complaint to allege negligent care, custody or control of personal property, Tenn. Code Ann. § 9-8-307(a)(1)(F), as its basis for

recovery. Lifeguard contends that although it forwarded timely and proper claims for payment to the CSAs, they failed to submit its claims to the managed care organizations (“MCOs”) in a timely manner, so that reimbursement could be obtained. The State has moved to dismiss the amended complaint for lack of subject matter jurisdiction. Lifeguard opposes the motion. For the reasons set forth below, the Commission finds that the claim should be dismissed.

FACTUAL BACKGROUND

Lifeguard is an approved provider of transportation services under the TennCare Program and is engaged in the business of providing ambulance transportation to TennCare enrollees. According to Lifeguard, between January 1, 2003 and December 31, 2007, its services were solicited by Community Services Agencies (“CSAs”) responsible for coordinating non-emergency ambulance transportation services for TennCare enrollees. As provided for under Tenn. Code Ann. § 37-5-304, CSAs are state instrumentalities or subdivisions created to coordinate funds or programs for the care of the citizens of the State. Tenn. Code Ann. § 37-5-304.

As a part of this role, the CSAs took intake calls for transportation services and contacted transportation providers to deliver the services to enrollees. Upon completion of service, a transportation provider would submit its claims for reimbursement/payment to the CSA, which it contends was responsible for submitting the claim to the MCO responsible for payment.

According to Lifeguard between January 1, 2003 and December 31, 2007, it provided services to TennCare enrollees at the request of Northeast CSA (formerly known as East Tennessee CSA), Midcumberland CSA, and Southeast CSA, which it alleges coordinated the services. Lifeguard then submitted timely claims for payment for the services to the CSAs. Lifeguard contends, however that because the CSAs failed to timely forward its claims for payment to the proper MCOs, the claims were denied, causing Lifeguard damages of \$109,664.79.

DISCUSSION

I. CLAIMS COMMISSION JURISDICTION

Subject matter jurisdiction concerns the authority of a court to hear a controversy. *Meighan v. U.S. Sprint Commc'ns*, 924 S.W.2d 632, 639 (Tenn.

1996). Subject matter jurisdiction involves the nature of the cause of action and the relief sought, and can only be conferred on a court by constitutional or legislative act. *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000).

When subject matter jurisdiction is at issue, the court must ascertain the nature or gravamen of the pending action. *Brandy Hills Estates, LLC v. Reeves*, 237 S.W.3d 307, 315 (Tenn.Ct.App. 2006). Once that is determined, the court must determine whether the Constitution of Tennessee, the General Assembly, or the common law have conferred the power to adjudicate cases of that sort on the court. *Id.*

The State of Tennessee, as a sovereign, is immune from suit except as it consents to be sued. *Stewart v. State*, 33 S.W.3d 785, 790 (Tenn. 2000). The Claims Commission is a forum of limited jurisdiction and its authority to render damages against the State is limited to claims based on the acts or omissions of state employees, as defined in Tenn. Code Ann. § 8-42-101(3), which fall within certain categories. The categories of claims over which the Claims Commission has jurisdiction are outlined in Tenn. Code Ann. § 9-8-307(a). If a claim falls outside of the categories specified in § 9-

8-307(a), then the state retains its immunity from suit, and a claimant may not seek relief from the State. *Stewart v. State*, 33 S.W.3d 785, 790 (Tenn. 2000). When deciding whether the Commission has jurisdiction to hear a claim under the statute, a liberal construction in favor of jurisdiction must be given, “but only so long as (1) the particular grant of jurisdiction is ambiguous and admits of several constructions, and (2) the ‘most favorable view in support of the petitioner’s claim’ is not clearly contrary to the statutory language used by the General Assembly. *Stewart v. State*, 33 S.W.3d 785, 791.

II. NEGLIGENCE CARE, CUSTODY OF CONTROL OF PERSONAL PROPERTY.

The State argues that Lifeguard’s claim for negligent care, custody, or control of property should be dismissed because its conduct relative to the submission of claims for payment did not constitute care, custody or control within the meaning of Tenn. Code Ann. § 9-8-307(a)(1)(F). It contends that Section 9-8-307(a)(1)(F) pertains to tangible personalty and not to Lifeguard’s allegation that it had an intangible right to have a claim for payment submitted.

Lifeguard argues that, employing the liberal construction required by the Tennessee Supreme Court's decision in *Stewart v. State*, 33 S.W.3d 790 (Tenn. 2000), Tenn. Code Ann. § 9-8-307(a)(1)(F) should be read to include its claim that the CSAs mishandled its claim file documents by failing to submit them to the MCO in a timely fashion, causing payment to be denied. This construction, it argues is supported by *Stewart*, in which the Court held that Tenn. Code Ann. § 9-8-307(a)(1)(F) includes not only claim for damages *to* personal property, but also damages *caused* by negligent care, custody or control of property. *Stewart* at 795.

Although the Claims Commission Act waived the state's immunity for certain categories of claims, it created no new causes of action. As provided for in Tenn. Code Ann. § 9-8-307(c), [t]he determination of the state's liability in tort shall be based on the traditional tort concepts of duty and the reasonably prudent person's standard of care." Tenn. Code Ann. § 9-8-307(c). "No award shall be made unless the facts found by the commission would entitle the claimant to a judgment in an action at law if the state had been a private individual." Tenn. Code Ann. § 9-8-307(d).

While Lifeguard relies upon the decision in *Stewart* as authority for its claim for its losses caused by the denial of payment by the MCOs, *Stewart* was a personal injury claim in which a deputy sheriff alleged, *inter alia*, that a trooper's negligent care, custody or control of a stalled vehicle at an accident scene caused him to be struck by a passing truck. Lifeguard, however, alleges neither personal injury nor property damage. Rather, the basis for its claim is its economic losses occasioned by the CSAs alleged negligence in the submission of its claim for reimbursement to the MCOs. Bodily injury or property damage is an essential element of a claim for negligence. Under the economic loss doctrine, absent privity of contract, one may not recover in negligence where there is no injury to person or property. See *United Textile Workers v. Lear Siegler Seating Corp.*, 825 S.W.2d 83 (Tenn.Ct.App.1990) (holding that industrial park employees could not recover economic damages without physical damage when park was closed due to gas leak allegedly caused by defendant's negligence).

Lifeguard's amended complaint alleges no contractual relationship with the CSAs or the State. Thus, even assuming that section 9-8-307(a)(1)(F) does permit claims against the state for damages caused by the

negligent care, custody or control of personal property by state employees,
the Commission cannot conclude that Lifeguard's claim for purely
economic damages caused by the defendant's negligence is compensable
under this statute. The claim is therefore dismissed.

It is so **ORDERED** this 11th day of August, 2009.



STEPHANIE R. REEVERS
Claims Commissioner

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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This 31st of August, 2009.



Marsha Richeson, Administrative Clerk
Tennessee Claims Commission