

[Cite as *Picciano v. Dept. of Transp.*, 2005-Ohio-2045.]

IN THE COURT OF CLAIMS OF OHIO

VALERIE E. PICCIANO :  
Plaintiff :  
v. : CASE NO. 2005-01439-AD  
DEPARTMENT OF TRANSPORTATION : MEMORANDUM DECISION  
Defendant :

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FINDINGS OF FACT

{¶1} On December 28, 2004, at approximately 3:00 p.m., plaintiff, Valerie E. Picciano, was traveling west on Interstate 90 between State Route 306 and State Route 91, when her automobile struck a huge pothole in the traveled portion of the roadway causing tire and wheel damage to the vehicle. Plaintiff related, after this incident occurred and she pulled her car to the side of the roadway, she noted other stopped disabled vehicles which had apparently sustained damage from the pothole. This damage-causing pothole on Interstate 90 was located between state mileposts 189.40 and 193.89 in Lake County, a length of roadway exceeding four miles.

{¶2} Plaintiff filed this complaint seeking to recover \$523.97, the cost of automotive repair which plaintiff contends she incurred as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the \$25.00 filing fee.

{¶3} Defendant has denied liability based on the fact it had no knowledge of the pothole prior to plaintiff's property damage

occurrence.

{¶4} Plaintiff has not submitted any evidence to indicate the length of time the pothole existed prior to the incident forming the basis of this claim. In a response, plaintiff stated, "there were 4 or 5 other cars at the scene that hit the same pothole I did." Additionally, plaintiff professed, "[n]o one probably filed a claim with the state since they find a way to get out of paying for damages that were caused by poor maintenance." Plaintiff did not produce evidence to establish the damage-causing pothole was the result of poor maintenance on the part of defendant.

{¶5} Defendant has asserted maintenance records show three pothole patching operations were needed in the general vicinity of plaintiff's incident during the seven-week period prior to the December 28, 2004, damage event, including one operation on the day of plaintiff's property damage occurrence.

#### CONCLUSIONS OF LAW

{¶6} Defendant has the duty to maintain its highway in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶7} In order to recover in any suit involving injury proximately caused by roadway conditions plaintiff must prove either: 1) defendant had actual or constructive notice of the pothole and failed to respond in a reasonable time or responded in a negligent manner, or 2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD. Defendant is only liable for

roadway conditions of which it as notice, but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1.

{¶3} Plaintiff has not produced any evidence to indicate the length of time the pothole was present on the roadway prior to the incident forming the basis of this claim. No evidence has been submitted to show defendant had actual notice of the pothole. Additionally, the trier of fact is precluded from making an inference of defendant's constructive notice, unless evidence is presented in respect to the time the pothole appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. Size of the defect (pothole) is insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 297. There is no indication defendant had constructive notice of the pothole. Furthermore, plaintiff has not provided any evidence to infer defendant, in a general sense, maintains its highways negligently or that defendant's acts caused the defective condition. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

{¶4} Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to plaintiff, or that plaintiff's injury was proximately caused by defendant's negligence. Plaintiff failed to show that the damage-causing pothole was connected to any conduct under the control of defendant, or that there was any negligence on the part of defendant or its agents. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD. Consequently, plaintiff's claim is denied.

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CASE NO. 2005-01439-AD

DEPARTMENT OF TRANSPORTATION :

ENTRY OF ADMINISTRATIVE  
DETERMINATION

Defendant :

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Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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For Defendant

RDK/laa  
3/22  
Filed 4/5/05

Sent to S.C. reporter 4/29/05