



{¶ 4} 4) Defendant explained the pothole plaintiff's vehicle struck had been patched by DOT personnel on January 31, 2005. Defendant acknowledged the repair patch deteriorated due to poor weather conditions at sometime between January 31, 2005 and February 8, 2005. Defendant presumed the patch deteriorated at some point "shortly preceding" plaintiff's property event since DOT did not receive any complaints regarding a pothole on State Route 125.

#### CONCLUSIONS OF LAW

{¶ 5} 1) Defendant has the duty to maintain its highways 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.

{¶ 6} 2) In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect (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.

{¶ 7} ) For plaintiff to prevail on a claim of negligence, he must prove, by a preponderance of the evidence, that defendant owed him a duty, that it breached that duty, and that the breach proximately caused his injuries. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285.

{¶ 8} 4) Although liability based on notice of the defects may present an unresolved issue in this claim, plaintiff has proven, by a preponderance of the evidence, that defendant did in a general sense, maintain the highway negligently. *Denis*, supra. The facts have established, on February 8, 2005, plaintiff's car struck a



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