[Cite as *Kim v. Ohio Dept. of Transp.*, 2005-Ohio-3537.]

IN THE COURT OF CLAIMS OF OHIO

TAI KIM	:	
Plaintiff	:	
v.	:	CASE NO. 2005-04411-AD
OHIO DEPT. OF TRANSPORTATION	:	MEMORANDUM DECISION
Defendant	:	

: : : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) At sometime between February 7, 2005 and February 11, 2005, plaintiff, Tai Kim, was traveling east on Interstate 90 around the Clague Road exit (milepost 160.5) in Cuyahoga County, when the automobile plaintiff drove struck many potholes causing damage to the rims of the vehicle. Plaintiff asserted the potholes on Interstate 90 had "been there for quite some time," prior to the described incident.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover $1,638.01, the total cost of automotive repair which plaintiff contends was incurred as a result of negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining the roadway. The $25.00 filing fee was paid on plaintiff's behalf.

{¶ 3} 3) Defendant denied liability based on the fact it professed to have no knowledge of the damage-causing potholes prior to plaintiff's incident. Defendant suggested the potholes plaintiff's car struck probably existed "for only a relatively short amount of time" before plaintiff's incident. Defendant denied receiving any prior complaints about potholes which were

located at milepost 160.5 in Cuyahoga County on I-90.

{¶ 4} 4) Plaintiff did not submit any evidence to establish the length of time the potholes existed prior to the February 2005, property damage event.

{¶ 5} 5) Furthermore, defendant explained DOT employees conduct roadway inspections on a routine basis and had any of these employees detected a roadway defect that defect would have promptly been repaired. Defendant contended, plaintiff did not produce sufficient evidence to prove DOT breached any duty of care owed to the traveling public in respect to roadway maintenance.

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 potholes 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 has notice, but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1.

{¶ 8} Plaintiff has not produced any evidence to indicate the length of time the potholes were present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown defendant had actual notice of the potholes. 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 potholes appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant had constructive notice of the potholes. Plaintiff has not produced 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 potholes.

{¶ 9} 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 potholes were 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.

IN THE COURT OF CLAIMS OF OHIO

TAI KIM :

Plaintiff :

: CASE NO. 2005-04411-AD

OHIO DEPT. 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.

_____
DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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For Defendant

RDK/laa
6/9
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