

employee Jason Brownrigg conducted a roadway inspection of US Route 50 and did not discover any potholes.

{¶ 5} 5) In her response to defendant's investigation report, plaintiff related the pothole her car struck was a previously repaired defect and the repair patch had deteriorated. Plaintiff suggested the damage-causing pothole had been negligently repaired.

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 has notice, but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1. Defendant, in the instant claim, had actual notice of the pothole on US Route 50. Evidence has established DOT had notice of this damage causing defect for multiple hours before plaintiff's incident. Defendant had ample time and opportunity to respond and institute measures to rectify the condition. Plaintiff has proven defendant breached its duty of care to maintain the roadway. Defendant is therefore liable to plaintiff for her property damage based on the actual notice rationale expressed in *Denis*, supra. ¶

