[Cite as *Respress v. Univ. of Akron*, 2005-Ohio-6584.]

IN THE COURT OF CLAIMS OF OHIO

ALEXIA RESPRESS	:	
Plaintiff	:	
v.	:	CASE NO. 2005-06333-AD
THE UNIVERSITY OF AKRON	:	MEMORANDUM DECISION
Defendant	:	

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{¶ 1} On March 9, 2005, plaintiff, Alexia Respress, suffered property damage to her automobile while driving in parking Lot 62 located on the campus of defendant, University of Akron. Specifically, plaintiff maintained the right front bumper, headlamp, and panel on her car were damaged as a result of the vehicle striking to potholes near the entrance of defendant's parking lot. Plaintiff recalled she entered the parking lot at a slow rate of speed because she was already aware of the potholes. Plaintiff noted, "[j]ust after hitting the first pothole my car fell into the second hole and I heard a loud noise." Plaintiff recalled she then parked her car, got out of the vehicle, and made a cursory inspection discovering damage to the automobile bumper on the right front side.

{¶ 2} Plaintiff has contended defendant should be responsible for the cost of repairing her car for the property damage suffered on March 9, 2005. Consequently, plaintiff filed this complaint seeking to recover $500.00, her stated insurance coverage deductible for automotive damage repair. Plaintiff's damage claim for repair expense is limited to her insurance deductible pursuant

to the statutory directive found in R.C. 3345.40(B)(2). The filing fee was paid.

{¶ 3} Defendant denied liability based on the contention that no University of Akron personnel had any knowledge of the potholes in the parking lot prior to plaintiff's March 9, 2005, incident. Defendant asserted regular inspections are conducted of all parking areas on campus grounds. Defendant denies any defects were discovered in Lot 62 prior to plaintiff's damage occurrence. Defendant denied receiving any complaints about any potholes in Lot 62 prior to March 9, 2005. Plaintiff pointed out in her complaint that she was aware of potholes in Lot 62 several weeks before her damage incident.

{¶ 4} In order to sustain an action in negligence, a party must establish three essential elements: duty, breach of the duty, and an injury proximately caused by that breach. *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75. An owner or occupier of premises, such as defendant, has a duty to protect or warn an invitee, such as plaintiff, from or against known or hidden dangers. *Paschal v. Rite Aid Pharmacy* (1985), 18 Ohio St. 3d 203. However, a premises owner has no duty to protect a business invitee against dangers which are known to such invitee or are so obvious and apparent to such invitee that she may reasonably be expected to discover and protect herself against. *Sidle v. Humphrey* (1968), 13 Ohio St. 2d 45.

{¶ 5} Plaintiff, in the instant claim, stated she sustained property damage to her automobile from driving into potholes she had known about for several weeks prior to her damage occurrence. Plaintiff submitted photographs of the potholes in defendant's lot, which can only be considered "open and obvious" defects. The duty to warn arises where the defect is latent. *Paschal*, supra; *Sidle*, supra, paragraph one of the syllabus. Consequently, the "duty to

warn" is inapplicable here where the defects claimed are open and obvious. Furthermore, "[t]he knowledge of the condition removes the sting of unreasonableness from any danger that lies in it, and obviousness may be relied on to supply knowledge. Hence, the obvious character of the condition is incompatible with negligence in maintaining it. If plaintiff happens to be hurt by the condition, he is barred from recovery by lack of defendant's negligence toward him, no matter how careful plaintiff himself may have been." *Sidle*, supra, 48; see, also, *Booker v. Revco DS., Inc.* (1996), 113 Ohio App. 3d 540, 546. Based on plaintiff's prior knowledge of the potholes and the open and obvious nature of the condition of the parking lot, the court concludes defendant was not charged with any duty to protect or warn plaintiff of any danger posed by the known hazards. Owing no duty to plaintiff, defendant cannot be determined negligent. Therefore, plaintiff's claim is denied.

IN THE COURT OF CLAIMS OF OHIO

ALEXIA RESPRESS	:	
Plaintiff	:	
v.	:	CASE NO. 2005-06333-AD
THE UNIVERSITY OF AKRON	:	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:

Alexia Respress
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RDK/laa
11/8
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