

was being conducted. Plaintiff seeks recovery of automotive repair costs in the amount of \$2,257.31. The filing fee was paid.

{¶ 2} 3) Defendant denied any liability in this matter. Defendant explained no DOT personnel were painting roadway centerlines on the highway location plaintiff provided on September 30, 2004. Defendant located the site of plaintiff's incident "at approximately milepost 1.39 on US 23 in Delaware County." Defendant denied any DOT painting operation was conducted on US Route 23 on September 30, 2004. Defendant's records show a pavement centerline marking (painting) was conducted on US Route 23 between mileposts 1.39 and 2.75 on May 17, 2004. Defendant maintained this May 17, 2004, painting activity, "was for white paint" and plaintiff incident was with yellow paint.

{¶ 3} 4) In his response to defendant's investigation report, plaintiff advised he inadvertently provided an incorrect date of the alleged paint overspray occurrence on his complaint. Plaintiff recollected the date his car received paint damage was actually May 17, 2004, the day DOT performed centerline painting on US Route 23 in Delaware County. Plaintiff disputed defendant's assertion that the May 17, 2004, pavement centerline marking operation used only white paint. Plaintiff reasoned centerline marking would include yellow paint which is consistent with the paint damage on his vehicle. Other than his own assertion, plaintiff did not provide substantiating evidence to show he did not receive adequate notice from DOT of any roadway painting activity on US Route 23.

CONCLUSIONS OF LAW

{¶ 4} 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;

journal.

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DRB/RDK/laa
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