

[Cite as *Atkins v. Ohio Dept. of Transp.*, 2004-Ohio-2898.]

IN THE COURT OF CLAIMS OF OHIO

SHAWN E. ATKINS :  
Plaintiff :  
v. : CASE NO. 2004-02385-AD  
DEPT. OF TRANSPORTATION : MEMORANDUM DECISION  
Defendant :

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FINDINGS OF FACT

{¶1} 1) On February 10, 2004, plaintiff, Shawn E. Atkins, was traveling on State Route 103 at milepost 6.8 by the reservoir on State Route 61 in Huron County, when his vehicle struck a broken road reflector laying on the traveled portion of the roadway. Plaintiff stated the tire of his vehicle was damaged as a result of striking the broken reflector.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$155.00, his expense incurred for repairing his truck, plus a claim for filing fees. Plaintiff asserted he incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation, in maintaining the roadway.

{¶3} 3) Defendant has denied liability based on the fact it had no knowledge the defective condition existed prior to plaintiff's incident.

{¶4} 4) On April 8, 2004, plaintiff filed a response to defendant's investigation report. However, plaintiff has not submitted any evidence to indicate the length of time the loosened road reflector was on the roadway surface prior to the February 10, 2004

property damage occurrence.

#### CONCLUSIONS OF LAW

{¶5} 1) Defendant has the duty to keep the roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD.

{¶6} 2) Defendant must exercise due care and diligence in the proper maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD.

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

{¶8} 4) There is no evidence defendant had actual notice of the damage-causing reflector.

{¶9} 5) 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 defective condition (reflector) appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶10} 6) In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the dangerous condition (loosened reflector) appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD.

{¶11} 7) No evidence has shown defendant had constructive notice of the damage-causing reflector.

{¶12} 8) Plaintiff has not submitted any evidence to prove the roadway was negligently maintained.

{¶13} 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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Shawn E. Atkins  
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DRB/RDK/laa  
4/28  
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