[Cite as *Ackerman v. Ohio Dept. of Transp.*, 2004-Ohio-7289.]

IN THE COURT OF CLAIMS OF OHIO

DEBRA ACKERMAN, et al.	:	
Plaintiffs	:	
v.	:	CASE NO. 2004-08022-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	MEMORANDUM DECISION
Defendant	:	

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{¶ 1} On July 13, 2004, at approximately 8:00 p.m., plaintiff, Justin Ackerman, was traveling south on Interstate 275 between the State Route 125 and the Five Mile Road exits near an overpass area, when his automobile struck an area of the roadway where the pavement had buckled. The buckled pavement area was caused by a highway blow up. The automobile received body damage from striking the pavement blow up. Automotive repair costs in the amount of $200.00 were paid by plaintiff, Debra Ackerman, Justin Ackerman's mother. Plaintiffs have asserted the damage to Justin Ackerman's vehicle was proximately caused by negligence on the part of defendant, Department of Transportation (DOT), in maintaining Interstate 275. Plaintiffs related they were informed by DOT personnel that the roadway pavement essentially "exploded" due to hot and humid weather conditions. Consequently, plaintiffs filed this complaint seeking to recover $200.00, the cost of automotive repair needed resulting rom the July 13, 2004, incident. The requisite material filing fee was paid by plaintiff, Debra Ackerman.

{¶ 2} Defendant acknowledged Justin Ackerman damaged his vehicle

when he drove over a roadway pavement blow up on Interstate 275 at milemarker 67.40 in Clermont County or milemarker 35.97 in Hamilton County. However, defendant denied any liability in this matter based on the assertion DOT did not have any notice of the pavement blow up prior to the July 13, 2004, incident forming the basis of this claim. Defendant pointed out the initial criterion for a liability determination in a highway blow up claim is establishing DOT's notice of the defective condition (blow up), see *Knickel v. Ohio Dept. of Transportation* (1976), 49 Ohio App. 2d 335, (general not specific particular notice that a deteriorated roadway condition is likely to occur is the standard for a liability judgment). Defendant also pointed out generalized notice of a highway blow up and resulting liability are shown under circumstances, "where temperatures are extremely hot for extended lengths of time." *Allen v. Department of Transportation* (1996), 95-10297-AD. The likelihood of a blow up occurrence may be substantiated by providing evidence of extreme weather conditions, *Allen*, id. However, weather evidence is not essential to a liability determination in an action for property damage caused by a highway blow up. The temperature at the time of the highway blow up incident in *Allen* was approximately 89°F to 90°F. The maximum relative humidity from July 1 to July 13, 2004, ranged from 90% to 100%.

{¶ 3} Defendant reiterated it did not have actual notice of the highway blow up prior to July 13, 2004. Defendant did not receive any calls or complaints about the blow up prior to Justin Ackerman's property damage event. Defendant contended notice of the blow up cannot be imputed due to the fact temperatures for the month of July 2004, in the Cincinnati, Ohio area were not extremely hot enough for a sufficient length of time to invoke a standard for notice expressed in *Allen*, supra. Defendant asserted plaintiffs

have failed to prove requisite notice and therefore, have failed to establish any liability on the part of DOT for the property damage sustained on July 13, 2004.

{¶ 4} Pavement upheavals or blow ups occur suddenly with little or no advance presage. Highway blow ups can and do occur under weather conditions prevalent in the summer season in the state of Ohio. Such prevalent weather conditions were shown in the instant action. Contrary to defendant's position the key issue to prove liability for highway blow up damages was outlined in *Knickel*, supra. The issue regards generalized notice and generalized foreseeability that blow ups can and do occur and when such a roadway deterioration occurs with resulting damage, DOT is liable for that damage. Plaintiffs have offered sufficient evidence to prove the property damage claimed was proximately caused by defendant's negligence.

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Plaintiffs	:	
v.	:	CASE NO. 2004-08022-AD
OHIO DEPARTMENT 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 plaintiff, Debra Ackerman, in the amount of $225.00, which includes the filing fee.

Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

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RDK/laa
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