



{¶ 3} 3) Defendant filed an investigation report admitting liability for plaintiff's \$500.00 insurance coverage deductible he paid for the automotive repair resulting from the July 14, 2005, property damage occurrence. Defendant contended plaintiff is not entitled to receive any damage award in addition to his insurance coverage deductible amount.

{¶ 4} 4) Despite filing a response, plaintiff has not offered any evidence to establish he suffered any compensable damages other than his insurance coverage deductible and filing fee reimbursement. Plaintiff acknowledged he did not incur expenses for loss of use of his vehicle.

#### CONCLUSIONS OF LAW

{¶ 5} 1) 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; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶ 6} 2) 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.

{¶ 7} 3) 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.

{¶ 8} 4) Plaintiff has proven, by a preponderance of the evidence, negligence on the part of defendant. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD. *Wiswasser v. Ohio Department of Transportation* (2006), 2006-02498-AD.

{¶ 9} 5) As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility* (1988), 61 Ohio Misc. 2d 239.

{¶ 10} 6) The court, pursuant to the limitations of R.C. 2743.02(D), finds defendant liable to plaintiff in the amount of \$500.00, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

IN THE COURT OF CLAIMS OF OHIO

URIAH CONE, SR. :

Plaintiff :

v. :

CASE NO. 2005-09316-AD

OHIO DEPARTMENT OF  
TRANSPORTATION :

ENTRY OF ADMINISTRATIVE  
DETERMINATION

Defendant :

: : : : : : : : : : : : : : : :

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 in the amount of \$525.00, 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

Entry cc:

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