



damage occurrence. Defendant located the damage-causing reflector at about milepost 2.75 on State Route 4 in Butler County. Defendant asserted plaintiff failed to produce any evidence showing how long the uprooted reflector existed prior to 3:30 p.m. on January 1, 2006.

{¶ 4} Defendant denied receiving any calls or complaints regarding the particular reflector before plaintiff's incident. Defendant explained DOT employees were conducting maintenance activities on State Route 4 on December 28, 2005, and did not notice any loose road reflectors. Defendant suggested the loose reflector likely, "existed for only a relatively short amount of time before plaintiff's incident," forming the basis of this claim. Defendant denied DOT employees were negligent in regard to roadway maintenance.

#### CONCLUSIONS OF LAW

{¶ 5} 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} In order to prove a breach of the duty to maintain the highways, plaintiff must prove, by a preponderance of the evidence, that defendant had actual or constructive notice of the precise condition or defect alleged to have caused the accident. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247.

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..

{¶ 7} Plaintiff has not produced sufficient evidence to indicate the length of time the particular pothole was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown defendant had actual notice of the loosened reflector for a sufficient length of time to invoke liability. Additionally, 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 defect appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant had constructive notice of the uprooted reflector. Plaintiff has not produced any evidence to infer defendant in a general sense, maintains its highways negligently or that defendant's acts caused the defective condition. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD.

IN THE COURT OF CLAIMS OF OHIO

CHRIS HUEY	:	
	:	
Plaintiff	:	
	:	
v.	:	CASE NO. 2006-01416-AD
	:	
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>
	:	
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 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:

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Case No. 2006-01416-AD

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MEMORANDUM DECISION

RDK/laa

5/24

Filed 6/20/06

Sent to S.C. reporter 3/16/07