# [Cite as Huey v. Ohio Dept. of Transp., 2006-Ohio-7198.]

#### IN THE COURT OF CLAIMS OF OHIO

CHRIS HUEY :

Plaintiff :

v. : CASE NO. 2006-01416-AD

OHIO DEPARTMENT OF : MEMORANDUM DECISION

TRANSPORTATION

:

Defendant

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

### FINDINGS OF FACT

- {¶1}1) On January 1, 2006, at approximately 3:30 p.m., plaintiff, Chris Huey, was traveling on the "Route 4 bypass in Butler County just north of Tylersville Road" when his automobile tire was struck by a loose road reflector that had been propelled into the path of his vehicle by another motorist. Plaintiff related the reflector was loose laying on the roadway when, "the car in front of me struck the reflector and sent the reflector tumbling," toward his vehicle.
- $\{\P\,2\}\,$ 2) Plaintiff filed this complaint seeking to recover \$132.49, the total cost of a replacement tire. Plaintiff asserted he incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining the roadway. Plaintiff paid the filing fee.
- $\{\P\ 3\}$  3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the loose reflector on the roadway prior to plaintiff's January 1, 2006, property

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}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

- $\{\P 5\}$  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.
- $\{\P 6\}$  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..

 $\{\P 7\}$  Plaintiff has not produced sufficient evidence indicate the length of time the particular pothole was present on the roadway prior to the incident forming the basis of this 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 Spires v. Highway Department (1988), 61 Ohio on the roadway. 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 Transportation (1999), 99-07011-AD.

## IN THE COURT OF CLAIMS OF OHIO

CHRIS HUEY :

Plaintiff :

v. : CASE NO. 2006-01416-AD

OHIO DEPARTMENT OF : ENTRY OF ADMINISTRATIVE

TRANSPORTATION 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 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:

Chris Huey 4408 Raceview Avenue Cincinnati, Ohio 45211 Plaintiff, Pro se

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For Defendant

RDK/laa 5/24 Filed 6/20/06 Sent to S.C. reporter 3/16/07