[Cite as Wiswasser v. Ohio Dept. of Transp., 2006-Ohio-7184.] IN THE COURT OF CLAIMS OF OHIO

BILLY F. WISWASSER, JR.	:	
Plaintiff	:	
ν.	:	CASE NO. 2006-02498-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	MEMORANDUM DECISION
Defendant	:	

## FINDINGS OF FACT

{¶1}1) On February 24, 2006, employees of defendant, Department of Transportation ("DOT"), removed trees from a residence adjacent to property owned by plaintiff, Billy F. Wiswasser, Jr. During the course of the tree removal operation, ODOT workers cut a large tree branch which fell upon plaintiff's concrete sidewalk and porch railing causing substantial property damage. Plaintiff consequently filed this complaint seeking to recover \$1,200.00, representing the estimated cost of repairing his property damage. The filing fee was paid. Photographs of the damaged area were submitted.

 $\{\P 2\}$  2) Defendant admitted liability for the damage to plaintiff's property. However, defendant contended plaintiff's estimate of \$1,200.00 for damage repair was excessive. Defendant offered \$900.00 to settle plaintiff's damage claim.

 $\{\P 3\}$  3) Plaintiff responded with the following narrative. "On February 24, 2006 ODOT State workers damage my side walk and porch railings while removing trees on the State Right-of-way. They left a note explaining the damage to the porch railing but not the sidewalk.

 $\{\P 4\}$  "I noticed the damage to the sidewalk and called them about it. They rudely told me that I would have to sue the state for compensation.

 $\{\P 5\}$  "I filed with the Court of Claims, no where in the instructions does it say to file more than one estimates.

 $\{\P\,6\}$  "On April 19, 2006, ODOT worker Vicki at phone #1-888-644-0308 called me and stated that ODOT would only pay \$600.00 for repairs. This was an unreasonably low offering. I told her that I would send other estimates. She told me that she would get back with me but never phoned again. I will accept the \$900.00 offering but not the \$600.00 offering that she gave me over the phone."

## CONCLUSIONS OF LAW

 $\{\P,7\}$  1) 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.

 $\{\P 8\}$  2) 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.

 $\{\P 9\}$  3) The court finds defendant liable to plaintiff in the amount of \$900.00, 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

BILLY F. WISWASSER, JR.	:	
Plaintiff	:	
V.	:	CASE NO. 2006-02498-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 \$925.00, 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:

Billy F. Wiswasser, Jr. Plaintiff, Pro se 303 West Findlay Street P.O. Box 81 Vaughnsville, Ohio 45893-0081

Gordon Proctor, Director For Defendant Department of Transportation 1980 West Broad Street Columbus, Ohio 43223

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