

# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
www.cco.state.oh.us

JEREMIAH SCOTT WHITE

Plaintiff

v.

OHIO DEPARTMENT OF  
TRANSPORTATION

Defendant

Case No. 2006-05144-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} 1) On January 22, 2006, at approximately 7:00 p.m., plaintiff, Jeremiah Scott White, was traveling “on the entrance ramp from East McMillan St. onto I-71 in Cincinnati Oh,” in Hamilton County, when his automobile struck potholes causing tire damage to the vehicle.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$340.16, the cost of replacement tires. Plaintiff implied the damage to his car was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining the roadway. The \$25.00 filing fee was paid.

{¶ 3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the potholes on the roadway prior to plaintiff’s property damage occurrence. Defendant located the damage-causing potholes on East McMillan Street from mileposts 3.20 to 3.44 adjacent to Interstate 71 in Hamilton County. Defendant asserted plaintiff failed to produce any evidence showing how long the potholes existed prior to the incident forming the basis of this claim.

[Cite as *White v. Ohio Dept. of Transp.*, 2006-Ohio-7316.]

{¶ 4} 4) Defendant denied receiving any calls or complaints regarding the particular potholes before plaintiff's incident. Defendant explained DOT employees conduct roadway inspections, "at least two times a month." Apparently no potholes were discovered during previous roadway inspections. Defendant suggested the potholes likely, "existed for only a short time before the 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 potholes were present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown defendant had actual notice of the potholes 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 potholes appeared on the roadway. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant

had constructive notice of the potholes. 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. Size of the defect (potholes) is insufficient to show notice or duration of existence. *O'Neil v. Ohio Department of Transportation* (1988), 61 Ohio Misc. 2d 287. Therefore, defendant is not liable for any damage plaintiff may have suffered from the potholes.

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ENTRY OF ADMINISTRATIVE  
DETERMINATION

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:

Jeremiah Scott White  
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Plaintiff, Pro se

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For Defendant

RDK/laa  
10/10  
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