

[Cite as *Keener v. Ohio Dept. of Transp., Dist. 4, 2007-Ohio-1992.*]

# 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](http://www.cco.state.oh.us)

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SHERYL D. KEENER

Plaintiff

v.

OHIO DEPARTMENT OF  
TRANSPORTATION, DISTRICT 4

Defendant

Case No. 2006-07686-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶ 1} 1) On November 24, 2006, about 2:30 p.m., plaintiff, Sheryl D. Keener, was traveling west on State Route 153, “approximately 50-100 yards from the 8 mi marker,” when her truck tire was punctured by an uprooted road reflector laying on the traveled portion of the roadway.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$186.35, her expenses incurred for replacing her truck tire and filing costs. Plaintiff asserted she 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.

{¶ 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 November 24, 2006, property damage occurrence. Defendant located the damage-causing reflector at about milepost 8.0 on State Route 153 in Stark County. Defendant asserted plaintiff failed to produce any evidence showing how long the uprooted reflector existed prior to 2:30 p.m. on November 24, 2006.

{¶ 4} 4) Defendant denied receiving any calls or complaints regarding the particular reflector before plaintiff’s incident. Defendant explained DOT employees conduct routine road inspections on State Route 153 and did not notice any loose road reflectors. Defendant suggested the loose reflector likely, “existed in that location 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 incident. *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

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Ohio Misc. 2d 1.

{¶ 7} Plaintiff has not produced sufficient evidence to indicate the length of time the particular defect 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. Ohio 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.

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ENTRY OF ADMINISTRATIVE  
DETERMINATION

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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:

Sheryl D. Keener  
1015 Baier Avenue  
Louisville, Ohio 44641

James Beasley, Director  
Department of Transportation  
1980 West Broad Street  
Columbus, Ohio 43223

RDK/laa  
3/14  
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