

# 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

NANCY REAGAN

Plaintiff

v.

DEPARTMENT OF  
TRANSPORTATION

Defendant

Case No. 2007-04958-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶1} 1) Plaintiff, Nancy Reagan, stated she was traveling east on Interstate 275, “just east of the I-75-275 interchange,” in Cincinnati, when her automobile struck, “many big potholes,” causing substantial damage to the vehicle. The described incident occurred on April 20, 2007.

{¶2} 2) Plaintiff implied her property damage was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining the roadway. Consequently, plaintiff filed this complaint seeking to recover \$891.26, the complete cost of automotive repair she incurred. The filing fee was paid.

{¶3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the pothole plaintiff’s car struck, which defendant located at milepost 43.40 on Interstate 275 in Hamilton County. Defendant denied receiving any calls or complaints about the particular pothole prior to the incident forming the basis of this claim. Defendant suggested, “it is more likely than not that the pothole existed in that location for only a relatively short amount of time before plaintiff’s incident.” Defendant noted the DOT, “Hamilton County Manager conducts roadway inspections on all state roadways within the county on a routine basis, at least one to

two times a month.” Apparently no potholes were discovered at milepost 43.40 on Interstate 275 during the last roadway inspection before April 20, 2007. Defendant denied that DOT employees were negligent in regard to roadway maintenance.

#### CONCLUSIONS OF LAW

{¶4} 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, 3 O.O. 3d 413, 361 N.E. 2d 486. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189, 678 N.E. 2d 273; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723, 588 N.E. 2d 864.

{¶5} 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, 517 N.E. 2d 1388. Defendant is only liable for roadway condition of which it has notice but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1, 31 OBR 64, 507 N.E. 2d 1179.

{¶6} Plaintiff has not produced sufficient evidence to indicate the length of time the particular pothole or 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 pothole. 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 pothole or potholes appeared on the roadway. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. There is no indication defendant had constructive notice of the pothole or 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 or conditions. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD. Size of the defect (pothole) is

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insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 287. 578 N.E. 2d 891. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole or 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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Nancy Reagan  
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RDK/laa  
8/29  
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