

# 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

LINDA S. WALTERS

Plaintiff

v.

OHIO DEPARTMENT OF  
TRANSPORTATION

Defendant

Case No. 2007-07159-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶1} 1) Plaintiff, Linda S. Walters, stated she was driving her 2002 Pontiac Grand AM south on Interstate 270 and as she maneuvered her vehicle to exit at the Georgesville Road exit ramp the automobile struck a “very large and deep pothole” located at the left side of the exit ramp. Plaintiff recalled the described incident occurred at approximately 5:20 p.m. on August 5, 2007. Plaintiff recorded her automobile tire was damaged as a result of striking the alleged roadway defect.

{¶2} 2) Plaintiff implied the property damage to her car was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining a hazardous roadway condition at the Georgesville Road exit ramp from Interstate 270. Plaintiff filed this complaint seeking to recover \$272.59, the cost of replacement parts and repair expenses resulting from the August 5, 2007, property damage event. Plaintiff paid the \$25.00 filing fee and requests reimbursement of that amount along with her damage claim.

{¶3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the damage-causing condition prior to plaintiff’s incident. Defendant denied receiving any calls or complaints about a pothole which DOT located at milepost 4.97 on Interstate 270 in Franklin County. Defendant

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submitted a photograph depicting the roadway entrance ramp area where plaintiff stated her property damage event occurred. The photograph does not depict any pothole or defect on the traveled portion of the roadway. The only area that could be considered defective is an area outside the paved portion of the roadway where the paved roadway berm abuts the unpaved berm. A depression may be observed along the corner of the paved berm well outside the painted yellow line marking the traveled portion of the roadway.

{¶4} 4) Plaintiff filed a response submitting defendant's photographs of the roadway ramp showing the area where she asserted her damage incident occurred. Plaintiff marked a photograph pointing out the area where her car struck the "pothole" at the entrance ramp. The area marked on the photograph shows a section clearly outside the demarcated paved roadway open to travel. Plaintiff stated the Georgesville Road ramp "is notoriously heavy with 2 lanes of cars attempting to merge from I-270 during morning and evening rush hours." Plaintiff explained her decision to drive off the traveled portion of the roadway noting: "There is only a single lane to merge onto. Therefore, those drivers wanting to eventually turn right, merge onto the right berm of the ramp. They do so, because those drivers wanting to turn left are squeezing onto this single lane ramp on the left. In my attempt to merge from the freeway, it was

necessary for me to drive across the slanted lines, to eventually turn left. My driver's side, left front tire was the tire that struck the pothole."

#### CONCLUSIONS OF LAW

{¶15} 1) 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.

{¶16} 2) For plaintiff to prevail on a claim of negligence, she must prove, by a preponderance of the evidence, that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Armstrong v. Best Buy Company, Inc.* 99 Ohio St. 3d 79, 81, 2003-Ohio-2573, 788 N.E. 2d 1088, citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 472 N.E. 2d 707.

{¶17} 3) This court has previously held that the Department of Transportation is not to be held liable for damages sustained by individuals who used the berm or shoulder of a highway for travel without adequate reasons. *Colagrossi v. Department of Transportation* (1983), 82-06474-AD.

{¶18} 4) The shoulder of a highway is designed to serve a purpose which may include travel under emergency circumstances. It is for the trier of fact to determine whether driving on the shoulder is a foreseeable and reasonable use of the shoulder of the highways. *Dickerhoof v. City of Canton* (1983), 6 Ohio St. 3d 128, 6 OBR 186, 451 N.E. 2d 1193. In the case at bar, plaintiff has offered no reasonable explanation or excuse for using the berm of the highway.

{¶19} 5) Plaintiff, in the instant case, has shown no adequate reason for her action of driving on the berm of the highway, consequently, based on the rational of *Colagrossi*, this case is denied. If a plaintiff sustains damage because of a defect located off the marked, regularly traveled portion of a roadway, a necessity for leaving



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MEMORANDUM DECISION

the roadway must be shown. *Lawson v. Department of Transportation* (1977), 75-0612-AD. The explanation given by plaintiff for her choice to drive off the unpaved berm did not support a threshold finding of adequacy or necessity.

{¶10} 6) Travel based on inattention is not an adequate reason or necessity for straying from the regularly traveled portion of the roadway. *Smith v. Ohio Department of Transportation* (2000), 2000-05151-AD. Assuming plaintiff had reason to drive off the roadway she has failed to produce evidence establishing defendant's notice of the defective condition. See *Ryan v. Dept. of Transp.*, Ct. of Cl. No. 2005-11230-AD, jud., 2006-Ohio-7147.

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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:

Linda S. Walters  
2451 Delowe Street  
Grove City, Ohio 43123

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

RDK/laa  
12/18  
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