

# 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

GARY R. BAUER

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 12

Defendant

Case No. 2008-05460-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Gary R. Bauer, related he was driving his 1999 Honda Accord west on Granger Road (State Route 17) when the automobile ran over concrete debris causing tire and rim damage to the vehicle. Plaintiff recalled the described damage incident occurred on February 13, 2008 at approximately 7:30 a.m.

{¶ 2} 2) Plaintiff filed this complaint seeking to recover \$423.97 for automotive repair expense. Plaintiff asserted he incurred these damages as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the filing fee.

{¶ 3} 3) Defendant has denied any liability for plaintiff's damage. Defendant denied having any knowledge of the concrete debris prior to plaintiff's incident. Plaintiff has failed to produce any evidence establishing the length of time the debris condition was on the roadway prior to his property damage occurrence. Defendant conducts routine road inspections in the area of plaintiff's February 13, 2008 property damage

event. Defendant denied receiving any calls or complaints about debris on the roadway at milepost 14.51 on State Route 17 in Cuyahoga County ( the approximate location of plaintiff's damage occurrence). Defendant suggested the debris existed at that location, "for only a relatively short amount of time before plaintiff's incident."

#### 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 recover in a suit involving damage proximately caused by roadway conditions including debris, plaintiff must prove that either: 1) defendant had actual or constructive notice of the debris and failed to respond in a reasonable time or responded in a negligent manner, or 2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD.

{¶ 6} 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, 31 OBR 64, 507 N.E. 2d 1179.

{¶ 7} Plaintiff has not produced any evidence to indicate the length of time the debris condition was present on the roadway prior to the incident forming the basis of this claim. No evidence has been submitted to show defendant had actual notice of the debris. 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 debris appeared on the roadway. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458.

{¶ 8} Finally, 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. Therefore, defendant is not liable for any damage plaintiff may have suffered from the roadway debris.

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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:

Gary R. Bauer  
5203 Cheswick Drive  
Solon, Ohio 44139

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

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Columbus, Ohio 43223

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