

# 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

DEBORAH J. JONES

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2008-08353-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Deborah J. Jones, stated her truck tire was damaged on March 12, 2008 from striking various potholes located between mileposts 76.0 to 40.0 on Interstate 75 in Miami, Montgomery, and Warren Counties.

{¶ 2} 2) Plaintiff asserted her property damage was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in failing to maintain Interstate 75 free of defects. Plaintiff filed this complaint seeking to recover \$174.56, the cost of a replacement tire. The \$25.00 filing fee was paid and plaintiff requested reimbursement of that cost along with her damage claim.

{¶ 3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of potholes on Interstate 75 prior to plaintiff’s property damage event. Defendant asserted no calls or complaints were received regarding potholes on Interstate 75 prior to March 12, 2008. 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 stated if any “ODOT personnel had

detected any defects they would have been promptly scheduled for repair.” Defendant asserted plaintiff failed to prove any negligence on the part of DOT concerning 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} Generally, in order to recover in any suit involving injury proximately caused by roadway conditions including potholes, plaintiff must prove either: 1) defendant had actual or constructive notice of the potholes 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. Plaintiff has not produced any evidence to indicate the length of time the potholes were 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 potholes. 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, 577 N.E. 2d 458. 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.

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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:

Deborah J. Jones  
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RDK/laa  
11/18  
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