

[Cite as *Christ v. Dept. of Transp.*, 2002-Ohio-6409.]

IN THE COURT OF CLAIMS OF OHIO

RALPH CHRIST	:	
445 Sand Run Road	:	
Akron, Ohio 44313	:	Case No. 2002-05361-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
OHIO DEPARTMENT OF	:	
TRANSPORTATION	:	
Defendant	:	

: : : : : : : : : : : : : : : :

For Defendant: Gordon Proctor, Director  
Department of Transportation  
1980 West Broad Street  
Columbus, Ohio 43223  
: : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶1} On April 16, 2002, at approximately 7:40 a.m., plaintiff, Ralph Christ, was traveling west on Interstate 76 between mileposts 13 and 14 in Summit County, when his automobile struck a massive pothole in the traveled portion of the roadway. The pothole caused rim damage to plaintiff's vehicle.

{¶2} Plaintiff filed this complaint seeking to recover \$279.52, the cost of a replacement rim. Plaintiff asserted he sustained these damages as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff has also filed a claim for filing fee reimbursement.

{¶3} Defendant denied liability based on the fact it had no knowledge the pothole existed.

{¶4} Plaintiff has not presented any evidence to indicate the

length of time the pothole was present on the roadway prior to his property-damage occurrence.

{¶5} On October 21, 2002, plaintiff submitted a response to defendant's investigation report.

#### CONCLUSIONS OF LAW

{¶6} Defendant has the duty to keep the roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD.

{¶7} Defendant must exercise due diligence in the maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD.

{¶8} In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect 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.

{¶9} There is no evidence defendant had actual notice of the pothole.

{¶10} 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 defective condition developed. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶11} In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the dangerous condition appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD.

{¶12} No evidence has shown defendant had constructive notice of the damage-causing pothole.

{¶13} Furthermore, plaintiff has failed to show defendant negligently maintained the roadway, despite the fact the specific area of the roadway required nine pothole patching operations in the four month period preceding plaintiff's damage event.

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DANIEL R. BORCHERT  
Deputy Clerk

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RALPH CHRIST :  
445 Sand Run Road  
Akron, Ohio 44313

Plaintiff

v.

OHIO DEPARTMENT OF  
TRANSPORTATION

Defendant

: Case No. 2002-05361-AD  
:  
: ORDER OF ADMINISTRATIVE  
: DETERMINATION  
:  
:  
:  
:

: : : : : : : : : : : : : : : :

For Defendant: Gordon Proctor Director  
Department of Transportation  
1980 West Broad Street  
Columbus, Ohio 43229

: : : : : : : : : : : : : : : :

Having considered all the evidence in the claim file and  
adopting the memorandum decision concurrently herewith;

IT IS ORDERED THAT:

- 1) Plaintiff's claim is DENIED and judgment is rendered in  
favor of defendant;
- 2) The court shall absorb the court costs of this case in  
excess of the filing fee.

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DANIEL R. BORCHERT  
Deputy Clerk