

IN THE COURT OF CLAIMS OF OHIO

HAZEL M. PEARCE	:	
1990 Old Smithfield Road	:	
Goldsboro, NC 27530	:	Case No. 2002-06804-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
DEPT. OF TRANSPORTATION	:	
Defendant	:	

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

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

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FINDINGS OF FACT

{¶1} 1) On June 3, 2002, plaintiff's niece was driving plaintiff's car south bound on State Route 44 just past State Route 87 in Geauga County, when the automobile struck three potholes located on the berm area of the roadway. As a result of striking the potholes plaintiff, Hazel M. Pearce, sustained tire and rim damage to her vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$495.24, the total cost of automotive repair resulting from the damage caused by the potholes. Plaintiff submitted evidence showing she received reimbursement from her insurer in the amount of \$202.00 for car repair. Plaintiff submitted the filing fee with the complaint.

{¶3} 3) Defendant submitted an investigation report denying liability based on the fact the damage causing potholes were

located on the berm area of the roadway.

CONCLUSIONS OF LAW

{¶4} 1) 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 reason. *Colagrossi v. Department of Transportation* (1983), 82-06474-AD.

{¶5} 2) 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 highway. *Dickerhoof v. City of Canton* (1983), 6 Ohio St. 3d 128. In the case at bar, plaintiff has offered no reasonable explanation or excuse for using the berm of the highway.

{¶6} 3) Plaintiff, in the instant case, has shown no adequate reason for the driver's action of driving on the berm of the highway, consequently, based on the rationale of *Colagrossi*, supra, 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 the roadway must be shown. *Lawson v. Jackson* (1977), 75-0612-AD. Inadvertent 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, jud.

{¶7} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶8} IT IS ORDERED THAT:

{¶9} 1) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶10} 2) Court costs are assessed against plaintiff.

DANIEL R. BORCHERT
Deputy Clerk

RDK/laa
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