

[Cite as *Andrews v. Ohio Dept. of Transp.*, 2002-Ohio-7232.]

IN THE COURT OF CLAIMS OF OHIO

MARK ANDREWS	:	
420 Vine Street	:	
McClure, Ohio 43534	:	Case No. 2002-05336-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
OHIO 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} On March 9, 2002, at approximately 3:30 p.m., plaintiff, Mark Andrews, was traveling west on U.S. Route 6 at milepost 19.92 in Henry County, when a falling tree limb struck his automobile causing property damage. Specifically, the windshield and passenger side mirror of plaintiff's vehicle were broken when struck by the falling limb which had dislodged from a nearby tree due to "severe wind." Plaintiff filed this complaint seeking to recover \$309.55, the cost of a replacement windshield and side mirror. Plaintiff has suggested his property damage was proximately caused by negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the filing fee with the complaint.

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{¶2} Defendant has denied any liability in this matter. Defendant has asserted the falling tree limb which caused plaintiff's damage resulted from an "Act of God" and not from a breach of a roadway maintenance duty. Defendant explained severe ice storms with accompanying weather conditions passed through the Henry County area on March 9, 2002.

{¶3} From the evidence presented, the proximate cause of plaintiff's damage was an ice storm with accompanying high winds, which uprooted trees and resulted in a tree branch falling on his car. No evidence has been presented to show defendant negligently maintained the roadway and right-of-way.

{¶4} It is well-settled Ohio law that if an "Act of God" is so unusual and overwhelming as to do damage by its own power, without reference to and independently of any negligence by defendant, there is no liability. *City of Piqua v. Morris* (1918), 98 Ohio St. 42, 49. The term "Act of God," in its legal significance, means any irresistible disaster, the result of natural causes, such as earthquakes, violent storms, lightning and unprecedented floods. *Id.* at 47-48. Accordingly, the storm occurring on March 9, 2002, was strong enough to cause plaintiff's damage by its own power alone as evidenced by the fact many trees in the area were toppled by the storm. Therefore, the court concludes no liability shall attach to defendant for damage done by an "Act of God."

DANIEL R. BORCHERT
Deputy Clerk

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