[Cite as *Nock v. Ohio Dept. of Transp.*, 2003-Ohio-112.]

IN THE COURT OF CLAIMS OF OHIO

JEFFREY E. NOCK c/o Terrace Construction Company, Inc. 3965 Pearl Road Cleveland, Ohio 44109	:	Case No. 2002-07975-AD
Plaintiff	:	MEMORANDUM DECISION
v.	:	
OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 12	:	
Defendant		

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

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

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

FINDINGS OF FACT

{¶1} 1) On August 16, 2002, plaintiff, Jeffrey E. Nock, was traveling east on Interstate 480 between the Lee Road entrance ramp and the Warrensville Center exit when a passing truck struck a box laying on the roadway and propelled the object into the path of plaintiff's vehicle. The box struck the front bumper of plaintiff's automobile causing substantial property damage.

{¶2} 2) Plaintiff filed this complaint seeking to recover $654.63, the cost of repairing his automobile. Plaintiff asserted he incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the filing fee with the complaint.

{¶3} 3) Defendant has denied liability based on the fact it

had no knowledge the debris existed prior to plaintiff's incident.

{¶4} 4) Plaintiff has not submitted any evidence to indicate the length of time the box was on the roadway surface prior to plaintiff's property damage occurrence.

CONCLUSIONS OF LAW

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

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

{¶7} 3) In order to recover on a claim of this type, plaintiff must prove 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.

{¶8} 4) There is no evidence defendant had actual notice of the damage-causing debris condition.

{¶9} 5) 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. Highway Department* (1988), 61 Ohio Misc. 2d 262.

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

{¶11} 7) No evidence has shown defendant had constructive notice of the damage-causing debris.

{¶12} 8) Plaintiff has not submitted any evidence to prove

the roadway was negligently maintained.

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

{¶14} IT IS ORDERED THAT:

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

{¶16} 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

RDK/laa
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