

IN THE COURT OF CLAIMS OF OHIO

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|--|---|------------------------|
| LINDA PISCIONERI | : | Case No. 2002-10836-AD |
| Plaintiff | : | MEMORANDUM DECISION |
| v. | : | |
| OHIO DEPT. OF TRANSPORTATION, DIVISION 12 | : | |
| Defendant | : | |

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

FINDINGS OF FACT

{¶1} 1) On November 11, 2002, at approximately 10:00 p.m., plaintiff, Linda Piscioneri, was traveling west on Interstate 90 on the Cleveland Innerbelt in Cuyahoga County when her automobile struck a massive pothole causing tire damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$432.34, the cost of automotive repair and related expenses which plaintiff contends she incurred as a result 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 of the pothole prior to plaintiff's property damage occurrence.

{¶4} 4) Evidence has shown the massive pothole condition had appeared by 9:00 p.m. on November 11, 2002 (see 2002-10798-AD).

CONCLUSIONS OF LAW

{¶5} 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. However,

defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶6} In order to prove a breach of duty to maintain the highways, plaintiff must prove, by a preponderance of the evidence, that defendant had actual or constructive notice of the precise condition or defect alleged to have caused the accident. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247. Defendant is only liable for roadway conditions of which it has notice, but fails to reasonably correct. *Bussard v. Ohio Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1. There is evidence defendant had constructive notice of the pothole on Interstate 90. This pothole condition had developed at least one hour prior to plaintiff's damage occurrence. Sufficient time had elapsed for defendant to have been aware of the condition and taken measures to initiate repairs. Since constructive notice has been shown defendant is, consequently, liable for all damages claimed including filing fees.

{¶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 GRANTED and judgment is rendered in favor of the plaintiff;

{¶10} 2) Defendant (Department of Transportation) pay plaintiff (Linda Piscioneri) \$457.34 and such interest as is allowed by law;

{¶11} 3) Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Order cc:

Linda Piscioneri
195 Herrmann Drive
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Plaintiff, Pro se.

Gordon Proctor, Director

For Defendant

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RDK/1aa
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