

[Cite as *Schrader v. Ohio Dept. of Transp.*, 2003-Ohio-3733.]

IN THE COURT OF CLAIMS OF OHIO

ROBERT E. SCHRADER :

Plaintiff :

V. :

CASE NO. 2003-03507-AD

OHIO DEPARTMENT OF :  
TRANSPORTATION

## MEMORANDUM DECISION

Defendant

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## FINDINGS OF FACT

¶1 1) On January 13, 2003, plaintiff, Robert E. Schrader, was traveling on State Route 95 at milepost 6.0 in Richland County, when his truck struck a broken road reflector laying on the traveled portion of the roadway. Plaintiff stated his truck tire was punctured as a result of striking the broken reflector.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$75.00, the cost of a replacement tire, plus \$25.00 for filing fees. Plaintiff stated 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 defective condition (broken reflector) existed prior to plaintiff's incident.

{¶4} 4) On May 19, 2003, plaintiff filed a response to defendant's investigation report. However, plaintiff has not submitted any evidence to indicate the length of time the loosened reflector was on the roadway surface prior to his 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 diligence in the maintenance and repair of highways. *Hennessey v. State of Ohio Highway Dept.* (1985), 85-02071-AD.

{¶7} 3) In order to recover on a claim of this type, plaintiffs must prove either: 1) defendant had actual or constructive notice of the defect (broken reflector) 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 loosened reflector.

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

{¶10} 6) In order for there to be constructive notice, plaintiffs must show sufficient time has elapsed after the dangerous condition (loosened reflector) 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 reflector.

{¶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, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs shall be absorbed by the court. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Robert E. Schrader  
1096 Twp. Rd. 2916  
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Plaintiff, Pro se

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For Defendant

RDK/DRB/laa  
6/14  
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