

{¶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, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect (pothole) 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 pothole.

{¶9} 5) However, the evidence reveals that police officer, Spencer Bischoff, stated the pothole had been on the traveled portion of the roadway for a considerable amount of time and had not been repaired. This evidence is sufficient to establish constructive notice. *Guiher v. Jackson* (1978), 78-0126-AD.

{¶10} 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 plaintiff in the amount of \$1,674.63, which includes the filing fee. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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5/14
Filed 8/28/03
Sent to S.C. reporter 9/11/03