



July 15, 16, and 17, 2003. The work involved was described as removing falsework from under the Long Street Bridge. On July 15, 2003, falsework was removed from under the bridge spanning the southbound lanes of Interstate 71. On July 16 and July 17, 2003, falsework was removed beneath the bridge spanning the northbound lanes of Interstate 71. Defendant asserted no work was being performed on the bridge spanning the southbound lanes of Interstate 71 on July 17, 2003, the date of plaintiff's property damage event.

{¶3} Defendant contended plaintiff has failed to produce sufficient evidence to establish the damage-causing object was produced by or emanated from any bridge work done by DOT or its agents. Defendant denied having any knowledge of the debris which struck plaintiff's car. Defendant posited plaintiff's property damage was not caused by any breach of a duty owed by DOT to motorists using the roadway. Defendant suggested the damage-causing object could have "fallen off a passing truck and that such event had no causal connection with the construction project." Defendant denied any liability in this matter and asserted plaintiff has not offered proof to show his damage was caused by any negligence in conducting construction activity.

{¶4} On September 9, 2003, plaintiff submitted a response to defendant's investigation report. Plaintiff insisted the damage to his vehicle was caused by debris falling from the bridge spanning Interstate 71 connected with the construction activity. Plaintiff asserted there was no traffic on the Long Street Bridge at the time of his property damage event. Therefore, plaintiff disputed defendant's suggestion that the damage-causing object could have fallen off a passing truck. Plaintiff argued, "loose debris or otherwise unstable material fell off the bridge as a result of previous construction activity at this on-going work site." Plaintiff contended inadequate measures were taken to protect motorists from falling debris at the bridge site where construction activity had been performed. Plaintiff asserted it is more likely the damage to his car was caused by a falling object emanating from a construction site under the control of defendant's agents.

{¶5} After reviewing all evidence presented and assertions made, the trier of fact agrees with plaintiff concerning the origin of the debris that damaged his car. The trier of fact finds in all probability, the damage-causing debris was bridge structure material.

{¶6} Defendant has the duty to maintain its highway 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. Additionally, defendant has a duty to exercise reasonable care in conducting its roadside construction activities to protect personal property from the hazards arising out of these activities. *Rush v. Ohio Dept. of Transportation* (1992), 91-07526-AD. Furthermore, proof of notice of a dangerous condition is not necessary when defendant's own agents actively cause such condition, as was the case in the instant matter. See *Bello v. Cleveland* (1992), 106 Ohio St. 94, at paragraph one of the syllabus; *Sexton v. Ohio Dept. of Transp.* (1996), 94-13861.

{¶7} This court has previously held DOT liable for property damage resulting from falling debris. *Eley v. Ohio Dept. of Transp.* (1989), 89-05775-AD. This court, as the trier of fact, determines questions of proximate causation. *Shinaver v. Szymanski* (1984), 14 Ohio St. 3d 51. In the instant claim, sufficient evidence has been presented to show defendant's agents breached a duty of care which resulted in plaintiff's property damage. Therefore, defendant is liable to plaintiff in the amount of \$663.99, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to *Bailey v. Ohio Dept. of Rehab. & Corr.* (1990), 62 Ohio Misc. 2d 19.

{¶8} 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 \$688.99, 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

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RDK/laa  
9/17  
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