

within the construction area. Therefore, DOT argued Fru-Con is the proper party defendant in this action. Defendant implied all duties such as the duty to inspect, the duty to warn, and maintenance duties were delegated when an independent contractor takes control over a particular section of roadway.

{¶4} 4) Furthermore, defendant denied that neither DOT nor Fru-Con had any notice of rock-like debris on the roadway prior to plaintiff's damage occurrence. Defendant professed there were thirteen project inspectors working at the construction zones and none of these inspectors discovered a debris problem on Interstate 280. Defendant stated the origin of the debris is unknown, but denied the debris emanated from roadway construction activity. Defendant speculated, "the rock could have been dropped from another vehicle." not associated with DOT or Fru-Con. In fact, defendant posited the rock debris condition was probably attributable to an unidentified preceding motorist.

{¶5} 5) On November 5, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff insisted his property damage was proximately caused by DOT's negligence in failing to maintain the roadway in a safe condition. Plaintiff did not present any evidence to indicate the length of time the debris condition was present on the roadway prior to his property damage occurrence. Plaintiff suggested the rock debris emanated from roadway construction operations. Plaintiff did not produce any other evidence to establish the origin of the debris which damaged his car.

CONCLUSIONS OF LAW

{¶6} 1) The duty of DOT to maintain the roadway in a safe drivable condition is not delegable to an independent contractor involved in roadway construction. DOT may bear liability for the negligent acts of an independent contractor charged with roadway construction. See *Cowell v. Ohio Department of Transportation* (2004), 2003-09343-AD.

{¶7} 2) 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.

{¶8} 3) In order to recover in any suit involving injury proximately caused by roadway conditions including debris, 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.

{¶9} 4) Defendant is only liable for roadway conditions of which it has notice, but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1.

{¶10} 5) Plaintiff has not produced any evidence to indicate the length of time the debris condition was present on the roadway prior to the incident forming the basis of this claim. No evidence has been submitted to show defendant had actual notice of the debris. Additionally, 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. There is no indication defendant had constructive notice of the debris. Plaintiff has not produced any evidence to infer defendant, in a general sense, maintains its highways negligently or that defendant's acts caused the defective condition. *Herlihy v. Ohio Department of Transportation* (1999), 99-07011-AD. Therefore, defendant is not liable for any damage plaintiff may have suffered from the roadway debris.

{¶11} 6) Plaintiff's case fails because plaintiff has failed to show, by a preponderance of the evidence, that defendant failed to discharge a duty owed to plaintiff, or that plaintiff's injury was proximately caused by defendant's negligence. Plaintiff failed to show the damage-causing object was connected to any conduct under the control of defendant, defendant was negligent in maintaining the construction area, or any negligence on the part of defendant or its agents. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD. Consequently, plaintiff's claim is denied.

{¶12} 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 are assessed against plaintiff. 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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