



event. Plaintiff related that she called the City of Cincinnati after her incident to notify them of the debris on the roadway.

#### CONCLUSIONS OF LAW

{¶5} 1) Defendant has the duty to keep roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD.

{¶6} 2) Defendant must exercise due care and diligence in the proper maintenance and repair of highways. *Hennessey v. State of Ohio Highway Department* (1985), 85-02071-AD. Breach of this duty, however, does not necessarily result in liability. Defendant is only liable when plaintiff proves, by a preponderance of the evidence, 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; *O'Hearn v. Ohio Department of Transportation* (1985), 84-03278-AD.

{¶7} 3) There is no evidence that defendant had actual notice of the existence of the debris.

{¶8} 4) The trier of fact is precluded from making an inference of defendant's constructive notice, unless plaintiff presents evidence in respect to the time the debris appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶9} 5) In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the debris appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Jackson* (1978), 78-0126-AD.

{¶10} 6) No evidence has shown defendant had constructive notice of the debris.

{¶11} 7) Furthermore, plaintiff has failed to show defendant negligently maintained its highways.

DRB/RDK/laa  
6/8  
Filed 6/17/04  
Sent to S.C. reporter 7/7/04