



embarkment located under the first layer of structural reinforcement. This means Defendant would not have any cause to take notice of the pothole outside routinely scheduled bridge inspections unless it was made aware by the City of Sharonville that the pothole was unique, and structural in nature instead of cosmetic." Accordingly, defendant contends it had no notice of the pothole until the exchange of e-mails between defendant and the city of Sharonville approximately six weeks after the plaintiff's damage-causing incident. Defendant contends it received no complaints concerning this pothole prior to plaintiff's incident. Consequently, defendant should not be liable for the damage sustained by plaintiff's vehicle.

{¶ 4} Furthermore, the defendant contends plaintiff has not provided sufficient proof to establish the damage suffered to his vehicle, a tire and two wheel rims damaged, was the result of striking the pothole in question. Defendant notes the tires did not go flat until a day after the incident and the resulting wheel rim damage was caused by plaintiff driving with flat tires. Defendant asserts it is more likely plaintiff struck a sharp object in a roadway which caused his subsequent damage rather than striking the pothole.

{¶ 5} Plaintiff did not respond to defendant's investigation report.

#### CONCLUSIONS OF LAW

{¶ 6} Defendant has the duty to maintain its highways 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.

{¶ 7} In order to prove a breach of the duty to maintain the

highways, plaintiff must prove, by a preponderance of the evidence, that defendant had actual or constructive notice of the precise condition or defect (pothole) alleged to have caused the damage. *McClellan v. ODOT* (1986), 34 Ohio App. 3d 247. 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.

{¶ 8} There is no evidence defendant had actual notice of the damage causing pothole until after plaintiff sustained his damage. 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 (pothole) developed. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶ 9} In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the dangerous condition (pothole) appeared, so that under the circumstances, defendant should have acquired knowledge of the existence of the defect. *Guiher v. Jackson* (1978), 78-0126-AD. In the case at bar, defendant had no knowledge of its maintenance responsibility toward the pothole until an investigation was conducted by the city of Sharonville. Accordingly, no evidence has shown defendant had constructive notice of the pothole.

{¶ 10} Furthermore, plaintiff has failed to show defendant negligently maintained the roadway.

{¶ 11} Finally, in order to recover from defendant for damage caused by a roadway condition, plaintiff must produce evidence which furnishes a reasonable basis for sustaining his claim. If his evidence furnishes a basis for only a guess, among different possibilities, as to any essential issue in the case (the condition that causes his damage), he fails to sustain the burden as to such issue. *Landon v. Lee Motors, Inc.* (1954), 161 Ohio St. 82.

IN THE COURT OF CLAIMS OF OHIO

ANTHONY MCCOY	:	
Plaintiff	:	
v.	:	CASE NO. 2004-09711-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	<u>ENTRY OF ADMINISTRATIVE DETERMINATION</u>
Defendant	:	

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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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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