[Cite as *Caltacci v. Ohio Dept. of Transp.*, 2005-Ohio-842.]

IN THE COURT OF CLAIMS OF OHIO

PETER CALTACCI	:	
Plaintiff	:	
v.	:	CASE NO. 2004-10191-AD
OHIO DEPARTMENT OF TRANSPORTATION	:	MEMORANDUM DECISION
Defendant	:	

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{¶ 1} During the morning of September 29, 2004, Trafftech, Inc. was conducting centerline painting operations on State Route 166 near the intersection of State Route 6, under a contract with defendant, Department of Transportation. Defendant's agent, Trafftech, Inc. insisted the centerline painting, which consisted of applying a line of yellow paint along the center of the roadway, was conducted properly and safely in accordance with all requirements mandated for this type of activity. Signage consisting of "Wet Paint" and "Line Painting Ahead," arrow boards, and cones were used to notify motorists of the painting operations. Defendant asserted adequate precautions were taken to perform the painting operation in a safe manner and to warn all motorists about the activity. Defendant indicated it received no complaints from any other motorists about this paint operation on State Route 166.

{¶ 2} Plaintiff alleges at approximately 8:30 a.m. on September 29, 2004, he was traveling eastbound on State Route 166 when his vehicle was "plastered" with yellow paint as he crossed the double yellow line to avoid bicyclists and pedestrians. Plaintiff asserts there was no signage to warn him of the painting operation. Plaintiff seeks damages in the amount of $1,920.70 for the removal of paint from his vehicle and a rental vehicle. Plaintiff

acknowledges he received $1,097.58 from his insurance carrier Liberty Mutual Inc. R.C. 2743.02(D) in pertinent part states: "Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant." Accordingly, plaintiff's prayer amount is reduced to $823.12. Plaintiff submitted the filing fee on December 8, 2004.

{¶ 3} Defendant denied the September 29, 2004, painting operation was conducted in a negligent manner. Defendant submitted the daily log of its contractor, Trafftech, Inc., which indicated wet paint and line painting ahead signs, arrow boards, and cones were used to inform motorists of the painting operation. Also, Trafftech, Inc. stated no complaints were received concerning this particular painting operation. If plaintiff had contacted Trafftech an investigation would have been conducted and if Trafftech, Inc. had been negligent they would have paid for the paint removal from a professional detailer who would have charged far less that the cost plaintiff incurred.

{¶ 4} Finally, defendant asserts it was plaintiff's own negligence of driving across the double center line which caused the damage to his vehicle.

{¶ 5} On January 21, 2005, plaintiff filed a response to defendant's investigation report. Plaintiff asserts he contacted defendant about the paint damage to his car six days after the incident but got no cooperation. Plaintiff also contends it was a single yellow line not a double yellow line that he crossed as he initially asserted in his complaint.

{¶ 6} Plaintiff maintained he did not observe any signage notifying him of the painting operation. Plaintiff did not offer any additional evidence to support the position regarding lack of signs. Plaintiff admitted he drove over the yellow line to avoid

bicyclists and pedestrians.

{¶ 7} 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, that defendant's negligence is the proximate cause of plaintiff's damages. *Strother v. Hutchinson* (1981), 67 Ohio St. 2d 282, 285.

{¶ 8} 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.

{¶ 9} Plaintiff has the burden of proof to show his property damage was the direct result of failure of defendant's agents to exercise ordinary care in conducting roadway painting operations. *Brake v. Ohio Department of Transportation* (2000), 99-12545-AD. In the instant claim, plaintiff has failed to prove his property damage was caused by any negligent act or omission on the part of defendant's agents. Conversely, evidence has shown plaintiff's own negligent driving by crossing a freshly painted yellow line was the proximate cause of his property damage. Therefore, plaintiff's claim is denied.

IN THE COURT OF CLAIMS OF OHIO

PETER CALTACCI	:	
Plaintiff	:	
v.	:	CASE NO. 2004-10191-AD

OHIO DEPARTMENT OF TRANSPORTATION	:	ENTRY OF ADMINISTRATIVE DETERMINATION
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.

_____

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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1/21
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