[Cite as *Lavelle v. Ohio Dept. of Transp.*, 2006-Ohio-1018.]

IN THE COURT OF CLAIMS OF OHIO

KEVIN G. LAVELLE	:	
Plaintiff	:	
v.	:	CASE NO. 2005-10357-AD
OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 12	:	MEMORANDUM DECISION
Defendant	:	

: : : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) On September 29, 2005, at about 2:15 p.m., plaintiff, Kevin G. Lavelle, was traveling east on Interstate 90, "where I77N merges with I90" in Cuyahoga County, when his automobile ran over debris on the traveled portion of the roadway. The debris caused substantial body damage to plaintiff's vehicle.

{¶ 2} 2) Consequently, plaintiff filed this complaint seeking to recover $1,114.54, his cost of vehicle repair which he contends was incurred as a result of negligence on the part of defendant, Department of Transportation, in maintaining the roadway. Plaintiff submitted the filing fee.

{¶ 3} 3) Defendant has denied any liability for plaintiff's damage. Defendant denied having any knowledge of the debris condition prior to plaintiff's incident. Despite filing a response to defendant's investigation report, plaintiff has failed to produce any evidence establishing the length of time the debris condition was on the roadway prior to his property damage occurrence. Defendant conducts frequent inspections in the area of plaintiff's September 29, 2005, property damage event. Defendant

suggested the concrete debris condition was on the roadway "for only a relatively short amount of time before plaintiff's incident." Defendant denied receiving any calls or complaints about concrete debris on Interstate 90 prior to plaintiff's damage occurrence. Plaintiff insisted defendant should bear liability for his property damage.

CONCLUSIONS OF LAW

{¶ 4} 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.

{¶ 5} 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.

{¶ 6} 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.

{¶ 7} 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. Ohio Highway Department* (1988), 61 Ohio Misc.

2d 262. There is no indication defendant had constructive notice of the debris.

{¶ 8} Finally, 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.

IN THE COURT OF CLAIMS OF OHIO

KEVIN G. LAVELLE	:	
Plaintiff	:	
v.	:	CASE NO. 2005-10357-AD
OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 12	:	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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RDK/laa
1/19
Filed 2/14/06
Sent to S.C. reporter 3/3/06