

[Cite as *Domanski v. Ohio Dept. of Transp.*, 2006-Ohio-370.]

IN THE COURT OF CLAIMS OF OHIO

JOHN DOMANSKI	:	
Plaintiff	:	
v.	:	CASE NO. 2005-09944-AD
OHIO DEPT. OF TRANSPORTATION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	

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{¶ 1} On August 29, 2005, at approximately 10:00 a.m., plaintiff, John Domanski, sustained tire damage to his 1995 Jeep Grand Cherokee while traveling on an entrance ramp to Interstate 77 South in Cuyahoga County. Specifically, plaintiff explained his property damage occurred when, "my right rear tire brushed against the curb area," of the roadway entrance ramp. Plaintiff related certain sections of the entrance ramp curb were considerably deteriorated. Plaintiff drove against the entrance ramp curb after making a right turn from Pleasant Valley Road in Independence, Ohio. No evidence was presented to show plaintiff was directed or forced to drive onto the curb area of the Interstate 77 South entrance ramp. All evidence apparently tends to indicate plaintiff made an errant driving maneuver when he scraped the right rear tire of his vehicle against the roadway curb.

{¶ 2} Plaintiff filed this complaint contending defendant, Department of Transportation ("DOT"), should be held liable for the property damage he suffered on August 29, 2005. Although, plaintiff damaged one tire on August 29, 2005, he is seeking recovery for the replacement cost of two tires, \$184.90. The damage claim in this action shall be limited to \$92.45, the total replacement cost of the specifically damaged property item. The

filing fee was paid.

{¶ 3} Defendant denied any liability in this matter. Defendant implied plaintiff failed to prove his property damage was proximately caused by any negligent act or omission attributable to DOT.

{¶ 4} This court has previously held that the Department of Transportation is not to be held liable for damages sustained by individuals who used the berm or shoulder of a highway for travel without adequate reasons. *Colagrossi v. Department of Transportation* (1983), 82-06474-AD. Generally, a plaintiff is barred from recovery for property damage caused by a defective condition located off the traveled portion of the roadway.

{¶ 5} The shoulder of a highway is designed to serve a purposed which may include travel under emergency circumstances. It is for the trier of fact to determine whether driving on the shoulder is a foreseeable and reasonable use of the shoulder of the highway. *Dickerhoof v. City of Canton* (1983), 6 Ohio St. 3d 128. In the case at bar, plaintiff has offered no reasonable explanation for driving on the curbed area of a roadway entrance ramp.

{¶ 6} Plaintiff, in the instant case, has shown no adequate reason for his action of driving on the berm of the highway, consequently, based on the rationale of *Colagrossi*, supra, this case is denied. If a plaintiff sustains damage because of a defect located off the marked, regularly traveled portion of a roadway, a necessity for leaving the roadway must be shown. *Lawson v. Department of Transportation* (1977), 75-0612-AD. Inadvertent travel based on inattention is not an adequate reason or necessity for straying from the regularly traveled portion of the roadway. *Smith v. Ohio Department of Transportation* (2000), 2000-05151-AD. Plaintiff has failed to prove his property damage was caused by any negligence on the part of defendant. In fact the sole cause of

plaintiff's damage was his own negligent driving. See *Wieleba-Lehotzky v. Ohio Dept. of Transp., Dist. 7*, 2004-03918-AD, 2004-Ohio-4129; *Repasky v. Ohio Dept. of Transp.*, 2005-02699-AD, 2005-Ohio-5383.

IN THE COURT OF CLAIMS OF OHIO

JOHN DOMANSKI	:	
Plaintiff	:	
v.	:	CASE NO. 2005-09944-AD
OHIO DEPT. OF TRANSPORTATION	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>

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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:

John Domanski
6507 Cross Creek Trail
Brecksville, Ohio 44141

Plaintiff, Pro se

Gordon Proctor, Director
Department of Transportation
1980 West Broad Street

For Defendant

Columbus, Ohio 43223

RDK/laa

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