

[Cite as *Elegant Limousines, Inc. v. Ohio Dept. of Transp.*, 2006-Ohio-7256.]
IN THE COURT OF CLAIMS OF OHIO

ELEGANT LIMOUSINES, INC. :
Plaintiff :
v. : CASE NO. 2005-10306-AD
OHIO DEPT. OF TRANSPORTATION : MEMORANDUM DECISION
Defendant :

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

FINDINGS OF FACT

{¶ 1} 1) On October 18, 2003, at approximately 7:40 p.m., a 1999 Lincoln Town Car owned by plaintiff, Elegant Limousines, Inc., was traveling south on Interstate 75 when the vehicle struck a tire laying on the roadway. The tire caused substantial damage to plaintiff's car. The incident was approximately located near milepost 46.0 on Interstate 75 in Montgomery County.

{¶ 2} 2) Consequently, plaintiff filed this complaint seeking to recover \$1,071.44, the cost of automotive repair which plaintiff 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 tire debris condition prior to plaintiff's incident. Plaintiff has failed to produce any evidence establishing the length of time the tire debris condition was on the roadway prior to the property damage occurrence. Defendant suggested the debris

condition existed for a short period of time prior to plaintiff's October 18, 2003, property damage event.

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. 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.

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Plaintiff :

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OHIO DEPT. OF TRANSPORTATION :

ENTRY OF ADMINISTRATIVE
DETERMINATION

Defendant :

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

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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8/16

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