

# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
www.cco.state.oh.us

NANCY ZAWADZKI

Plaintiff

v.

DEPARTMENT OF  
TRANSPORTATION

Defendant

Case No. 2007-01916-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

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### FINDINGS OF FACT

{¶ 1} 1) On January 23, 2007, at approximately 8:45 a.m., plaintiff, Nancy Zawadzki, was traveling east on Interstate 480, “at the point where Interstate 71 N veers to the right towards 480 East,” when her automobile struck a pothole in the roadway. The pothole caused tire and rim damage to the vehicle.

{¶ 2} 2) Plaintiff alleged the property damage she sustained was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining a hazardous condition on the roadway. Consequently, plaintiff filed this complaint seeking to recover \$379.05 for replacement parts, automotive repair costs, and work loss resulting from the January 23, 2007, incident. Plaintiff also requested reimbursement of the 25.00 filing fee. The filing fee was paid.

{¶ 3} 3) Defendant denied any liability in this matter asserting plaintiff failed to produce evidence establishing her property damage was related to any negligent act or omission on the part of DOT. Defendant explained plaintiff noted her automobile struck a pothole on Interstate 280 on January 23, 2007. Defendant recorded the indicated pothole location would be at state milepost 10.90 on I-480 in Cuyahoga County. Defendant related no calls or complaints were received about a pothole at this location prior to January 23, 2007. Defendant denied having any knowledge of the pothole before plaintiff’s damage

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occurrence. Defendant observed DOT employees conduct roadway inspections, “at least two times a month.” Apparently no potholes were discovered during previous roadway inspections.

{¶ 4} 4) Despite filing a response, plaintiff has not submitted any evidence to indicate the length of time the pothole existed prior to the incident forming the basis of this claim.

{¶ 5} 5) Defendant suggested the pothole plaintiff’s vehicle struck, “likely existed for only a short time before the incident.” Defendant submitted records showing DOT previously repaired potholes in the vicinity of plaintiff’s damage occurrence on November 8, November 22, December 12, 2006, January 8, January 11, and January 18, 2007.

#### 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 alleged to have caused the accident. *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} Plaintiff has not produced sufficient evidence to indicate the length of time the particular pothole was present on the roadway prior to the incident forming the basis of this claim. Plaintiff has not shown defendant had actual notice of the pothole for a sufficient length of time to invoke liability. Additionally, the trier of fact is precluded from making an

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inference of defendant's constructive notice, unless evidence is presented in respect to the time the pothole 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 pothole. 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. Size of the defect (pothole) is insufficient to show notice or duration of existence. *O'Neil v. Department of Transportation* (1988), 61 Ohio Misc. 2d 287. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

[C



*i v. Ohio Dept. of Transp., 2007-Ohio-3753.*]

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ENTRY OF ADMINISTRATIVE  
DETERMINATION

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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:

Nancy Zawadzki  
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RDK/laa  
5/16  
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