

[Cite as *Indorf v. Ohio Dept. of Transp.*, 2007-Ohio-5276.]

# 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](http://www.cco.state.oh.us)

---

LYNN INDORF

Plaintiff

v.

OHIO DEPARTMENT OF  
TRANSPORTATION

Defendant

Case No. 2007-02084-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶1} 1) Plaintiff, Lynn Indorf, stated she was traveling west on Interstate 270 at about 1:35 p.m. on January 30, 2007, when her 1997 Oldsmobile Bravada struck, “a huge sign laying face down,” in the center roadway lane. The impact of striking the fallen sign caused damage to three tires on plaintiff’s vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$441.96, for replacement tires and towing expenses resulting from the described January 30, 2007, incident. Plaintiff contended her property damage was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining the roadway. The filing fee was paid.

{¶3} 3) Defendant denied any liability contending no DOT personnel had any knowledge of a downed sign on the roadway prior to plaintiff’s property damage occurrence. From plaintiff’s description, defendant located the incident, “around milepost 28.71 on I-270 in Franklin County.” Defendant stated it “has no way knowing or determining exactly how long the debris existed in the roadway prior to plaintiff’s incident.” Defendant pointed out DOT personnel conduct roadway inspections on all state roadways, “at least one to two times a month.” Also, defendant related multiple litter patrol operations were conducted on Interstate 270 in Franklin County with one such patrol occurring on January 29, 2007. Defendant asserted that if any downed sign or debris was discovered on the roadway, DOT crews would have promptly removed the debris. Defendant contended plaintiff failed to prove her property damage was caused by any negligent act or omission on the part of DOT personnel.

## CONCLUSIONS OF LAW

{¶4} 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, 361 N.E. 2d 486. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189, 678 N.E. 2d 273; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723, 588 N.E. 2d 864.

{¶5} 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.*

Case No. 2007-02084-AD	- 3 -	MEMORANDUM DECISION
------------------------	-------	---------------------

ODOT (1986), 34 Ohio App. 3d 247, 517 N.E. 2d 1388. Defendant is only liable for roadway condition of which it has notice but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1, 507 N.E. 2d 1179. 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 defective condition developed. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. There is no evidence DOT had any notice of the sign on the roadway. However, proof of notice of a dangerous condition is not necessary when defendant's own agents actively cause such condition. See *Bello v. City of Cleveland* (1922), 106 Ohio St. 94, 138 N.E. 526, at paragraph one of the syllabus; *Sexton v. Ohio Department of Transportation* (1996), 94-13861.

{¶6} For plaintiff to prevail on a claim of negligence, she must prove, by a preponderance of the evidence, that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Armstrong v. Best Buy Company, Inc.* 99 Ohio St. 3d 79, 81, 2003-Ohio-2573, ¶8, 788 N.E. 2d 1088, 1090 citing *Menifee v. Ohio Welding Products, Inc.* (1984), 15 Ohio St. 3d 75, 77, 472 N.E. 2d 707, 710. Plaintiff has the burden of proving, by a preponderance of the evidence, that she suffered a loss and that this loss was proximately caused by defendant's negligence. *Barnum v. Ohio State University* (1977), 76-0368-AD. However, "[i]t is the duty of a party on whom the burden of proof rests to produce evidence which furnishes a reasonable basis for sustaining his claim. If the evidence so produced furnishes only a basis for a choice among different possibilities as to any issue in the case, he fails to sustain such burden." Paragraph three of the syllabus in *Steven v. Indus. Comm.* (1945), 145 Ohio St. 198, 61 N.E. 2d 198, approved and followed.

{¶7} Plaintiff has not shown, by a preponderance of the evidence, that defendant failed to discharge a duty owed to plaintiff, or that plaintiff's injury was proximately caused by defendant's negligence. Plaintiff has failed to show that the damage-causing sign was connected to any conduct under the control of defendant or that there was any negligence

Case No. 2007-02084-AD	- 4 -	MEMORANDUM DECISION
------------------------	-------	---------------------

on the part of defendant or its agents. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD.

{¶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.

# 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](http://www.cco.state.oh.us)

---

LYNN INDORF

Plaintiff

v.

OHIO DEPARTMENT OF  
TRANSPORTATION

Defendant

Case No. 2007-02084-AD

Deputy Clerk Daniel R. Borchert

ENTRY OF ADMINISTRATIVE  
DETERMINATION

---

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.

---

DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Lynn Indorf  
12533 Lincoln Way W.  
Massillon, Ohio 44647

James G. Beasley, Director  
Department of Transportation  
1980 West Broad Street  
Columbus, Ohio 43223

RDK/laa  
7/20  
Filed 8/10/07  
Sent to S.C. reporter 10/2/07