

# 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)

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CHARLIE GARRISON

Plaintiff

v.

DEPARTMENT OF  
TRANSPORTATION

Defendant

Case No. 2007-03901-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

## FINDINGS OF FACT

{¶1} 1) Plaintiff, Charlie Garrison, stated: “I was traveling north on I 271 and I exited on exit 10 to go onto I 77 north. When I got over I 77 on the exit bridge I hit a deep hole in the middle of the bridge.” Plaintiff recalled the described incident occurred on April 4, 2005, at approximately 9:00 p.m. Plaintiff asserted the pothole his car struck caused tire and rim damage to the vehicle.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$736.29, the cost of replacement parts resulting from the April 4, 2005, property damage incident. Plaintiff implied he incurred these damages as a proximate cause of negligence on the part of defendant, Department of Transportation (“DOT”), in maintaining the roadway ramp. The filing fee was paid.

{¶3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the pothole prior to plaintiff’s property damage occurrence. Defendant explained the damage causing pothole was located on a ramp of Interstate 271 in Summit County which is approximately 1.20 miles in length. This portion of roadway was designated by defendant as, “the long ramp.” Defendant suggested, “it is likely the pothole (on the long ramp) existed for only a short time before the incident.”

{¶4} 4) Defendant noted the DOT Summit County Manager conducts roadway inspections on all state roadways within Summit County, “at least two times a month.” Apparently no potholes were discovered the last time “the long ramp” was inspected prior to April 4, 2005.

## CONCLUSIONS OF LAW

{¶5} 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.

{¶6} 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, 517 N.E. 2d 1388. Defendant is only liable for

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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.

{¶7} 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. 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 pothole appeared on the roadway. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. 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, 587 N.E. 2d 891. Therefore, defendant is not liable for any damage plaintiff may have suffered from the pothole.

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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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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Department of Transportation  
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RDK/laa  
7/20  
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