

# 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

JOHN PENNINGTON

Case No. 2007-03994-AD

Plaintiff

Clerk Miles C. Durfey

v.

## MEMORANDUM DECISION

DEPARTMENT OF  
TRANSPORTATION

Defendant

### FINDINGS OF FACT

{¶1} 1) On January 29, 2007, plaintiff, John Pennington, was traveling north on Interstate 75 when his automobile struck a pothole causing tire damage to the vehicle.

{¶2} 2) Plaintiff implied that his property damage was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining the roadway. Plaintiff filed this complaint seeking to recover \$436.50, the total cost of replacement parts he incurred. The filing fee was paid.

{¶3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the damage-causing pothole prior to plaintiff's property damage incident. Defendant denied receiving any calls or complaints about this particular pothole which DOT located between mileposts 15.2 and 16.0 on Interstate 75 in Hamilton County. Defendant suggested that, "it is likely the pothole existed for only a short time before the incident."

{¶4} 4) Defendant contended that plaintiff failed to produce any evidence to show that the roadway was negligently maintained. Defendant explained that DOT's Hamilton County Manager conducts roadway inspections of all state roadways in

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Hamilton County, “at least two times a month.” Apparently, the particular damage-causing pothole was not discovered during the last inspection prior to January 29, 2007.

#### CONCLUSIONS OF LAW

{¶15} 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, 3 O.O. 3d 413, 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.

{¶16} In order to recover in a suit involving damage proximately caused by roadway conditions including potholes, plaintiff must prove that either: 1) defendant had actual or constructive notice of the pothole 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.

{¶17} To prove a breach of duty by defendant to maintain the highways plaintiff must establish, by a preponderance of the evidence, that DOT 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 roadway conditions of which it has notice, but fails to reasonably correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1, 31 OBR 64, 507 N.E. 2d 1179. No evidence has shown that defendant had actual notice of the damage-causing pothole.

{¶18} The trier of fact is precluded from making an inference of defendant’s constructive notice, unless evidence is presented in respect to the time that the defective condition (pothole) developed. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. There is no evidence of constructive notice of the pothole.

{¶19} Plaintiff as not produced any evidence to infer that defendant, in a general

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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 pothole.

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

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### 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.

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MILES C. DURFEY  
Clerk

Entry cc:

John Pennington  
125 Knollridge Ct., #103  
Fairfield, Ohio 45014

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

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RDK/laa

8/16

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