

# 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)

VICTOR E. BILLINGSLEY, et al.

Case No. 2007-05610-AD

Plaintiffs

Deputy Clerk Daniel R. Borchert

v.

## MEMORANDUM DECISION

OHIO DEPARTMENT OF  
TRANSPORTATION

Defendant

{¶1} From July 12, 2006 to April 3, 2007, The John R. Jurgensen Company (“Jurgensen”), a contractor engaged by defendant, Department of Transportation (“DOT”), performed reconstruction work on the existing roadway on Front Street in the Village of Ripley, Ohio. According to defendant, the reconstruction work entailed, “installing a new storm sewer system, new curbs, new sidewalk, new traffic control signs, new lighting, retaining walls and landscaping.” All work performed by Jurgensen was to be done in accordance with DOT specifications and designs.

{¶2} Plaintiffs Victor E. and Elizabeth J. Billingsley are the owners of a house located at 234 North Front Street in Ripley. The Billingsley residence sits on a lot at the corner of Front and Locust Streets. Plaintiffs’ related Jurgensen personnel used a pavement and curb grinder to mill the roadway surface at the corner of Front and Locust Streets on November 4, 2006. Plaintiffs further related that during the roadway surface milling at the turn onto Locust Street, the pavement grinder used by Jurgensen struck old cobble stones which had been laid years ago and subsequently paved over. Plaintiffs recalled their entire house shook as the grinder struck the old cobble stones as it milled away the roadway pavement. Plaintiffs stated, “on the evening of November 4, 2006 we noticed a crack in the front parlor ceiling, a crack in the rear parlor and medallion, and a ceiling crack in the den,” of their home. Plaintiffs asserted they had

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not observed any cracks in any of the ceilings in the rooms of their house prior to the road work performed at Front and Locust Streets on November 4, 2006. Plaintiffs essentially contended the roadway milling on November 4, 2006, caused the damage to the ceilings in their residence.

**{¶3}** Plaintiffs have asserted DOT should bear liability for the property damage allegedly caused by the November 4, 2006, roadway construction operation. Plaintiffs filed this complaint seeking to recover \$2,114.00, the stated cost of ceiling repair for their residence. The filing fee was paid.

**{¶4}** Defendant contended plaintiffs have failed to offer sufficient proof to establish the damage claimed was proximately caused by any construction activity conducted in the vicinity of their home during November 2006. Consequently, defendant denied any liability in this matter and urged this claim be dismissed.

**{¶5}** Defendant submitted a written statement from DOT Project Engineer, Patrick Lloyd, who was initially informed of damage to plaintiffs' property on November 6, 2006, and inspected the damaged room ceilings that same day. After inspecting the cracks in the room ceilings, Lloyd wrote, "[t]he cracks in the ceiling did not look new but it was hard to get a good look as the ceilings were about 10' - 12' high." Lloyd noted construction projects records did not show Jurgensen performed roadway milling on

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Front and Locust Streets on November 4, 2006. Lloyd related he verbally advised Jurgensen personnel of plaintiffs' complaint of property damage on November 6, 2006.

{¶6} Defendant submitted a copy of the construction project Daily Diary Report for November 4, 2006, a Saturday. This report recorded Jurgensen planed 1.5" of pavement surface on Front street from 7:00 a.m. to 3:30 p.m. The planing operation was conducted in preparation for scheduled repaving on Monday, November 6, 2006. The Daily Diary Report for November 6, 2006, which was also submitted by defendant, noted DOT employee Patrick Lloyd had been informed of the property damage at plaintiffs' house, and plaintiffs had alleged the damage was caused by roadway pavement milling performed on November 4, 2006. It was further reported plaintiffs were advised to contact Jurgensen regarding the observed damage.

{¶7} Jurgensen employee Travis Roberts investigated the matter raised by plaintiffs by inspecting the property. Jurgensen personnel pointed out the roadway repaving project on Front Street did not implement pile driving, boring, or blasting to accomplish the work and therefore, it was Jurgensen's opinion that the damage to the ceilings in plaintiffs' home was attributable to the age of the property and not vibrations caused by construction activity.

{¶8} Plaintiffs filed a response insisting the cracks in the plaster ceiling of their

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house were not present until after roadway milling was conducted at the corner of Front and Locust Streets. Plaintiffs recalled the grinder used for milling struck old cobble stones laid under the existing pavement material. According to plaintiffs, when the milling machine struck the cobble stones, “the machine made a (horrifying) noise and shook the entire house, vibrating plates and figures on tables in the house.” Plaintiffs denied the property damage claimed was due to the age of the house. Plaintiffs explained new plaster was applied to the house room ceilings in 1997 and no cracks appeared in the ceilings until November 2006.

{¶19} Plaintiffs have not presented any evidence other than their own assertions to prove their property was damaged as a proximate result of activity under the control of DOT. As a necessary element of their claim, plaintiffs were required to prove proximate cause of their damage by a preponderance of the evidence. See, e.g. *Stinson v. England* (1994), 69 Ohio St. 3d 451, 633 N.E. 2d 532. In a situation such as the instant claim, plaintiffs are required to produce expert testimony regarding the issue of causation and that testimony must be expressed in terms of probability. *Stinson* at 454. Plaintiffs, by not supplying the requisite testimony to state a prima facie claim, have failed to meet their burden of proof. See *Ryan v. Ohio Dept. of Transp.* Ct. of Cl. No. 2003-09297-AD, 2004-Ohio-900.

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MEMORANDUM DECISION

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OHIO DEPARTMENT OF  
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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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Victor E. Billingsley  
Elizabeth J. Billingsley  
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RDK/laa  
11/14  
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