

# 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

JEAN HEINZELMAN

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2009-04378-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

### FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Jean Heinzelman, related she was traveling west on Interstate 74 near the “Dry Fork exit (and) 4 mile mark” when her Hyundai Sonata struck a large pothole causing tire damage to the vehicle. Records indicate the damage incident occurred on February 13, 2009.

{¶ 2} 2) Plaintiff implied the damage to her car was proximately caused by negligence on the part of defendant, Department of Transportation (“DOT”), in failing to maintain the roadway free of hazards such as potholes. Plaintiff filed this complaint seeking to recover damages in the amount of \$287.74, the cost of replacement tires. Plaintiff paid the \$25.00 filing fee.

{¶ 3} 3) Defendant denied liability based on the contention that no DOT personnel had any knowledge of the particular damage-causing pothole prior to plaintiff’s February 13, 2009 property damage occurrence. Defendant denied receiving prior calls or complaints about the pothole plaintiff’s car struck, which DOT located at approximately milemarker 4.00 on Interstate 74 in Hamilton County. Defendant

asserted plaintiff did not produce any evidence to indicate the length of time the damage-causing pothole existed prior to February 13, 2009. Defendant suggested “it is likely the pothole existed for only a short time before the incident.” Defendant stated the DOT “Hamilton County Manager inspects all state roadways within the county at least two times a month.” Apparently no potholes were discovered at milemarker 4.00 on Interstate 74 the last time that section of roadway was inspected prior to February 13, 2009. Defendant asserted plaintiff failed to produce evidence to establish the roadway was negligently maintained. DOT records show potholes were patched in the vicinity of plaintiff’s damage occurrence on December 9, 2008, December 31, 2008, January 14, 2009, February 12, 2009, and February 13, 2009.

#### CONCLUSIONS OF LAW

{¶ 4} 1) Defendant has the duty to maintain the 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.

{¶ 5} 2) 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 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.

{¶ 6} 3) There is no evidence defendant had actual notice of the damage-causing pothole.

{¶ 7} 4) 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 (pothole) developed. *Spires v. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262, 577 N.E. 2d 458. No evidence of constructive notice has been produced.

{¶ 8} 5) 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.

{¶ 9} 6) Plaintiff has failed to show that the proximate cause of her damage was connected to any conduct under the control of defendant, or that defendant was negligent in maintaining the roadway area. *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.

## 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)

JEAN HEINZELMAN

Plaintiff

v.

DEPARTMENT OF TRANSPORTATION

Defendant

Case No. 2009-04378-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:

Jean Heinzelman  
P.O. Box 98  
New Trenton, Indiana 47035

Jolene M. Molitoris, Director  
Department of Transportation  
1980 West Broad Street  
Columbus, Ohio 43223

RDK/laa  
8/10  
Filed 8/28/09  
Sent to S.C. reporter 12/23/09