



# 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

ROGER M. TREADWAY

Plaintiff

v.

OHIO DEPARTMENT OF TRANSPORTATION, DISTRICT 6

Defendant

Case No. 2009-08811-AD

Deputy Clerk Daniel R. Borchert

## MEMORANDUM DECISION

{¶ 1} Plaintiff, Roger M. Treadway, filed this action against defendant, Department of Transportation (ODOT), alleging that he suffered paint damage to his automobile as a proximate cause of negligence on the part of ODOT contractor Aero-Mark, Inc. (Aero-Mark), in conducting a roadway painting operation on State Route 61. Plaintiff recalled that the paint damage incident occurred on September 15, 2009 at sometime during the morning hours. In his complaint, plaintiff provided a narrative description of his property damage event stating: “[f]ollowed directions of flagger as yellow road paint was being applied. Yellow paint splashed all down side of new black car, front to back.” Plaintiff explained that the yellow paint splattered on his vehicle could not be removed and consequently, the car was taken to a body shop for repair. Plaintiff requested damage recovery in the amount of \$500.00, his insurance coverage deductible for automotive repair. The \$25.00 filing fee was paid and plaintiff requested reimbursement of that cost along with his damage claim.

{¶ 2} Defendant advised that after contacting plaintiff, it was suggested his paint

damage incident occurred on State Route 61 in either Delaware County or Morrow County within the limits of a working construction project under the control of ODOT contractor, The Shelly Company (Shelly). Defendant maintained that no ODOT personnel, no Shelly personnel and no sub-contractors of Shelly were applying yellow paint to the roadway surface of State Route 61 on September 15, 2009. Defendant explained Shelly was working on September 15, 2009 grading the roadway for new asphalt and a flagger was employed during the operation to control traffic. However, no paint crews were working on State Route 61 on September 15, 2009 or on subsequent dates during September 2009 when work was performed. Evidence submitted shows that Shelly did “put down temporary tape striping” (on State Route 61) on September 16, and 24, 2009. Defendant denied any liability in this matter.

{¶ 3} From the allegations contained in plaintiff’s complaint, the court concludes plaintiff has stated a claim against ODOT contractor, Aero-Mark. This court has previously held that ODOT cannot be held liable for any alleged negligence on the part of a contractor in conducting painting operations on state roadways. ODOT may delegate its duty of care in situations where an independent contractor such as Aero-Mark undertakes roadway painting projects. See *Henderson v. Ohio Dept. of Transp.*, Ct. of Cl. No. 2003-11496-AD, 2004-Ohio-1839, adopting the rationale of *Gore v. Ohio Dept. of Transp.*, Franklin App. No. 02AP-996, 2003-Ohio-1648; also *Henning v. Dept. of Transp.* (2006), 2006-04369-AD. ODOT is not the proper party defendant in this action and therefore, this claim is dismissed.



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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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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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RDK/laa  
3/11  
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