[Cite as *Fisher Plaza, L.L.C. v. Dept. of Transp.*, 2026-Ohio-4101.]

IN THE COURT OF CLAIMS OF OHIO

FISHER PLAZA, LLC Plaintiff v. OHIO DEPARTMENT OF TRANSPORTATION Defendant AND FISHER PLAZA, LLC Plaintiff v. COMPLETE GENERAL CONSTRUCTION CONTRACTOR Defendant/Third-Party Plaintiff v. OHIO DEPARTMENT OF TRANSPORTATION Third-Party Defendant	Case Nos. 2024-00871JD and 2025-00792PR Judge Lisa L. Sadler DECISION

I. Introduction

{¶1} *Fisher Plaza, LLC v. Ohio Dept. of Transportation*, Ct. of Cl. No. 2024-00871JD is an original action filed in this court. *Fisher Plaza, LLC v. Complete General Construction Contractor*, Ct. of Cl. No. 2025-00792PR is an action removed to this court from the Franklin County Court of Common Pleas. Both cases stem from a certain public-improvement project in Marion, Ohio, for which Complete General Construction Company served as a contractor for the Ohio Department of Transportation (ODOT). Fisher Plaza, LLC maintains in both cases that its real property, which is adjacent to the public-

improvement project, was damaged because of the public-improvement project. Ct. of Cl. No. 2024-00871JD and Ct. of Cl. No. 2025-00792PR have been consolidated for purposes of discovery and trial.[1]

{¶2} Before the court is a summary-judgment motion filed by ODOT in Ct. of Cl. No. 2024-00871JD and Ct. of Cl. No. 2025-00792PR, urging dismissal of "this lawsuit" "on the basis that Plaintiff has not timely filed its complaint." In the summary-judgment motion, ODOT does not identify the "lawsuit" or "complaint" that it maintains should be dismissed; ODOT thus appears to conflate Ct. of Cl. No. 2024-00871JD with Ct. of Cl. No. 2025-00792PR in its summary-judgment motion.[2] Since ODOT's arguments in its summary-judgment motion pertain to Fisher Plaza, LLC, and since Fisher Plaza, LLC has filed a complaint against ODOT in Ct. of Cl. No. 2024-00871JD, the court concludes that ODOT's use of "this lawsuit" pertains to the lawsuit against ODOT in Ct. of Cl. No. 2024-00871JD, rather than Fisher Plaza, LLC's lawsuit against Complete General Construction Company in Ct. of Cl. No. 2025-00792PR.

{¶3} As discussed within, after the submitted evidence is viewed most strongly in favor of Fisher Plaza, LLC, Fisher Plaza, LLC has failed to meet its reciprocal burden under Civ.R. 56(E) to show a genuine issue that Fisher Plaza, LLC's action against ODOT

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[1] Entry dated January 9, 2026. Rule 42 of the Ohio Rules of Civil Procedure governs the consolidation of actions. Civ.R. 42(A)(1) provides: "If actions before the court involve a common question of law or fact, the court may: (a) join for hearing or trial any or all matters at issue in the actions; (b) consolidate the actions; or (c) issue any other orders to avoid unnecessary cost or delay." *See* R.C. 2743.03(D) (providing that the Ohio Rules of Civil Procedure "shall govern practice and procedure in all actions in the court of claims, except insofar as inconsistent with [R.C. Chapter 2743]."

The Tenth District Court of Appeals has held that, "although actions may be consolidated, they continue to maintain their separate character and do not make a single multiple party, multiple claim action." *E.C. Redman v. Ohio Dept. of Indus. Relations*, 1994 Ohio App. LEXIS 3953, at *14 (10th Dist. Sep. 6, 1994). *Accord Transcon Builders v. Lorain*, 49 Ohio App.2d 145, 150 (9th Dist.1976); *Golden Goose Properties, LLC v. Leizman*, 2014-Ohio-4384, ¶ 32 (8th Dist.); *Hall-Davis v. Honeywell, Inc.*, 2009-Ohio-531, ¶ 27 (2d Dist.).

[2] Under the invited-error doctrine ODOT may not take advantage of any ambiguity as to which lawsuit or complaint its summary-judgment motion concerns. *See State v. Murphy*, 91 Ohio St. 3d 516, 535-536 (2001), quoting *Hal Artz Lincoln-Mercury, Inc. v. Ford Motor Co*., 28 Ohio St. 3d 20, 28 (1986), paragraph one of the syllabus, citing *Lester v. Leuck*, 142 Ohio St. 91 (1943), paragraph one of the syllabus (under the settled principle of invited error, a litigant "may not 'take advantage of an error which he himself invited or induced'"). "Invited error requires that counsel induced the error or was actively responsible for it." *Agarwal v. Bansal*, 2001 Ohio App. LEXIS 1505, *10 (10th Dist. 2001), citing *State v. Kollar*, 93 Ohio St. 89, 91 (1915). *See Tchankpa v. Ascena Retail Grp., Inc.*, 2020-Ohio-3291, ¶ 22 (10th Dist.) (concluding that, in that case, the appellant invited any error in the trial court's determination that the two-year statute of limitations applied to all of appellant's claims).

in Ct. of Cl. No. 2024-00871JD is not time-barred. ODOT is therefore entitled to a summary judgment in its favor in Ct. of Cl. No. 2024-00871JD. ODOT's summary-judgment motion filed in Ct. of Cl. No. 2025-00792PR shall be denied, as explained below.

II. Background

{¶4} On November 22, 2024, Fisher Plaza, LLC sued Complete General Construction Company (a contractor hired by ODOT for the public-improvement project in Marion, Ohio), and others, in a complaint sounding in negligence and nuisance in the Franklin County Court of Common Pleas. Fisher Plaza, LLC demanded a jury trial in its complaint. Complete General Construction Company filed a third-party complaint against ODOT, and, in accordance with R.C. 2743.03(E)(1), the case before the common pleas court was removed to this court where Ct. of Cl. No. 2025-00792PR was assigned to the removed case.[3]

{¶5} On December 11, 2024, in Ct. of Cl. No. 2024-00871JD, Fisher Plaza LLC, through counsel, brought an original action against ODOT, which sounds in negligence and nuisance, that stems from the same public-improvement project as in Ct. of Cl. No. 2025-00792PR. In Ct. of Cl. No 2024-00871JD, Fisher Plaza, LLC asserts that ODOT "negligently controlled, directed, supervised, advised, allowed and authorized Complete General Construction and its subcontractors to perform the work in a negligent manner so as to damage Plaintiff's property," (Complaint, ¶ 19), that ODOT "negligently hired, trained, controlled, directed and supervised Complete General Construction and is liable for its conduct and negligence," (Complaint, ¶ 29), and that ODOT's actions created a nuisance and resulted in direct physical invasion to Plaintiff's property and caused continuing structural damages. (Complaint, ¶ 32).

{¶6} On March 9, 2026, the court held simultaneous case-management conferences in Ct. of Ct. Nos. 2024-00871JD and 2025-00792PR. Following the conferences, the court ordered simultaneous trials for Ct. of Cl. Nos. 2024-00871JD and 2025-00792PR and the court set case-management deadlines for each case.

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[3] Under R.C. 2743.03(E)(1) a party who files a counterclaim against the state or makes the state a third-party defendant in an action commenced in any court, other than the court of claims, "shall file a petition for removal in the court of claims."

{¶7} On August 6, 2026, ODOT moved for a summary judgment in its favor in Ct. of Cl. Nos. 2024-00871JD and 2025-00792PR "on the basis that Plaintiff has not timely filed its complaint." ODOT's summary-judgment motion is accompanied by, among other things, a deposition of Austin Blake Carte, owner of Fisher Plaza, LLC.

{¶8} On September 3, 2026, Fisher Plaza, LLC, through counsel, filed a response in opposition to ODOT's summary-judgment motion. Fisher Plaza, LLC contends that (1) ODOT has not established that Fisher Plaza, LLC discovered both actionable injury and its likely cause in October 2022, (2) Ohio law does not require complete knowledge as to damages, and the absence of a final estimate underscores the dispute concerning the character and cause of injury to its property, (3) a certain foundation incident in July 2024 creates an independent factual dispute concerning later-occurring injury, (4) the record presents genuine issues of material fact concerning causation, (5) Fisher Plaza's evidence supports the existence of an issue of material fact and dispute concerning successive or continuing damage, and (6) an administrative-claim timeline requires resolution before a judgment on limitations grounds should be issued, and (7) even if one theory were untimely, dismissal of the entire action would be improper. Fisher Plaza, LLC's response is accompanied by an affidavit of Austin Carte.

{¶9} In reply, ODOT cites to certain deposition testimony of Austin Blake Carte that it contends supports its request for a summary judgment and to *Rosendale v. Ohio Dept. of Transp.*, 2008-Ohio-4899 (10th Dist.) and *Dalesandro v. Ohio Dept. of Transp.*, 2010-Ohio-6177 (10th Dist.), which ODOT contends are factually similar to this case and supports its contention that it is entitled to a summary judgment in its favor.

{¶10} Complete General Construction Company has not filed a response to ODOT's summary-judgment motion filed in Ct. of Cl. Nos. 2024-00871JD and 2025-00792PR.

{¶11} ODOT's summary-judgment motion is before the court for a nonoral hearing pursuant to Civ.R 56 and L.C.C.R. 4(D).

III. Law and Analysis

A. Rule 56 of the Ohio Rules of Civil Procedure governs motions for summary judgment.

{¶12} Rule 56 of the Ohio Rules of Civil Procedure governs motions for summary judgment. *See* Civ.R. 56. Under Civ.R. 56(C) summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule." Any evidence that is not specifically listed in Civ.R. 56(C) "is only proper if it is incorporated into an appropriate affidavit under Civ.R. 56(E)." *Pollard v. Elber*, 2018-Ohio-4538, ¶ 22 (6th Dist.). *Accord Barton v. Cty. of Cuyahoga*, 2020-Ohio-6994, ¶ 21 (8th Dist.). Courts "may consider other evidence if there is no objection on this basis." *State ex rel. Gilmour Realty, Inc. v. City of Mayfield Hts.*, 2009-Ohio-2871, ¶ 17; *Pollard* at ¶ 22.

{¶13} Under Civ.R. 56(C) a summary judgment "shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor."[4] The Supreme Court of Ohio has explained that, on motion for summary judgment, the moving party "bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996). In *Dresher* the Supreme Court of Ohio stated:

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[4] Discussing Civ.R. 56(C), the Supreme Court of Ohio has stated:

> Civ.R. 56(C) provides that before summary judgment may be granted, it must be determined that (1) no genuine issue as to any material fact remains to be litigated, (2) the moving party is entitled to judgment as a matter of law, and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the nonmoving party, that conclusion is adverse to the party against whom the motion for summary judgment is made.

State ex rel. Grady v. State Emp. Rels. Bd., 78 Ohio St.3d 181, 183 (1997), citing *Temple v. Wean United, Inc.*, 50 Ohio St. 2d 317, 327 (1977).

> [T]he moving party bears the initial burden of *demonstrating* that there are no genuine issues of material fact concerning an essential element of the opponent's case. To accomplish this, the movant must be able to point to evidentiary materials of the type listed in Civ.R. 56(C) that a court is to consider in rendering summary judgment. The evidentiary materials listed in Civ.R. 56(C) include "the pleading, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of fact, if any." These evidentiary materials must show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law.

(Emphasis sic.) *Dresher* at 292-293.

{¶14} If a moving party "fails to satisfy its initial burden, the motion for summary judgment must be denied." *Vahila v. Hall*, 77 Ohio St.3d 421, 429 (1997). *See Omega Riggers & Erectors, Inc. v. Koverman*, 2016-Ohio-2961, ¶ 69 (2d Dist.) ("unless the movant satisfies its initial burden on a motion for summary judgment, the non-movant has no burden of proof"). But if a party who moves for summary judgment has satisfied its initial burden, then a nonmoving party "has a reciprocal burden outlined in the last sentence of Civ.R. 56(E)." *Dresher* at 293. *See* Civ.R. 56(E) ("[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party").

{¶15} Under Ohio law a material fact "is an essential element of the claim or defense, as defined by the substantive law." *Morgan v. Beigel*, 2011-Ohio-406, ¶ 8 (3d Dist.), citing *Mount v. Columbus & S. Ohio Elec. Co.*, 39 Ohio App.3d 1, 2 (5th Dist.1987). "A dispute of fact is 'material' if it affects the outcome of the litigation." *Morgan* at ¶ 8, citing *Mount* at 2. The Tenth District Court of Appeals has discussed a determination of material facts, as follows:

> In every lawsuit there are some disputed issues of fact, but Civ.R. 56 focuses on those which are "material." The materiality determination of facts

> is discussed in *Anderson v. Liberty Lobby, Inc.* (1986), 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202. The mere existence of some factual disputes, if not material, will not defeat a summary judgment otherwise proper. If one's case is supported only by a "scintilla" of evidence, or if his evidence is "merely colorable" or not "significantly probative," summary judgment should be entered.

Buckeye Union Ins. Co. v. Consol. Stores Corp., 68 Ohio App.3d 19, 22 (10th Dist.1990). The Tenth District Court of Appeals, however, has cautioned:

> At summary judgment, it is not the role of the court to resolve a disputed fact or weigh the credibility of the evidence, only to determine whether there exists a genuine dispute of material fact. . . . The trial court is limited to determining whether admissible evidence of the type contemplated by Civ.R. 56(C) gives rise to a genuine dispute of material fact; it is exclusively the role of the fact-finder to determine what weight to give that evidence at trial.

Kiser v. United Dairy Farmers, 2023-Ohio-2136, ¶ 16 (10th Dist.).

B. R.C. 2743.16(A) requires actions against the state to be commenced within two years of the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties.

{¶16} According to R.C. 2743.01(A), as used in R.C. Chapter 2743, the term "state" "means the state of Ohio, including, but not limited to . . . all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state." ODOT is an administrative department within the State of Ohio. R.C. 121.02(D).

{¶17} The Tenth District Court of Appeals has discussed the statute-of-limitations for bringing an action against the state, explaining:

> Pursuant to R.C. 2743.16(A), "civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties." The General Assembly "clearly intended for [the]

> two-year limitation period [set forth in R.C. 2743.16(A)] to take precedence over all other statutes of limitation in the Revised Code at large." *Simmons v. Ohio Rehab. Servs. Comm.*, 10th Dist. No. 09AP-1034, 2010 Ohio 1590, ¶ 6; see also *Grenga v. Youngstown State Univ.*, 10th Dist. No. 11AP-165, 2011 Ohio 5621, ¶ 17; *Windsor House, Inc. v. Ohio Dep't of Job & Family Servs.*, 10th Dist. No. 09AP-584, 2010 Ohio 257, ¶ 20. Therefore, the longest limitations period applicable to actions in the Court of Claims is two years. *Grenga* at ¶ 18.

Agrawal v. Univ. of Cincinnati, 2017-Ohio-8644, ¶ 12, quoting *Cargile v. Ohio Dept. of Admin. Servs.*, 2012-Ohio-2470, ¶ 12 (10th Dist.). *Accord Coleman v. Columbus State Cmty. College*, 2015-Ohio-4685, ¶ 12 (10th Dist.) (R.C. 2743.02(A)(1) requires that a suit must be brought against the state no later than two years after the date of accrual of the cause of action).

{¶18} Regarding when a cause of action accrues, the First District Court of Appeals has noted:

> As a general rule, a cause of action accrues at the time the wrongful act is committed. *Flagstar Bank, F.S.B. v. Airline Union's Mortg. Co.*, 128 Ohio St.3d 529, 2011-Ohio-1961, 947 N.E.2d 672, ¶ 13. An exception to the general rule is the discovery rule. It provides that a cause of action does not arise until the plaintiff knows, or by the exercise of reasonable diligence should know, that he or she has been injured by the defendant's conduct. *Id.* at ¶ 13-14. The discovery rule tolls the running of the statute of limitations. *LGR Realty, Inc. v. Frank & London Ins. Agency*, 2016-Ohio-5044, 58 N.E.3d 1179, ¶ 14 (10th Dist.), *appeal allowed*, 148 Ohio St. 3d 1425, 2017-Ohio-905, 71 N.E.3d 297.
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> A related concept is the delayed-damages rule. Under that rule, "where the wrongful conduct complained of is not presently harmful, the cause of action does not accrue until actual damage occurs." *Flagstar* at ¶ 19, quoting *Velotta v. Leo Petronzio Landscaping, Inc.*, 69 Ohio St.2d 376, 379, 433 N.E.2d 147 (1982). Unlike the discovery rule, the delayed-damages rule does not just toll the running of the statute of limitations, it

> adjusts when the cause of action accrues. *LGR Realty*, 2016-Ohio-5044, at ¶ 14. "In other words, a cause of action for negligence is not complete, and the statute of limitations does not begin to run, until there has been an injury." *Flagstar* at ¶ 19.

Chateau Estate Homes v. Fifth Third Bank, 2017-Ohio-6985, ¶ 13-14 (1st Dist.). *Accord Columbus Green Bldg. Forum v. State*, 2012-Ohio-4244, ¶ 27 (10th Dist.). (a cause of action does not ordinarily accrue until actual damage occurs and when one's conduct becomes presently injurious, the statute of limitations begins to run.)

{¶19} In *Rosendale v. Ohio Dept. of Transp.*, 2008-Ohio-4899, ¶ 6-7 (10th Dist.), the Tenth District Court of Appeals discussed when a cause of action accrues against the state, explaining:

> R.C. 2743.16(A) provides in pertinent part as follows: "[C]ivil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties." Generally, a cause of action accrues and the statute of limitations begins to run at the time the wrongful act was committed. *Collins v. Sotka* (1998), 81 Ohio St.3d 506, 507, 1998 Ohio 331, 692 N.E.2d 581, citing *Kunz v. Buckeye Union Ins. Co.* (1982), 1 Ohio St.3d 79, 1 Ohio B. 117, 437 N.E.2d 1194. However, under the discovery rule, which is an exception to the general rule, a cause of action accrues when the plaintiff discovers, or in the exercise of reasonable care should have discovered, that he or she was injured by the wrongful conduct of the defendant. Id., citing both *O'Stricker v. Jim Walter Corp.* (1983), 4 Ohio St.3d 84, 4 Ohio B. 335, 447 N.E.2d 727, and *Oliver v. Kaiser Community Health Found.* (1983), 5 Ohio St.3d 111, 5 Ohio B. 247, 449 N.E.2d 438, syllabus. "In essence, the running of the limitations period is delayed until triggered by a 'cognizable event' that alerts the plaintiff that he or she was injured by the defendant." *Collins,* at 507-508. It is unnecessary for a plaintiff to be aware of the full extent of damages before there is a

cognizable event. See *Allenius v. Thomas* (1989), 42 Ohio St.3d 131, 133-134, 538 N.E.2d 93.

Although the discovery rule has been applied most often in medical malpractice cases, the "underlying rationale also fits with latent property-damage actions." *NCR Corp. v. U.S. Mineral Prods. Co.* (1995), 72 Ohio St.3d 269, 271, 1995 Ohio 191, 649 N.E.2d 175. "The discovery rule is invoked in situations where the injury complained of may not manifest itself immediately and, therefore, fairness necessitates allowing the assertion of a claim when discovery of the injury occurs beyond the statute of limitations." Id., citing *O'Stricker,* supra. This court has applied the discovery rule to the two-year statute of limitations contained in R.C. 2743.16(A). *See Hans v. Ohio State Univ. Medical Ctr.,* Franklin App. No. 07AP-10, 2007 Ohio 3294, at ¶ 12, citing *Wright v. Lima Correctional Facility* (Sept. 21, 2000), Franklin App. No. 00AP-332, 2000 Ohio App. LEXIS 4242.

C. Fisher Plaza, LLC did not commence its action against ODOT in Ct. of Cl. No. 2024-00871JD within two years of the date of accrual of the cause of action.

{¶20} In support of ODOT's request for a summary judgment, ODOT asserts that Austin Blake Carte, owner of Fisher Plaza, LLC, has testified in a deposition that, as early as October 13, 2022, he presented a pre-suit claim to ODOT alleging that work on the highway improvement project caused damage to his building located on Prospect Street, in Marion, Ohio. ODOT asserts that, according to R.C. 2743.16(A), Fisher Plaza, LLC had until October 13, 2024, to bring its lawsuits, but it failed to do so. ODOT reasons that it is therefore entitled to a summary judgment in its favor in Ct. of Cl. Nos. 2024-00871JD and 2025-00792PR.

{¶21} A review of Carte's deposition testimony confirms that, on October 13, 2022, Carte was aware of actionable damage to Fisher Plaza, LLC's property and Carte contacted ODOT. See Carte Deposition, at 24, 62, 63, 78, 81-82. Even when Carte's deposition testimony is construed in favor of Fisher Plaza, LLC in Ct. of Cl. No. 2024-

000871JD, Carte's deposition testimony demonstrates that Carte, as the owner of Fisher Plaza, LLC, knew, or should have known, that Fisher Plaza, LLC sustained particular actionable injuries that were likely caused by ODOT or ODOT's failure to properly administer the public-improvement project. Fisher Plaza, LLC, however, filed its lawsuit against ODOT in Ct. of Cl. No. 2024-00871JD on December 11, 2024—more than 2 years after the date that the actionable injury by ODOT accrued.

{¶22} Fisher Plaza LLC's response to ODOT's summary-judgment motion fails to point to testimony in Carte's deposition that shows that, as of October 13, 2022, Carte was not aware of actionable damage to Fisher Plaza, LLC's property and that Carte did not contact ODOT. Fisher Plaza LLC's arguments about a lack of "complete knowledge" as to damages, the lack of a final estimate of alleged damages, a foundation incident in July 2024, ongoing damage, and an administrative timeline miss the mark, because, even when Carte's deposition testimony is construed in Fisher Plaza LLC's favor in Ct. of Cl. No. 2024-00871JD, Carte's testimony establishes that, as of October 13, 2022, Carte knew, or should have known, that Fisher Plaza, LLC sustained particular actionable injuries that were likely caused by ODOT and that ODOT had performed an allegedly wrongful act that purportedly caused harm to Fisher Plaza, LLC.

{¶23} Fisher Plaza LLC's claim about a lack of "complete knowledge" does not preclude a summary judgment in ODOT's favor in Ct. of Cl. No. 2024-00871JD. *See Dalesandro v. Ohio Dept. of Transp.*, 2010-Ohio-6177, ¶ 21-22 (10th Dist.). In *Dalesandro* at ¶ 21-22 the Tenth District Court of Appeals noted:

> Appellants correctly state that they did not know with certainty that the underlying problem causing the sewer backup was caused by the construction project administered by ODOT until the city excavated the line in 2006. The discovery of wrongdoing, however, may be constructive, as well as actual. *Hambleton v. R.G. Barry Corp*. (1984), 12 Ohio St.3d 179, 181, 12 Ohio B. 246, 465 N.E.2d 1298. The discovery rule tolls the statute of limitations only until a plaintiff has an "'*indication* of wrongful conduct of the defendant.'" *Twee Jonge Gezellen, Ltd. v. Owens-Illinois, Inc*. (C.A.6, 2007), 238 Fed.Appx. 159, 163, quoting [*Norgard v. Brush Wellman*, 2002-Ohio-2007, ¶ 10]. (Emphasis sic.) ""If a person has knowledge of such

facts as would lead a fair and prudent man, using ordinary care and thoughtfulness, to make further inquiry, and he fails to do so, he is chargeable with knowledge which by ordinary diligence he would have acquired."'" *Hambleton* at 181, quoting *Schofield v. Cleveland Trust Co*. (1948), 149 Ohio St. 133, 142, 78 N.E.2d 167.

A plaintiff need not have discovered all relevant facts necessary to file a claim to trigger the statute of limitations. *Norris v. Yamaha Motor Corp. U.S.A*., 5th Dist. No. 2008 CA 00296, 2009-Ohio-4158, ¶ 41, citing *Flowers v. Walker* (1992), 63 Ohio St.3d 546, 549, 589 N.E.2d 1284. While the plaintiff must have an indication that his or her damages result from misconduct of the defendant, the plaintiff need not know, with absolute certainty, that the defendant is responsible. For example, in [*Rosendale v. Ohio Dept. of Transp.*, 2008-Ohio-4899, ¶ 10 (10th Dist.)], this court affirmed summary judgment in favor of the defendant, based on the statute of limitations, where the plaintiff knew, more than two years before filing his complaint, "that his home *may* have been damaged due to *possible* negligence of [the defendant] in connection with the construction project near his home." (Emphasis added.) We noted that the plaintiff was aware of some damages, "which, *in his view*, were the result of negligence on [the defendant's] part." Id. at ¶ 8. (Emphasis added.)

{¶24} With Fisher Plaza, LLC's response, Fisher Plaza, LLC has filed an affidavit of Austin Carte. Carte avers that his affidavit "is not intended to contradict anything in my deposition testimony," but instead "is intended to clarify the timing of certain events relevant to the case." (Affidavit at ¶ 3.)[5] Carte's self-serving affidavit fails to create a genuine issue that, as of October 13, 2022, Carte knew, or should have known, that Fisher

[5] A review of Carte's affidavit shows that Kristi E. Carte was the notary public before whom the affidavit was sworn and subscribed. In deposition testimony filed with ODOT's summary-judgment motion, Austin Carte referred to a person named "Kristy" as his wife. See Carte Deposition at 59.

If Kristi E. Carte, who notarized Austin Carte's affidavit, is Austin Carte's wife, and if Kristi E. Carte had a conflict of interest regarding the transaction at issue when she notarized Austin Carte's affidavit, a court reasonably could conclude that Austin Carte's self-serving affidavit should not be considered admissible evidence of the type contemplated by Civ.R. 56(C). *See* R.C. 147.141(A)(4) (prohibiting a notary from performing a notarial act if the notary has a conflict of interest with regard to the transaction in question).

Plaza, LLC sustained particular actionable injuries that were likely caused by ODOT and that ODOT had performed a wrongful act that purportedly caused harm to Fisher Plaza, LLC. *See Barich v. Scheidler Med. Grp., LLC*, 2015-Ohio-4446, ¶ 14 (12th Dist.) (evidence necessary to create a genuine issue of material fact must be more than just bare, unsupported assertions contained within a self-serving affidavit); *SRS Distrib. v. Axis All., LLC,* 2020-Ohio-1529, ¶ 14 (2d Dist.). In *Bell v. Beightler*, 2003-Ohio-88, ¶ 33 (10th Dist.), the Tenth District Court of Appeals explained:

> Generally, a party's unsupported and self-serving assertions, offered by way of affidavit, standing alone and without corroborating materials under Civ.R. 56, will not be sufficient to demonstrate material issues of fact. Otherwise, a party could avoid summary judgment under all circumstances solely by simply submitting such a self-serving affidavit containing nothing more than bare contradictions of the evidence offered by the moving party. *C.R. Withem Enterprises, v. Maley* (Sept. 23, 2002), Fairfield App. No. 01 CA-54, 2002-Ohio-5056, ¶ 24; *Kulch v. Structural Fibers, Inc.* (1997), 78 Ohio St.3d 134, 170, 1997 Ohio 219, 677 N.E.2d 308 (Cook, J., concurring in part and dissenting in part).

Compare Kiser, *supra*, 2023-Ohio-2136 at ¶ 24 (10th Dist.) ("[t]o the extent that prior decisions from this court, including [*White v. Sears*, 2011-Ohio-204 (10th Dist.)], hold that a nonmoving party may never demonstrate the existence of a genuine issue of material fact with 'selfserving' testimonial evidence alone, they are overruled").[6] Here, Carte's unsupported and self-serving assertions offered in his affidavit, which are offered to "clarify" certain events discussed in his deposition testimony, are insufficient to satisfy Fisher Plaza, LLC's reciprocal burden under Civ.R. 56(E) to show a genuine issue that

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[6] In *Kiser*, the Tenth District Court of Appeals explained:

> Like any other evidence from a moving or nonmoving party, this is not to say that testimony from the nonmoving party will automatically create a genuine dispute of material fact. A material fact is only "in dispute" if the evidence in the record creates a conflict requiring resolution at trial, as opposed to evidence that is so one-sided the fact dispute can be resolved as a matter of law. *Turner* [*v. Turner,* 67 Ohio St.3d 337, 340 (1993)].

Kiser at ¶ 24, footnote 2.

Fisher Plaza, LLC's action against ODOT in Ct. of Cl. No. 2024-00871JD is not time-barred.

D. Removal of the underlying action in Ct. of Cl. No. 2025-00792PR is no longer justified. ODOT's summary-judgment motion filed in Ct. of Cl. No. 2025-00792PR is moot.

{¶25} Given that ODOT is entitled to a summary judgment in its favor in Ct. of Cl. No. 2024-00871JD, the court finds that (1) pursuant to R.C. 2743.02(E)(2), a removal of the underlying common pleas court action in Ct. of Cl. No. 2025-00792PR is no longer justified, (2) the underlying action in Ct. of Cl. No. 2025-00792PR should be remanded to the Franklin County Court of Common Pleas for further proceedings on Fisher Plaza, LLC's claims against Complete General Construction Company, and (3) Ct. of Cl. No. 2025-00792PR should be closed.[7] Removal is no longer justified, and the underlying action in Ct. of Cl. No. 2025-00792PR should be remanded, because, as a result of the summary judgment in ODOT's favor in Ct. of Cl. No.2024-00871JD, ODOT is not liable for Fisher Plaza, LLC's claims against ODOT that stem from the public-improvement project in Marion, Ohio, and the doctrine of collateral estoppel applies in the underlying action in Ct. of Cl. No. 2025-00792PR to prevent a re-litigation of ODOT's liability to Fisher Plaza, LLC. *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979), citing *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 328-329 (1971) ("[c]ollateral estoppel, like the related doctrine of res judicata, has the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation" (footnote omitted));[8] *Brunner v. RJ Lipps, Inc.*, 2016-Ohio-3231, ¶ 9 (1st Dist.) ("[c]ollateral estoppel

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[7] Pursuant to R.C. 2743.03(E)(2), this court "may remand a civil action to the court in which it originated upon a finding that the removal petition does not justify removal, or upon a finding that the state is no longer a party."

Under Ohio law, trial courts, such as this court, "have inherent authority to manage their own dockets and the cases before them." *Lupo v. City of Columbus*, 2014-Ohio-2792, ¶ 20 (10th Dist.), citing *State ex rel. Charvat v. Frye*, 2007-Ohio-2882, ¶ 23; *Flynn v. Flynn*, 2004-Ohio-3881, ¶ 10 (10th Dist.). *See Caldwell v. ProMedica Health Sys.*, 2017-Ohio-7979, ¶ 12 (6th Dist.), quoting *State ex rel. Charvat* at ¶ 23. ("[i]t is well-established that 'trial courts have inherent power to manage their own dockets'").

[8] In the omitted footnote in *Paklane Hosiery*, the Supreme Court of the United States explained:

may be used both offensively and defensively. Defensive collateral estoppel occurs when a defendant seeks to stop a plaintiff from asserting a claim that the plaintiff had previously litigated and lost. *See Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326, 99 S.Ct. 645, 58 L.Ed.2d 552 (1979)"). Additionally, since Fisher Plaza, LLC has demanded a jury trial in the case removed from the common pleas court in Ct. of Cl. No. 2025-00792PR, and, since, under R.C. 2743.11, juries "shall be drawn from the common pleas list of qualified jurors, and empaneled in the same manner as in cases that originate in the court of common pleas," the court determines that the jury trial demanded by Fisher Plaza, LLC in the case removed from the Franklin County Court of Common Pleas should be conducted in the common pleas court, rather than this court.

{¶26} The court further determines that Complete General Construction Company's third-party complaint against ODOT in the underlying action in Ct. of Cl. No. 2025-00792PR presents no impediment to a remanding of the underlying action to the common pleas court, because, if Complete General Construction Company is not found liable in the common pleas court on Fisher Plaza, LLC's claims against it, then Complete

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> Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action. Under the doctrine of collateral estoppel, on the other hand, the second action is upon a different cause of action and the judgment in the prior suit precludes relitigation of issues actually litigated and necessary to the outcome of the first action. 1B J. Moore, Federal Practice para. 0.405 [1], pp. 622-624 (2d ed. 1974); *e. g., Lawlor* v. *National Screen Serv. Corp*., 349 U.S. 322, 326; *Commissioner* v. *Sunnen*, 333 U.S. 591, 597; *Cromwell* v. *County of Sac*, 94 U.S. 351, 352-353.

Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326 (1979), footnote 5. With respect to Ohio law, the Supreme Court of Ohio has stated:

> In Ohio, "[t]he doctrine of res judicata encompasses the two related concepts of claim preclusion, also known as res judicata or estoppel by judgment, and issue preclusion, also known as collateral estoppel." *O'Nesti v. DeBartolo Realty Corp*., 113 Ohio St. 3d 59, 2007-Ohio-1102, 862 N.E.2d 803, ¶ 6. "[I]ssue preclusion, [or] collateral estoppel, holds that a fact or a point that was actually and directly at issue in a previous action, and was passed upon and determined by a court of competent jurisdiction, may not be drawn into question in a subsequent action between the same parties or their privies, whether the cause of action in the two actions be identical or different." *Ft. Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd*. (1998), 81 Ohio St.3d 392, 395, 1998-Ohio-435, 692 N.E.2d 140. "While the merger and bar aspects of *res judicata* have the effect of precluding the relitigation of the same cause of action, the collateral estoppel aspect precludes the relitigation, in a second action, of an issue that had been actually and necessarily litigated and determined in a prior action that was based on a different cause of action." Id. . . .

State ex rel. Davis v. Public Emp. Ret. Bd., 2008-Ohio-6254, ¶ 27.

General Construction Company's third-party complaint against ODOT would not be viable. *See Stewart v. American International Oil & Gas Co.*, 845 F.2d 196, 199-200 (9th Cir. 1988) (discussing third-party claims under analogous Fed.R.Civ.P. 14); *Am. Zurich Ins. Co. v. Cooper Tire & Rubber Co.*, 512 F.3d 800, 805 (6th Cir. 2008) (discussing third-party claims); *Waverly City Sch. Dist. Bd. of Educ. v. Triad Architects, Inc.*, 2008-Ohio-6917, ¶ 24 (10th Dist.).[9] And, even if Complete General Construction Company were to be found liable, or partially liable, to Fisher Plaza, LLC in the underlying action in the common pleas court, then Complete General Construction Company is statutorily permitted to seek relief against ODOT in this forum in an original action under R.C. 2743.02. *See* R.C. 2743.02 (waiver of immunity by the state).

{¶27} Because the underlying action in Ct. of Cl. No. 2025-00792PR shall be remanded to the Franklin County Court of Common Pleas for further proceedings, and because Ct. of Cl. No. 2025-00792PR shall be closed following remand to the common

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[9] In *Stewart* at 199-200, the United States Court of Appeals for the Ninth Circuit explained that

> a third-party claim may be asserted only when the third party's liability is in some way dependent on the outcome of the main claim and is secondary or derivative thereto. *One 1977 Mercedes Benz*, 708 F.2d at, 452. As Professors Wright and Miller explain:
>
> > . . . [the claim] cannot simply be an independent or related claim but must be based upon plaintiff's claim against defendant. The crucial characteristic of a Rule 14 claim is that defendant is attempting to transfer to the third-party defendant the liability asserted against him by the original plaintiff. The mere fact that the alleged third-party claim arises from the same transaction or set of facts as the original claim is not enough.
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> 6 *Fed. Prac. & Proc.* § 1446 at 257 (1971 ed.). *See also*, 3 J. Moore, *Federal Practice*, paragraphs 14.04-14.15.

In *Am. Zurich Ins. Co. v. Cooper Tire & Rubber Co.*, 512 F.3d 800, 805 (6th Cir. 2008), the United States Court of Appeals for the Sixth Circuit has stated:

> Third-party pleading is appropriate only where the third-party defendant's liability to the third-party plaintiff is dependent on the outcome of the main claim; one that merely arises out of the same set of facts does not allow a third-party defendant to be impleaded. A defendant attempting to transfer the liability asserted against him by the original plaintiff to the third-party defendant is therefore the essential criterion of a third-party claim. Correlatively, a defendant's claim against a third-party defendant cannot simply be an independent or related claim, but must be based upon the original plaintiff's claim against the defendant.

And in *Waverly City Sch. Dist. Bd. of Educ. v. Triad Architects, Inc.*, 2008-Ohio-6917, ¶ 24 (10th Dist.), the Tenth District Court of Appeals has stated that "because a third-party complaint under Civ.R. 14(A) arises only where a third-party plaintiff claims that a third-party defendant is liable to him for all or part of the plaintiff's claim, the third-party plaintiff's right to recover must arise from the plaintiff's successful prosecution of the main action."

pleas court, the court determines that third-party defendant ODOT's summary-judgment motion filed in Ct. of Cl. No. 2025-00792PR is rendered moot and therefore should be denied, as moot. *See Tassone v. Tassone*, 2021-Ohio-4063, ¶ 19 (10th Dist.) (moot issues have no practical significance, and, instead, present hypothetical or academic questions); *City of Grove City v. Clark*, 2002-Ohio-4549, ¶ 11 (10th Dist.).

{¶28} Accordingly, and, in sum, after the summary-judgment standard in Civ.R. 56(C) is applied to the submitted evidence, Fisher Plaza, LLC has failed to satisfy its reciprocal burden under *Dresher*, and as outlined in Civ.R. 56(E), to show that its action against ODOT in Ct. of Cl. No. 2024-00871JD is not time-barred. Because Fisher Plaza LLC's action is time-barred, ODOT is not liable to Fisher Plaza, LLC for Fisher Plaza, LLC's claims against ODOT. Pursuant to R.C. 2743.03(E)(2), the court finds that a removal of the underlying action in Ct. of Cl. No. 2025-00792PR, is no longer justified. Consequently, the underlying action in Ct. of Cl. No. 2025-00792PR shall be remanded to the Franklin County Court of Common Pleas for further proceedings on Fisher Plaza, LLC's claims against Complete General Construction Company. Ct. of Cl. No. 2025-00792PR shall therefore be closed, and ODOT's summary-judgment motion filed in Ct. of Cl. No. 2025-00792PR shall be denied as moot. *See Tassone*, *supra* at ¶ 19 (10th Dist.) (moot issues have no practical significance, and, instead, present hypothetical or academic questions).

IV. Conclusion

{¶29} The court determines, and holds, that (1) ODOT's summary-judgment motion filed on August 6, 2026, in Ct. of Cl. No. 2024-00871JD, shall be granted, (2) ODOT is entitled to a summary judgment in its favor in Ct. of Cl. No. 2024-00871JD, (3) the underlying case in Ct. of Cl. No. 2025-00792PR—Franklin C.P. No. 24 CV 009047—shall be remanded to the Franklin County Court of Common Pleas pursuant to R.C. 2743.03(E)(2) for further proceedings, and (4) ODOT's summary-judgment motion filed on August 6, 2026, in Ct. of Cl. No. 2025-00792PR shall be denied, as moot.

LISA L. SADLER

Judge

IN THE COURT OF CLAIMS OF OHIO

FISHER PLAZA, LLC Plaintiff v. OHIO DEPARTMENT OF TRANSPORTATION Defendant AND FISHER PLAZA, LLC Plaintiff v. COMPLETE GENERAL CONSTRUCTION CONTRACTOR Defendant/Third-Party Plaintiff v. OHIO DEPARTMENT OF TRANSPORTATION Third-Party Defendant	Case Nos. 2024-00871JD and 2025-00792PR Judge Lisa L. Sadler JUDGMENT ENTRY

{¶30} For reasons set forth in the decision filed concurrently herewith, defendant Ohio Department of Transportation's summary-judgment motion filed in Ct. of Cl. No. 2024-00871JD is GRANTED. Judgment is rendered in favor of defendant in Ct. of Cl. No. 2024-00871JD. Court costs for Ct. of Cl. Nos. 2024-000871JD are assessed to plaintiff Fisher Plaza, LLC.

{¶31} Franklin C.P. No. 24 CV 009047—a case removed from the Franklin County Common Pleas Court in Ct. of Cl. No. 2025-00792PR—is REMANDED to the Franklin County Court of Common Pleas for further proceedings in accordance with R.C. 2743.03(E)(2). Ct. of Cl. No. 2025-00792PR is therefore CLOSED and

TERMINATED. Third-party defendant Ohio Department of Transportation's summary-judgment motion filed in Ct. of Cl. No. 2025-00792PR, is DENIED, as moot. The clerk of this court is ORDERED to return all original papers in Franklin C.P. No. 24 CV 009047 to the clerk of the Franklin County Court of Common Pleas.

{¶32} Because third-party defendant Ohio Department of Transportation's summary-judgment motion filed in Ct. of Cl. No. 2025-00792PR is denied, and because, in Ct. of Cl. No. 2025-00792PR, the underlying case brought by plaintiff Fisher Plaza, LLC is remanded to the Franklin County Court of Common Pleas, court costs for Ct. of Cl. No. 2025-00792PR are assessed equally to third-party defendant Ohio Department of Transportation and plaintiff Fisher Plaza, LLC. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

LISA L. SADLER
Judge

Filed September 23, 2026
Sent to S.C. Reporter 10/19/26