

IN THE COURT OF CLAIMS OF OHIO

MARK PHILLIP ALESSIO :

Plaintiff :

v. :

CASE NO. 2005-02362-AD

OHIO DEPARTMENT OF :
TRANSPORTATION :

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. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Transportation is not to be held liable for damages sustained by individuals who used the berm or shoulder of a highway for travel without adequate reasons. *Colagrossi v. Department of Transportation* (1983), 82-06474-AD.

{¶ 5} 2) The shoulder of a highway is designed to serve a purpose which may include travel under emergency circumstances. It is for the trier of fact to determine whether driving on the shoulder is a foreseeable and reasonable use of the shoulder of the highway. *Dickerhoff v. City of Canton* (1983), 6 Ohio St. 3d 128. In the case at bar, plaintiff has offered no reasonable explanation

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or excuse for using the berm of the highway.

{¶ 6} 3) Plaintiff, in the instant case, has shown no adequate reason for the driver's action of driving on the berm of the highway, consequently, based on the rationale of *Colagrossi*, supra, this case is denied. If a plaintiff sustains damage because of a defect located off the marked, regularly traveled portion of a roadway, a necessity for leaving the roadway must be shown. *Lawson v. Jackson* (1977), 75-0612-AD. Inadvertent travel based on inattention is not an adequate reason or necessity for straying from the regularly traveled portion of the roadway. *Smith v. Ohio*

