

dispatched to the scene and the asphalt debris was removed. Defendant suggested the asphalt debris condition "existed for only a relatively short amount of time before plaintiff's incident." Defendant asserted plaintiff has failed to offer sufficient evidence to prove DOT had requisite notice of the damage-causing debris or that DOT negligently maintained the particular roadway area.

{¶ 4} 4) Plaintiff stated, in his response to defendant's investigation report, "[w]hile at the scene and shortly after the incident, I was approached by an ODOT person who indicated to me they had been notified much earlier of the chunk of pavement in the highway." Plaintiff did not submit any statements from DOT personnel concerning prior notice of asphalt debris on the roadway.

Plaintiff did submit an incident report of his property damage event which recorded the date and time of this event occurring on February 4, 2005, before 2:46 p.m. The incident report noted plaintiff's vehicle struck a large piece of asphalt which damaged the tire and rim of the vehicle. The damage-causing asphalt debris was described as a piece of deteriorated roadway pavement material.

The incident report also noted DOT personnel were in the area, assisted plaintiff with changing his tire, and cleared the asphalt debris from the roadway.

CONCLUSIONS OF LAW

{¶ 5} Defendant has the duty to maintain its highway in a reasonably safe condition for the motoring public. *Knickel v. Ohio Department of Transportation* (1976), 49 Ohio App. 2d 335. However, defendant is not an insurer of the safety of its highways. See *Kniskern v. Township of Somerford* (1996), 112 Ohio App. 3d 189; *Rhodus v. Ohio Dept. of Transp.* (1990), 67 Ohio App. 3d 723.

{¶ 6} In order to recover in any suit involving injury proximately caused by roadway conditions including debris,

plaintiff must prove either: 1) defendant had actual or constructive notice of the debris and failed to respond in a reasonable time or responded in a negligent manner, or 2) that defendant, in a general sense, maintains its highways negligently. *Denis v. Department of Transportation* (1976), 75-0287-AD.

{¶ 7} 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.

{¶ 8} Plaintiff has not produced any evidence to indicate the length of time the debris condition was present on the roadway prior to the incident forming the basis of this claim. No evidence has been submitted to show defendant had requisite actual notice of the debris to invoke liability. Additionally, 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 debris appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant had constructive notice of the debris.

{¶ 9} Finally, 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. Therefore, defendant is not liable for any damage plaintiff may have suffered from the roadway debris.

IN THE COURT OF CLAIMS OF OHIO

ANTHONY J. CIRIGLIANO :
Plaintiff :
v. : CASE NO. 2005-06121-AD

OHIO DEPARTMENT OF
TRANSPORTATION, DISTRICT 12

:

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

Entry cc:

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