

Johnson Construction Company ("Smith & Johnson"), who were engaged by DOT to perform the construction work on the bridge overpass spanning US Route 33. Smith & Johnson agreed to reimburse plaintiff for the cost of removing the dried concrete from her vehicle, but apparently refused to pay for the repainting of plaintiff's Toyota 4 Runner. Consequently, plaintiff filed this complaint against DOT, the supervisor of the US Route 33 construction project, to recover the cost of repainting her vehicle and filing fees. The filing fee was paid. Total damages sought in this claim amount to \$627.07.

{¶ 3} Defendant denied any liability in this matter. Defendant explained the bridge overpass area where plaintiff's property damage occurred was within a roadway construction zone under the control of DOT's contractor, Smith & Johnson. Defendant asserted Smith & Johnson, by contractual agreement, assumed responsibility for maintaining the bridges and roadway within the construction zone. Therefore, DOT argued Smith & Johnson is the proper party defendant in this action. Defendant implied all duties, such as the duty to inspect, the duty to warn, the duty to maintain, and the duty to repair, were delegated when an independent contractor takes control over a particular section of roadway including bridges.

{¶ 4} 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. The duty of DOT to maintain the roadway in a safe drivable condition is not delegable to an independent contractor involved in roadway construction. DOT may bear liability for the negligent acts of an

independent contractor charged with roadway construction. See *Cowell v. Ohio Department of Transportation*, 2003-09343-AD, 2004-Ohio-151, affirmed jud; *Slagle v. Ohio Dept. of Transp.*, 2003-10899-AD, 2004-Ohio-906; *Harchalk v. Ohio Dept. of Transp.*, 2004-08979-AD, 2005-Ohio-1242.

{¶ 5} Defendant was under a duty to inspect the construction site and correct any known deficiencies in connection with particular construction work. See *Roadway Express, Inc. v. Ohio Dept. of Transp.* (June 28, 2001), Franklin App. No. 00AP-1119.

{¶ 6} However, in order to find liability for a damage claim occurring in a construction area, the court must look at the totality of the circumstances to determine whether DOT acted in a manner to render the highway free from an unreasonable risk of harm for the traveling public. *Feichtner v. Ohio Dept. of Transp.* (1995), 114 Ohio App. 3d 346. In fact the duty to render the highway free from unreasonable risk of harm is the precise duty owed by DOT to the traveling public under both normal traffic conditions and during highway construction projects. See e.g., *White v. Ohio Dept. of Transp.* (1990), 56 Ohio St. 3d 39, 42; *Rhodus*, supra, at 729; *Feichtner*, supra, at 354.

{¶ 7} In the instant claim, sufficient evidence was presented to show a known hazardous condition was deposited on the roadway and neither DOT nor its agents corrected the condition. Plaintiff has proven her damage was caused by negligent acts or omissions on the part of defendant's agents. Therefore, defendant is liable to plaintiff for the damage claimed plus filing fees.

IN THE COURT OF CLAIMS OF OHIO

LORI D. CRAMER :
Plaintiff :

v. : CASE NO. 2005-09383-AD
OHIO DEPARTMENT OF : ENTRY OF ADMINISTRATIVE
TRANSPORTATION : DETERMINATION
Defendant :

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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 plaintiff in the amount of \$627.07, which includes the filing fee. Court costs are assessed against defendant. 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:

Lori D. Cramer
1165 Pump Station Road S.E.
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Plaintiff, Pro se

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For Defendant

RDK/laa
12/22
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