



investigation report, plaintiff has not submitted sufficient evidence to indicate the length of time the loosened road reflector was on the roadway surface prior to the February 11, 2006, property damage occurrence. Plaintiff suggested the reflector had been laying on the roadway for several weeks prior to his incident since he observed rust on the particular reflector his vehicle struck. Plaintiff submitted photographs depicting the damage-causing reflector. It appears the damage-causing reflector is in fairly good condition. The photographs do not constitute evidence of prior notice.

#### CONCLUSIONS OF LAW

{¶ 5} 1) Defendant has the duty to keep the roads in a safe, drivable condition. *Amica Mutual v. Dept. of Transportation* (1982), 81-02289-AD.

{¶ 6} 2) Defendant must exercise due care and diligence in the proper maintenance and repair of highways. *Hennessy v. State of Ohio Highway Department* (1985), 85-02071-AD.

{¶ 7} 3) In order to recover on a claim of this type, plaintiff must prove either: 1) defendant had actual or constructive notice of the defect (uprooted reflector) 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.

{¶ 8} 4) There is no evidence defendant had actual notice of the damage-causing reflector.

{¶ 9} 5) 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 defective condition (uprooted reflector) appeared on the roadway. *Spires v. Highway Department* (1988), 61 Ohio Misc. 2d 262.

{¶ 10} 6) In order for there to be constructive notice, plaintiff must show sufficient time has elapsed after the dangerous condition (loosened reflector) appears, so that under the circumstances, defendant should have acquired knowledge of its existence. *Guiher v. Department of Transportation* (1978), 78-0126-AD.

{¶ 11} 7) No evidence has shown defendant had constructive notice of the damage-causing reflector.

{¶ 12} 8) Plaintiff has not submitted any evidence to prove the roadway was negligently maintained.

IN THE COURT OF CLAIMS OF OHIO

JOHN TERBRACK :

Plaintiff :

v. :

CASE NO. 2006-02129-AD

OHIO DEPARTMENT OF  
TRANSPORTATION :

ENTRY OF ADMINISTRATIVE  
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 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.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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RDK/laa

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