

[Cite as *Farmer v. Ohio Dept. of Transp.*, 2007-Ohio-1276.]

# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
[www.cco.state.oh.us](http://www.cco.state.oh.us)

---

STAN FARMER

Plaintiff

v.

OHIO DEPARTMENT OF  
TRANSPORTATION

Defendant

Case No. 2006-06639-AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

{¶1} Plaintiff, Stan Farmer, asserted he suffered property damage to his automobile on August 18, 2006, while traveling east on Interstate 90 near milemarker 199 in Lake County. Plaintiff stated he was driving through a roadway construction area when a westbound semi-truck struck a piece of concrete laying on the road which propelled the concrete piece into the path of plaintiff's vehicle, striking and cracking the vehicle's windshield. Plaintiff recalled, "[t]he section of highway where I was hit has a large pile of concrete setting near mile marker 199."

{¶2} Consequently, plaintiff filed this complaint seeking to recover \$311.75, the cost of a replacement windshield, plus \$25.00 for filing fee reimbursement. Plaintiff has suggested his property damage was proximately caused by negligence on the part of defendant, Department of Transportation ("DOT"), in maintaining the roadway.

{¶3} Defendant acknowledged the described incident occurred within a construction zone where major roadway reconstruction was being performed. Defendant explained DOT contractor Anthony Allega, Inc. ("Allega"), had control over the roadway construction area on Interstate 90. Defendant asserted Allega, by contractual agreement, was responsible for maintaining the roadway within the construction zone. Therefore, DOT argued Allega 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 defects were delegated when an independent contractor takes control over a particular section of roadway. Furthermore, defendant contended plaintiff failed to introduce sufficient evidence to prove his damage was proximately caused by roadway conditions created by DOT or its contractor.

{¶4} Alternatively, defendant denied that neither DOT nor Allega had any notice of any debris material on the traveled portion of the roadway prior to plaintiff's property damage occurrence. Furthermore, defendant denied the damage-causing debris were construction material used by Allega or connected to any construction activity of DOT's contractor. Plaintiff did not present any evidence to determine the length of time the debris material was present on the roadway prior to 8:30 a.m. on August 18, 2006. Defendant contended plaintiff failed to produce evidence of negligent roadway maintenance. Defendant related DOT first received notice of the incident when plaintiff filed his complaint in this court. Defendant denied receiving any prior calls or complaints regarding pieces of concrete on the roadway. Defendant denied the truck that propelled the debris into the

Case No. 2006-06639-AD	- 3 -	MEMORANDUM DECISION
------------------------	-------	---------------------

path of plaintiff's car was connected to DOT or DOT's contractor Allega.

{¶15} 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. *Cowell v. Ohio Department of Transportation* (2004), 2003-09343-AD, jud, 2004-Ohio-151. Despite defendant's contentions that DOT did not owe any duty in regard to the construction project, defendant was charged with duties 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-119, 2001 Ohio App. LEXIS 2854. No evidence other than plaintiff's assertion has been produced to show a hazardous condition was maintained by either Allega or DOT.

{¶16} Defendant denied neither DOT nor Allega had any notice of concrete debris left on Interstate 90 on August 18, 2006. Defendant professed liability cannot be established when requisite notice of damage-causing debris conditions cannot be proven. Generally, defendant is only liable for roadway conditions of which it has notice, but fails to correct. *Bussard v. Dept. of Transp.* (1986), 31 Ohio Misc. 2d 1. However, proof or notice of a dangerous condition is not necessary when defendant's own agents actively cause such conditions. See *Bello v. City of Cleveland* (1922), 106 Ohio St. 94, at paragraph one of the syllabus; *Sexton v. Department of Transportation* (1996), 94-13861. In the instant claim, evidence is inconclusive regarding the origin of the debris which damaged plaintiff's vehicle. Defendant insisted the debris condition was not caused by maintenance or construction activity.

Case No. 2006-06639-AD	- 4 -	MEMORANDUM DECISION
------------------------	-------	---------------------

{¶7} Generally, in order to recover in any suit involved 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. 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 actual notice of the debris. 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. Ohio Highway Department* (1988), 61 Ohio Misc. 2d 262. There is no indication defendant had constructive notice of the debris. 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.

{¶8} In the instant claim, plaintiff has failed to introduce sufficient evidence to prove defendant or its agents maintained a known hazardous roadway condition. Plaintiff failed to prove his property damage was connected to any conduct under the control of defendant, or that defendant or its agents were negligent in maintaining the roadway area, or that there was any negligence on the part of defendant or its agents. *Taylor v. Transportation Dept.* (1998), 97-10898-AD; *Weininger v. Department of Transportation* (1999), 99-10909-AD; *Witherell v. Ohio Dept. of Transportation* (2000), 2000-04758-AD. Consequently, plaintiff's claim is denied.

Case No. 2006-06639-AD

- 5 -

MEMORANDUM DECISION

# Court of Claims of Ohio

The Ohio Judicial Center  
65 South Front Street, Third Floor  
Columbus, OH 43215  
614.387.9800 or 1.800.824.8263  
[www.cco.state.oh.us](http://www.cco.state.oh.us)

---

STAN FARMER

Case No. 2006-06639-AD

Plaintiff

Deputy Clerk Daniel R. Borchert

v.

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

Entry cc:

Stan Farmer  
12454 The Bluffs  
Strongsville, Ohio 44136

Keith Swearingen, Acting Director  
Department of Transportation  
1980 West Broad Street  
Columbus, Ohio 43223

RDK/laa  
1/10  
Filed 2/6/07  
Sent to S.C. reporter 3/20/07

[Cite as *Farmer v. Ohio Dept. of Transp.*, 2007-Ohio-1276.]