

**IN THE SUPREME COURT OF OHIO**

RAYMOND J. SANDERBECK, etc.	:	Case No. 2010-1654
	:	
Appellee	:	On Appeal from the
	:	Medina County Court of Appeals,
vs.	:	Ninth Appellate District
	:	Case No. 09CA00051-M
COUNTY OF MEDINA, et al.,	:	
	:	
Appellants	:	

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**AMICUS CURIAE BRIEF OF  
THE OHIO ASSOCIATION OF CIVIL TRIAL ATTORNEYS  
URGING REVERSAL ON BEHALF OF APPELLANTS  
MEDINA COUNTY AND MEDINA COUNTY BOARD OF COMMISSIONERS**

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## INTRODUCTION

This case is about the scope of a political subdivision's immunity for allegedly failing to keep its roads "in repair" within the meaning of R. C. 2744.02(B)(3). In the proceedings below, the Ninth Appellate District found that a county could be held liable for failing to keep its roads "in repair" within the meaning of R. C. 2744.02(B)(3) based upon opinion testimony from the plaintiff's expert that the road in question had a "skid number" below a certain value which indicated that it was "dis-repaired pavement" and "worn out".<sup>1</sup>

This issue has drawn the interest of several amici. One of these is The Ohio Association of Civil Trial Attorneys ("OACTA") which is an organization of over 800 attorneys, corporate executives and managers who devote a substantial portion of time to the defense of civil lawsuits and the management of claims against individuals, corporations and governmental entities. For nearly half a century, OACTA's mission has been to provide a forum where such professionals can work together on common problems and promote and improve the administration of justice in Ohio. In

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<sup>1</sup>Throughout this case, pavement friction issues are variously referred to as "co-efficient of friction", "skid numbers," "skid resistance" or simply friction. However, the concept of pavement friction is not and cannot be an inherent property of pavement. Rather, friction measurements, by definition, provide a mathematical value which represents the relationship between at least *two* surfaces. In traffic accident investigation, friction typically refers to at least the friction between the road and a vehicles' tires. Thus, strictly speaking, a road surface, by itself, does not have a coefficient of friction, a skid number or skid resistance. Attempts to isolate the friction value of pavement in absence of other variables is akin to attempts to determine the weight of an object in the absence of gravity.

In 2009, the National Cooperative Highway Research Program ("NCHRP," part of the Transportation Research Board of the National Research Council and National Academy of Sciences) issued an authoritative Guide for Pavement Friction. See [http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp\\_w108.pdf](http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_w108.pdf). ("Guide for Pavement Friction"). The Guide for Pavement Friction describes the importance of pavement friction for safe driving and explains the dynamics involved in determining proper pavement friction. This Court is permitted to take judicial notice of this quasi-governmental guide when considering the issues in this case and may find it helpful to do so in this case.

furtherance of this mission, OACTA maintains a robust amicus curiae program by which it can provide expert legal services to support suitable litigation efforts of its constituents. These amicus curiae efforts are limited to those cases addressing legal principles that may impact the fair and efficient administration of justice in Ohio. This case is such a case.

### **STATEMENT OF THE CASE AND FACTS**

This case arises from the death of Michelle Sanderbeck (“Michelle”) in a single vehicle accident in Medina County in 2006. Michelle was one of four teenage passengers in a car driven by another teenager, Steven Ward (“Ward”). Ward crashed his vehicle while speeding through an “S” curve on a Medina County road *at more than 30 miles per hour over the posted advisory speed limit*. Ward was subsequently convicted of aggravated vehicular homicide and aggravated vehicular assault. It is undisputed that if Ward had followed the advisory speed limit the accident would not have occurred.

Michelle’s family later sued Appellants Medina County and Medina County Board of Commissioners (collectively “Medina County”) claiming that Medina County negligently failed to keep the road in repair and such negligence contributed to Michelle’s death. Medina County defended on the basis that there was not any evidence that the road was not in repair within the meaning of R. C. 2744.02(B)(3), and therefore Medina County was immune from liability for damages arising from the accident.

After extensive discovery, Michelle’s family’s theory of negligence against Medina County was narrowed to the opinion of their expert engineer, Richard L. Stanford, II (“Stanford”), that the skid resistance of the road at the time of the accident indicated that the road was “worn out”. Stanford testified that:

- According to certain articles he had read, one element of road disrepair for a “high volume” road, like the road in question, might be pavement friction characteristics that fall below a “skid number” of .38.<sup>2</sup>
- He could not identify or explain the “scientific methodology” employed by the author of the article, but assumed that it would involve testing of some kind.<sup>3</sup>
- He was aware of several sets of “skid numbers” for the road. One investigating officer had obtained a “skid number” of .25. Other police measurements obtained a “skid number” of .44. The average police measurements were .502. Another expert had obtained a “skid number” of .6. Yet another expert had obtained a “skid number” of .922.<sup>4</sup>
- He did not conduct any testing of his own.<sup>5</sup> He simply chose the lowest of the “skid numbers” measured by others.<sup>6</sup>
- The “skid number” of the road was the only basis for his opinion that the road was in disrepair.<sup>7</sup> He “concluded based on the police officer’s measurements and his skid testing that was done at the accident site that the roadway was in disrepair because the skid number falls below an accepted range.”<sup>8</sup>
- He relied upon trade information which indicated that Ohio did not use specific guidelines to assess skid resistance on paved roads.<sup>9</sup>

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<sup>2</sup>(Stanford Deposition, pp. 17, 45-46, 93).

<sup>3</sup>(*Id.*, pp. 16-17).

<sup>4</sup>(*Id.*, pp. 45-48, 69).

<sup>5</sup>(*Id.*, pp. 17-18).

<sup>6</sup>(*Id.*, pp. 44-49).

<sup>7</sup>(*Id.*, pp. 17-19, 69-70).

<sup>8</sup>(*Id.*, p. 45).

<sup>9</sup>(*Id.*, pp. 8-16, Ex. B).

Based upon the foregoing, the lower courts overruled Medina County's motion for summary judgment on immunity on the basis that a genuine issue of material fact existed with respect to whether the road was "in repair". For its part, the Ninth Appellate District explained:

[Stanford] testified that, based on its traffic count numbers, East Smith Road is a high volume road. He said that roads are assigned a "skid number" based on their coefficient of friction. He said that anything less than a skid number of 38 on a high volume road "would be disrepaired pavement." He said that East Smith Road had a skid number of 25, indicating that its pavement was "worn out."<sup>10</sup>

Based upon this testimony, the Ninth Appellate District concluded: "Mr. Sanderbeck presented evidence establishing that a genuine issue of material fact exists regarding whether the County failed to keep the road where the crash occurred 'in repair.'"<sup>11</sup>

In so doing, the Ninth Appellate District held that the claims of Michelle's family may survive Medina County's motion for summary judgment on immunity by introducing "expert" evidence that the surface of the road alleged to have contributed to the accident did not exhibit a certain level of skid resistance. This conclusion was reached: (1) without any evidence that the road was not "in repair" other than the alleged deficient skid resistance level; (2) without any evidence of what the road's skid resistance was at the time it was designed and constructed to determine whether that skid resistance was the cause of deterioration or decay; (3) without any evidence that Medina County had actual or constructive knowledge of the road's skid resistance prior to the accident; (4) despite the fact that Medina County had posted a reduced advisory speed limit for the area and it was undisputed that

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<sup>10</sup>*Sanderbeck v. County of Medina*, 9<sup>th</sup> Dist. No. 09CA0051-M, 2010-Ohio-3659, at ¶6.

<sup>11</sup>*Id.*, at ¶12.

had Ward abided by that speed no accident would have occurred<sup>12</sup>; and (5) despite the fact that no proper foundation was laid for the admissibility (as opposed to the probative value) of Stanford's opinions.<sup>13</sup> Medina County then appealed to this Court.

Otherwise, OACTA adopts, and defers to, the Statement of the Facts and Statement of the Case set forth by Medina County in its Merit Brief.

## LAW AND ARGUMENT

**PROPOSITION OF LAW: Under R. C. 2744.02(B)(3), the skid resistance of a road does not raise a repair issue when no evidence exists regarding the skid resistance of the road at the time of design or construction R. C. 2744.02(B)(3) interpreted and applied).**

### **A. Interpretation of R. C. 2744.02**

After this Court abolished the common law doctrine of sovereign immunity three decades ago, the General Assembly enacted R. C. Chapter 2744 to re-institute immunity for political subdivisions. That legislation provided a general grant of immunity from liability for damages resulting from,

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<sup>12</sup>The Ninth Appellate District was apparently heavily influenced by its belief that the 45 MPH speed limit for the "S" curve was unreasonable. See *Sanderbeck*, 2010-Ohio-3659, at ¶¶5-10. However, not only does Medina County lack legal authority to change the speed limit (other than to post the advisory speed limit of 25 MPH), it enjoys complete immunity with respect to the regulation of use of roads, enforcement or nonperformance of any law, the regulation of traffic, and the erection or nonerection of traffic signs. R. C. 2744.01(C)(1); R. C. 2744.02(A). Thus, if this case is truly about the speed limits, then it should be reversed on that basis alone.

<sup>13</sup>When confronted with proper objections, the Ninth Appellate District announced that arguments regarding the reliability of Stanford's testimony "go[] to the weight of the engineer's testimony" and are "not an appropriate consideration for summary judgment." *Sanderbeck*, 2010-Ohio-3659, at ¶11. This was a failure to fulfill the important "gatekeeper" role with respect to expert testimony. *Valentine v. Conrad*, 110 Ohio St.3d 42, 2006-Ohio-3561. Other courts have guarded their expert testimony "gatekeeper" role more diligently with respect to such issues. See eg. *Texas Dept. of Transportation v. Martinez* (Tex. App. 2006), No. 04-04-00867-CV, 2006 Tex. App. LEXIS 4420, at \*14-26 (holding that plaintiff's expert's opinion that road posed an unreasonable risk of harm due to low coefficient of friction was conjecture unsupported by valid scientific principles regarding what levels were reasonable for public roads).

among other things, the maintenance or repair of roads subject to a narrow exception in R. C. 2744.02(B)(3).<sup>14</sup> The exception under R. C. 2744.02(B)(3) provides, in pertinent part, that a political subdivision may be liable for damages “caused by their negligent failure to keep public roads in repair”. This Court has consistently held that this exception is to be limited to circumstances where: (1) the road’s condition creates a danger for ordinary traffic on the regularly traveled portion of the road; (2) the road’s condition is the product of deterioration or disassembly rather than design or construction decisions; and (3) the responsible local government has actual or constructive notice of the road’s condition.<sup>15</sup>

This case raises a question about the scope of the immunity exception in R. C. 2744.02(B)(3).

When considering the scope of that statutory framework, this Court has explained:

“We must first look to the plain language of the statute itself to determine the legislative intent.” . . . “We apply a statute as it is written when its meaning is unambiguous and definite” . . . “However, where a statute is found to be subject to various interpretations, a court called upon to interpret its provisions may invoke rules of statutory construction in order to arrive at legislative intent.” (citations omitted)<sup>16</sup>

#### **B. The Scope of R. C. 2744.02(B)(3)**

In this case, it is necessary to determine the meaning of “in repair”. R.C. 2744.02(B)(3) does not define the meaning of “in repair”, but when addressing undefined terms in R. C. 2744.02(B)(3),

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<sup>14</sup>R. C. 2744.02; *Heckert v. Patrick* (1984), 15 Ohio St.3d 402, 406-407, 473 N.E.2d 1204; *Harp v. City of Cleveland Heights*, 87 Ohio St.3d 506, 513-514, 2000-Ohio-467; *Haynes v. City of Franklin*, 95 Ohio St.3d 344, 2002-Ohio-2334, at ¶¶9-11,18; *Howard v. Miami Twp. Fire Div.*, 119 Ohio St.3d 1, 2008-Ohio-2792, at ¶¶18-29.

<sup>15</sup>R. C. 2744.02(B)(3); *Heckert*, 15 Ohio St.3d at 406-407; *Harp v. City of Cleveland Heights*, 87 Ohio St.3d at 513-514; *Haynes*, 2002-Ohio-2334, at ¶18; *Howard*, 2008-Ohio-2792, at ¶¶18-29.

<sup>16</sup>*Summerville v. City of Forest Park*, — Ohio St.3d —, 2010-Ohio-6280, at ¶¶18-19; *see also* R. C. 1.11, 1.12, 1.42, 1.47 and 1.49.

this Court has correctly looked to the plain meaning of such terms.<sup>17</sup> The plain meaning of “repair” is “to restore by replacing a part or putting together what is torn or broken”<sup>18</sup> or “to put back in good condition after damage, decay, etc.”<sup>19</sup> Such definitions include a temporal analysis: condition before vs. condition after. Thus, determining whether a political subdivision has negligently failed to keep a public road “in repair” must involve, at a minimum, a comparison between: (1) the condition of the road at the time it was constructed or last repaired; and (2) the condition of the road at the time of the accident. Otherwise, there is no way to determine whether the road has been damaged, decayed, etc. as to not be “in repair” within the plain meaning of R. C. 2744.02(B)(3).

Distilled down to its essence, Stanford’s opinion is that the physical condition of the road where the accident occurred contributed to Michelle’s death because its skid resistance at the time of the accident was below a certain “skid number”. This is not a case about potholes, ruts, crumbling pavement, cracks, road obstructions, sinkholes, berms with precipitous dropoffs or other patent defects in the road. It is about an alleged latent defect that is not visible to the eye, that failed to show up in two out of the three skid tests performed by investigating police, and that was not found by two other experts investigating the fatal crash. It is unknown whether the alleged latent defect existed when the road was constructed or whether or why it appeared later. In its simplest form, Stanford opines that *any* road with a skid resistance below that embraced by Stanford is ipso facto “worn out” or in “disrepair”. For the reasons that follow, this argument must fail.

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<sup>17</sup>Howard, 2008-Ohio-2792, at ¶¶20-21 (analyzing the meaning of the term “obstruction”).

<sup>18</sup>Webster’s Ninth New Collegiate Dictionary (1990), p. 998.

<sup>19</sup>New World Dictionary of the American Language, Second College Edition (1984), p. 1204.

First, there is no evidence that the road's condition creates a danger for ordinary traffic on the regularly traveled portion of the road. To the contrary, the undisputed evidence is that if Ward had followed the advisory speed limit of 25 MPH no accident would have occurred.

Second, there is no evidence that the road's condition was the product of deterioration or disassembly rather than design or construction decisions or other factors. Stanford failed to investigate or even consider the condition of the road when built or previously repaired. Accordingly, he cannot opine that the road was not kept "in repair". Likewise, his opinion testimony regarding the "critical speed" of the "S" curve being at or below the posted speed limit does not go to the issue of whether the road was kept "in repair,"<sup>20</sup> but instead goes to a design issue or a traffic enforcement issue. There is no exception for immunity for such issues.

Third, there is no evidence that Medina County had notice of the road's alleged low skid resistance prior to the accident. While there is evidence that the road experienced traffic accidents (as all roads do), there is no admissible evidence that such traffic accidents were caused by the skid resistance of the road.<sup>21</sup> If this Court embraces the approach taken by the Ninth Appellate District it will be judicially imposing a potentially astronomical cost on Ohio's local governments to inspect local roads for low "skid numbers".<sup>22</sup> Historically, this Court has been sensitive to such concerns. For instance, when this Court held that an earlier version of R. C. 2744.02(B)(3) allowed liability to

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<sup>20</sup>*Sanderbeck*, 2010-Ohio-3659, at ¶5.

<sup>21</sup>Other traffic accidents do not establish causality. As explained by this Court in *Valentine v. Conrad*, 110 Ohio St.3d 42, 2006-Ohio-3561, at ¶23: "When an unusual event follows closely on the heels of another unusual event, the ordinary person infers a causal relation \* \* \* . But lay speculations on . . . causality, however plausible, are a perilous basis for inferring causality."

<sup>22</sup>*See* Stanford Deposition, Ex. B ("Field testing [for skid resistance] is labor intense and, therefore, creates heavy demands on money, personnel, and equipment").

be imposed on political subdivisions for injury resulting from tree limbs that fall upon public roads, this Court felt compelled to opine:

**In order to assuage any fear that municipalities and political subdivisions will now be required to inspect all the trees within the limits that stand alongside public roads, we find it necessary to stress the limits of our decision. Actual or constructive notice remains a prerequisite to liability under R.C. 2744.02(B)(3) . . . *Nothing we have said today requires a municipality or political subdivision to inspect any tree solely because of its proximity to a public road. The fact that a tree stands close to a public road, or that its limbs overhang the roadway, is not in itself sufficient for purposes of actual or constructive notice. Nor are municipalities or political subdivisions required to develop or maintain any additional inspection program* (Emphasis added).<sup>23</sup>**

Fourth, Stanford's opinion regarding low skid resistance on the road was unreliable and inadmissible to oppose Medina County's motion for summary judgment.<sup>24</sup> R. C. 2744.02(B)(3) requires: (a) that Medina County did not keep the road "in repair"; and (b) that the accident be caused by the disrepair. Stanford's opinion was deficient as to both requirements. First, Stanford failed to present any evidence of regulations or empirical data to establish that the skid resistance of the road at the time of the accident was due to failure to keep the road in repair. Indeed, the entire predicate of Stanford's opinion that the road exhibited a low skid resistance or "skid number" and this fact alone constituted evidence of disrepair is at odds with valid scientific principle for the following reasons:

- Stanford's own testimony was that unless the "skid number" of the road was lower than .38, there was no issue with the road. Multiple test skids were run which resulted in "skid numbers" higher than this,

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<sup>23</sup>*Harp*, 87 Ohio St.3d at 513-514.

<sup>24</sup>*Valentine*, 2006-Ohio-3561, at ¶¶9-23; *Terry v. Caputo*, 115 Ohio St.3d 351, 2007-Ohio-5023, at ¶¶12-30; *Martinez*, at \*14-26

but Stanford “cherry picked” a low number, without further explanation, and based his entire opinion upon that low number.

- Other courts have rejected the type of opinion provided by Stanford. In *Martinez*, at \*21, the Texas court of appeals considered undisputed expert evidence that “a coefficient of friction range between .25 and .55 range was a safe range.”
- While clearly linking pavement friction to safety, the Guide for Pavement Friction rejects the over-emphasis Stanford placed on “skid numbers” and concludes:

With its strong link to safety, pavement friction is a tremendously important facet of highway transportation. However, achieving and maintaining adequate pavement friction can be very difficult to accomplish by agencies responsible for making roads safer. Though there are many reasons for this difficulty, three of the more apparent ones are: (a) the complexity of the pavement-tire friction interface, (b) controversy concerning the agency’s level of responsibility for ensuring user safety, and (c) uncertainty regarding the costs and benefits of a proactive and effective pavement friction program.

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The concepts and mechanisms behind pavement friction are quite involved and not easily understood. *Moreover, because there are many factors that affect friction, it is more of a process than an inherent characteristic of pavement. Thus, while highway engineers can control some facts (e.g. surface texture, speed), conditions and circumstances will arise that may put adequate friction beyond reach.* (Emphasis added).<sup>25</sup>

Second, Stanford’s opinions with respect to causality are also deficient. Although low skid resistance may generally be a cause of an accident, Stanford failed to present any evidence that low skid resistance was a specific cause of this accident. Stanford could not use a differential analysis to infer

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<sup>25</sup>Guide for Pavement Friction, p. 123.

causation because it is undisputed that Ward's speed was the sine qua non of the accident. Thus, unacceptably low skid resistance cannot be isolated as to allow an inference of causation.

Finally, in light of the public policy and history behind Ohio's political subdivision immunity laws, this Court should hold that the immunity exception in R. C. 2744.02(B)(3) with respect to "negligent failure to keep public roads in repair" refers only to physical conditions of the road which in and of themselves can cause injury to motorists. Road conditions which are subject to multiple variables to become relevant, such as skid resistance of a road, should not be considered for purposes of whether a road has been kept "in repair". Otherwise, immunity questions will be plunged into the murky depths of expert-driven litigation which is contrary to the framework developed to quickly determine such questions.

This public policy and history has been driven by undeniable economic and historic factors. During the second half of the Twentieth Century, personal injury litigation exploded in a feeding frenzy fueled by the interaction between, among other things, increases in population and lawyers, liberal modern pleading rules, easier access to the courts, availability of contingent fee contracts, skyrocketing damage awards, corresponding increases in available insurance coverage and a shift in judicial philosophy to emphasize compensation of plaintiffs.<sup>26</sup> At the same time, local, state and national governments grew in size, responsibility and revenue such that they became attractive targets for litigation in the same way, and for many of the same reasons, that business had been targeted. So

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<sup>26</sup>In 1950, the population of the United States was 152 million. <http://www.fas.org/sgp/crs/misc/RL32701.pdf>. It has doubled. Nationally, the first individual liability award in excess of \$1 million did not occur until 1961. Robertson, How Umbrella Policies Started Part 2: The First Umbrella Forms, <http://www.irmi.com/expert/articles/2000/robertson04.aspx>. Liability insurance markets exploded thereafter. *Id.*

long as government retained sovereign immunity, this presented little difficulty. However, when courts and legislatures began to roll back common law sovereign immunity doctrines during this time frame, governments found themselves subject to the financial distress endemic to being an attractive litigation target.

It's one thing if litigation bankrupts a business, such as what happened to countless businesses associated with the manufacture of asbestos. It's quite another thing if litigation threatens to bankrupt local government. To allow this to happen would be to deprive the many to satisfy the needs of the few—or the one. This cannot happen if civil society is to continue to function. Accordingly, after this Court judicially abolished common law sovereign immunity, the General Assembly enacted legislation to broker a compromise that would allow injured persons to sue local government under limited circumstances while simultaneously providing local government with immunity for virtually everything else. In enacting the legislation, the General Assembly explained that “the protections afforded to political subdivisions and employees of political subdivisions by this act are urgently needed in order to ensure the continued orderly operation of local governments and the continued ability of local governments to provide public peace, health, and safety services for their residents.”<sup>27</sup> Once passed, this Court correctly recognized that: “The manifest statutory purpose of R. C. Chapter 2744 is the preservation of the fiscal integrity of political subdivisions.”<sup>28</sup> Thus, any ambiguity regarding the meaning of “in repair” under R. C. 2744.02(B)(3) must be resolved with this legislative purpose in mind.

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<sup>27</sup>*Summerville*, 2010-Ohio-6280, at ¶38.

<sup>28</sup>*Hubbell v. City of Xenia*, 115 Ohio St.3d 77, 2007-Ohio-4839, at ¶23; *Doe v. Marlinton Local School District Board of Education*, 122 Ohio St.3d 12, 2009-Ohio-1360, at ¶10.

This important legislative purpose has pushed this Court and the General Assembly to seek bright line legal tests for application of the immunity exception. The press for bright line legal tests has been fostered by new rules that provide that a court order denying immunity is immediately appealable.<sup>29</sup> Why? Because both the General Assembly and this Court recognized that the interests of both claimants and political subdivisions alike were best served when the issue of political subdivision immunity is definitively resolved as early as possible. As this Court has explained:

Determination of whether a political subdivision is immune from liability is usually pivotal to the ultimate outcome of a lawsuit. Early resolution of the issue of whether a political subdivision is immune from liability pursuant to R. C. Chapter 2744 is beneficial to both parties. If the appellate court holds that the political subdivision is immune, the litigation can come to an early end, with the same outcome that otherwise have been reached only after trial, resulting in a savings to all parties of costs and attorney fees. Alternatively, if the appellate court holds that immunity does not apply, that early finding will encourage the political subdivision to settle promptly with the victim rather than pursue a lengthy trial and appeals. Under either scenario, both the plaintiff and the political subdivision may save time, effort, and expense of a trial and appeal, which could take years.<sup>30</sup>

Thus, Ohio public policy in this area of law has been to move away from vague, amorphous standards toward clear, well-delineated legal standards.

The decision of the Ninth Appellate District is decidedly contrary to this well-established public policy. Whether a public road is “in repair” should not be decided on the basis of the skid

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<sup>29</sup>R. C. 2744.02(C); *Hubbell*, 2007-Ohio-4839, at ¶¶20-26.

<sup>30</sup>*Hubbell*, 2007-Ohio-4839, at ¶25. This mirrors the sentiment expressed by the Supreme Court of the United States in recent cases addressing Fed. R. Civ. P. 12(b)(6). See *Bell Atlantic Corp. v. Twombly* (2007), 550 U.S. 544, 555-556, 127 S.Ct. 1955 (“[S]omething beyond the mere possibility of loss causation must be alleged, lest a plaintiff with ‘a largely groundless claim’ be allowed to ‘take up the time of a number of other people, with the right to do so representing an *in terrorem* increment of the settlement value’ . . . So, when the allegations in a complaint, however true, could not raise a claim of entitlement to relief, ‘this basic deficiency should . . . be exposed at the point of minimum expenditure of time and money by the parties and the court’”).

resistance of pavement which is subject to wide variability based upon testing methods, weather, road materials and speeds of vehicles.<sup>31</sup> This is all the more true where: (1) the road's skid resistance only becomes relevant when the speed of the vehicle (in the case, clearly excessive speed) is taken into account; (2) there is not any evidence introduced of national or state government standards governing skid resistance levels of roadways—forcing courts to wade through conflicting expert opinions on what “in repair” should mean with respect to skid resistance; and (3) there is not any evidence which allows this Court to compare the condition of the road prior to the accident to the condition of the road at the time of the accident to determine whether Medina County failed to keep the road “in repair”.

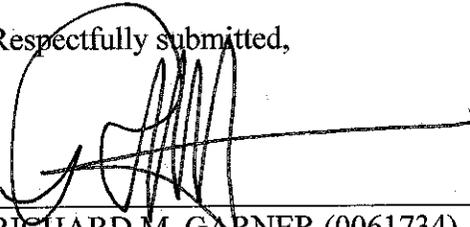
### CONCLUSION

Michelle's death was a profound tragedy, but it was caused by the foolishness and immaturity of a teenage driver. It is not something for which the people of Medina County, or their local government, can be held responsible because it was not caused by Medina County's failure to keep its roads in repair.

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<sup>31</sup>“The factors that influence pavement friction forces can be grouped into four categories—pavement surface characteristics [including micro-texture, macro-texture, mega-texture (unevenness), material properties and temperature], vehicle operational parameters [including slip speed, vehicle speed, braking action, driving maneuver, turning and overtaking], tire properties [including footprint, tread design and condition, rubber composition and hardness, inflation pressure, load and temperature], and environmental factors [including climate, wind, temperature, water, snow, ice, contaminants, anti-skid material, dirt, mud, debris, salt and sand] . . . Because each factor . . . plays a role in defining pavement friction, friction must be viewed as a process instead of an inherent property of the pavement. It is only when all these factors are fully specified that friction takes on a definite value.” Guide for Pavement Friction, p. 26.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

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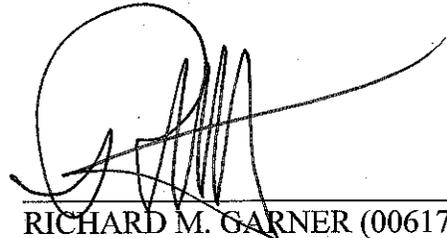
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A handwritten signature in black ink, appearing to read 'R. M. Garner', written over a horizontal line.

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