

TABLE OF CONTENTS

TABLE OF CONTENTS.....i

TABLE OF AUTHORITIES.....iii

INTRODUCTION.....1

STATEMENT OF THE CASE AND FACTS.....1

ARGUMENT.....5

 A. The Tenth District has consistently held that ODOT has a duty to upgrade Ohio roadways when implementing improvements to those roadways.....5

 B. ODOT’s decisions relating to the allocation of its resources for roadway improvements needs to be decided by the legislature and administrative bodies, not the judiciary.....9

 C. ODOT’s concern about an unprecedented expansion of liability if the Tenth District is affirmed is unwarranted because a safety driven improvement which cures the safety concern abates the liability potential.....10

 D. If the Court finds that ODOT is entitled to discretionary immunity, the Court should follow its precedent and grant ODOT immunity in its policy choice to make the roadway safer, not to its time and manner of implementation of this policy choice.....10

CONCLUSION.....14

CERTIFICATE OF SERVICE.....15

APPENDIX:

Deposition of Daren Marceau.....APPX. 1
Plaintiffs' Complaint.....APPX. 3

TABLE OF AUTHORITIES

CASES	PAGES
<i>Hurier v. Ohio Dept. of Transp.</i> 10 th Dist. No. 01AP-1362, 2002-Ohio-449	6
<i>Knickle v. Ohio Dept. of Transp.</i> 49 Ohio App. 2d 335 (Frkln. Co. App. Ct. 1976)	9
<i>Lunar v. Ohio Dept. of Transp.</i> 61 Ohio App. 3d 143 (1989)	6, 10
<i>Morgan v. Ohio Dept. of Transp.</i> 10 th Dist. No. 10AP-362, 2010-Ohio-5969	6
<i>Risner v. Ohio Dept. of Transp.</i> 10 th Dist. No. 12AP-828, 2012-Ohio-5698	5
<i>Risner v. Ohio Dept. of Transp.</i> 140 Ohio St. 3d 1415, 2014-Ohio-3785	5
<i>Semadeni v. Ohio Dept. of Transp.</i> 75 Ohio St. 3d 128 (1996)	8, 11
<i>Sobczak v. Ohio Dept. of Transp.</i> 10 th Dist. No. 09AP-388, 2010-Ohio-3324	7
<i>Wiebelt v. Ohio Dept. of Transp.</i> 10 th Dist. No. 93AP-117 (June 23, 1993)	5
STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS	
R.C. 2743.02.....	10
R.C. 2743.03(a)(1).....	11
Ohio Constitution, Article I, Section 16.....	10

INTRODUCTION

The Ohio Department of Transportation (“ODOT”) evaluates and ranks all of its intersections and roadways for safety. The most dangerous roadways are studied and the cause of the safety issue identified. ODOT then makes a policy choice as to which roadways need attention. The manner in which this policy choice is implemented is either in the form of maintenance to the roadway or an improvement to the roadway. For the past twenty years, if an improvement to a roadway was warranted to eliminate the cause of danger to Ohio motorists, ODOT has had a duty to ensure that the improvement made to the roadway addressed the concern that it identified. If an improvement did not address this concern, ODOT has been held accountable if an injury is directly related to the roadway not meeting its updated guidelines. This accountability makes Ohio roadways as safe as possible for all motorists.

In the present case, The Tenth District Court of Appeals unanimously recognized this duty when ODOT made improvements to the intersection of S.R. 32 and Germany Road but failed to correct a known safety issue. In following a long line of precedent, the court held that ODOT, when making improvements to roadways, owed a duty of care to Ohio motorists in ensuring that the intersection complied with its written guidelines. Because only if those guidelines are followed, will safety issues be resolved and tragic collisions, like the one in Amber Risner’s case, be avoided.

STATEMENT OF THE CASE AND FACTS

On September 12, 2009, at approximately midnight, Amber Risner was a passenger in a vehicle driven by her best friend, Ashley Royster. The two friends and another friend, Kayla Thompson, had stopped at a gas station on State Route

220/Germany Road for snacks and gas before heading out to a campground. *See* Ashley Royster Depo. at 9 (Appellant's Supp. 434). Ms. Royster stopped at the stop sign at northbound State Route 220, looked both ways up and down State Route 32, the road that she was about to cross, and, seeing no oncoming vehicles, proceeded into the intersection. *Id.* at 7 (Appellant's Supp. 434). Ms. Royster did not stop in the median area of the intersection because there was no safe area to stop. *See* Traffic Crash Report (Appellant's Supp. 44); Exhibit C to Depo D. Marceau (Appx. 2).

At the same time, Robert Boring was operating a semi-tractor trailer westbound on State Route 32 and collided with Ms. Royster's vehicle. *See* A. Royster Depo. at 8 (Appellant's Supp. 434). Upon impact, Ms. Royster's vehicle was spun parallel to the truck. *See* Traffic Crash Report, Diagram/Narrative Continuation (Appellant's Supp. 50). Amber Risner's passenger door was ripped off by the truck causing Amber to fall out of the car and become entangled underneath the truck.. *Id.* (Appellant's Supp. 50). Amber Risner, the daughter of Plaintiffs Paul and Catherine Risner ("Plaintiffs"), was killed instantly. *Id.* (Appellant's Supp. 43).

Plaintiffs filed a Complaint against ODOT alleging negligent design and maintenance of the intersection of State Route 220 and State Route 32. *See* Plaintiffs' Complaint at ¶9 (Appx. 5). Plaintiffs alleged that the intersection was inherently dangerous, prohibiting vehicles crossing State Route 32 from State Route 220 from viewing oncoming traffic and that ODOT knew of this fact for several years before the subject collision and failed to rectify the intersection's dangerous nature. *See* Plaintiffs' Complaint at ¶9 (Appx. 5).

Since 2000, the intersection of State Route 32 and State Route 220 has been reviewed repeatedly by ODOT for its high occurrence of angle collisions. In 2000, the intersection first appeared on the Highway Safety Program because it ranked 42nd in the state for problematic intersections. *See* District 9 Safety Review Team Meeting Minutes, attached as Exhibit 1 in Risner Mot. Opp. to ODOT's First Sum. Judg. Mot. (Appellant's Supp. 78-79); R. Chaffin Depo. at 20 (Appellant's Supp. 217). The safety team found that the high incidence of angle crashes at the intersection was due to a "sight distance problem" with the intersection. *Id.* (Appellant's Supp. 78-79). The team proposed installing overhead flashers and delineating the median by painting white lines across the median area. *Id.*; R. Chaffin Depo. at 23. (Appellant's Supp. 78-79).

In 2004, the intersection appeared again on the Highway Safety Program. *Id.* (Appellant's Supp. 80-83); R. Chaffin Depo. at 28 (Appellant's Supp. 219). The team recognized that this intersection had been studied before for its high incidence of angle crashes. *Id.* (Appellant's Supp. 80). The team also noted that most of the accidents occurred, just as the subject accident occurred, "with motorists on westbound 32 colliding with vehicles crossing the intersection from the side roads." *Id.* (Appellant's Supp. 80). The team understood that these accidents occurred because of "problems with visibility for motorists at the intersection looking toward the east." *Id.* (Appellant's Supp. 80). When determining possible solutions, the team considered a traffic signal since the intersection only needed 20 additional vehicles per hour for two more hours a day to meet the requirements for a full traffic signal. *Id.* (Appellant's Supp. 81). The team ultimately decided to install intersection warning signs with flashers on westbound State Route 32 and to install back plates on the flasher signal heads. *Id.* (Appellant's Supp. 81). R.

Chaffin Depo. at 29 (Appellant's Supp. 220). The team further decided to consider re-routing State Route 220 to avoid the intersection. *Id.* (Appellant's Supp. 81).

The design standards for intersections in 2000 and 2004 were found in the May of 1999 through August 2002 Location and Design Manual (hereafter L&D Manual) and October 2004 L & D Manual. *See* Exhibit 17 ('99-'02) and 18 ('04) to Plts. Mot. Opp. To Dfts. Mot. Sum. Judg., (Appellant's Supp. 253-297). At the time of ODOT's improvements to the intersection of S.R. 32 and Germany Road, the intersection did not comply with the sight distance requirements found in both the 2000 and 2004 L&D Manual. *See* Affidavit of D. Marceau, P.E. attached as Exh. 2 to Plts. Mot. Opp. to Defts. Mot. Sum. Judg. (Appellant's Supp. 89-90); AASHTO Manuals and ODOT Manuals, attached as Exhibits 3, 4, 16, 17 and 18 in Plts. Mot. Opp. to Defts. Sum. Judg. Mot. (Appellant's Supp. 91-203).

On May 25, 2011, ODOT commenced its re-routing project at the intersection of State Route 32 and State Route 220. *See* M. May Depo. at 27 (Appellant's Supp. 207). The re-routing project will upgrade Schuester Road west of the intersection to become State Route 220 and will only permit a right turn in or out of the existing intersection eliminating traffic from crossing State Route 32 from State Route 220. *See* R. Chaffin depo. at 17 (Appellant's Supp. 217). This project will eliminate any traffic traveling straight across State Route 32 from State Route 220. *Id.* (Appellant's Supp. 217).

The Court of Claims granted ODOT's Second Motion for Summary Judgment holding that the installation of flashers and warning signs were acts of "maintenance" and, therefore, ODOT did not have a duty to ensure that the intersection's sight distances

met ODOT's written requirements at the time they were installed. *Risner v. Ohio Dept. of Transp.*, 10th Dist. No. 12 AP-828, 2012-Ohio-5698, ¶5.

However, in a unanimous decision, the Tenth District reversed the Court of Claim's decision holding that the installation of flashers and warning signs were "improvements" and not "maintenance." *Id.* at ¶¶15-16. The Tenth District reasoned that ODOT added components and structural elements to the existing highway and those additions could only be considered "improvements" and not "maintenance." *Id.* at ¶14. It further held that the "improvements" required ODOT to adhere to the written sight distance standards in place at the time they were installed in order to fulfill its duty of care to Ohio motorists. *Id.* at ¶11.

In its Memorandum Decision denying ODOT's application for reconsideration and *en banc* review, the Tenth District specified that "our decision in the present case does not represent a change in the analysis in these types of cases but merely clarifies that the pertinent distinction is between 'maintenance' and 'improvement.'" *Risner v. Ohio Dept. of Transp.*, 12 AP-828, (Apr. 10, 2014) ¶4.

ODOT appealed the Tenth District's decision and this Court accepted jurisdiction. *Risner v. Ohio Dept. of Transp.*, 140 Ohio St.3d 1415, 2014-Ohio-3785.

ARGUMENT

A. The Tenth District has consistently held that ODOT has a duty to upgrade Ohio roadways when implementing improvements to those roadways.

The Tenth District's holding follows its long line of precedent that ODOT owes a duty of care to Ohio motorists when maintaining and improving a roadway. In *Wiebelt v. Ohio Dept. of Transp.* (June 24, 1993), 10th Dist. No. 93AP-117, the Tenth District reviewed a claim against ODOT involving State Route 303 in Portage County. A curve

existed on the highway and, when the road was wet, a westbound vehicle lost control, crossed the center line, and struck an eastbound vehicle killing an occupant in each vehicle. *Id.* at *1. The claims against ODOT were for its alleged failure to construct, inspect, and maintain properly the portion of S.R. 303 where the collision occurred. *Id.* at *2. The court found that ODOT had no role in constructing the roadway in 1929 and therefore could not be held “liable for any design defects which may have existed.” *Id.* at *3. Regarding the upgrading of the roadway making the curve easier to negotiate, the court followed its prior precedent and held that “ODOT has no duty to upgrade highways to current design standards when acting in the course of maintenance.” *Id.* at *4 (citing *Lunar v. Ohio Dept. of Transp.* (1989), 61 Ohio App.3d 143, 149). ODOT had repaved the road eleven years before the accident but, because this repaving was a held to be “maintenance”, ODOT had no duty to “improve upon the superelevation of the curve near the site of the accident.” *Id.* at *5. Such responsibility would fall outside ODOT’s duty of care requiring it “to upgrade the highway while carrying out its maintenance responsibilities.” *Id.*

In 2002, the Tenth District again examined ODOT’s duty of care when maintaining, but not improving, a roadway. In *Hurier v. Ohio Dept. of Transp.*, 10th Dist. No. 01AP-1362, 2002-Ohio-449, ¶2-3, a family was traveling in a van on State Route 125 when the driver of the van fell asleep causing the van to drift off the road into a drainage culvert. *Id.* at ¶2 and 3. The van collided with a drainage pipe which ran underneath a private residential driveway and a brick wall which enclosed the pipe and served as a guardrail for the driveway as it ran over the drainage culvert. *Id.* at ¶3. Both

the drainage pipe and brick wall were installed in 1973 at the time the residence was built. *Id.*

The family filed a complaint against ODOT alleging that ODOT was negligent in “allowing a drainage pipe and brick walls to exist within a clear zone of a highway maintained by ODOT....” *Id.* at ¶5. The family argued that ODOT’s 1990 Location and Design Manual, published three years before the accident, “placed a duty upon ODOT to order the removal of the brick walls or bury the drainage pipe.” *Id.* at ¶28.

Following the installation of the brick walls and drainage pipe in 1973, ODOT had resurfaced the highway in 1991 and there was “maintenance work (asphalt patching)” done in 1992 and 1993. The court considered these projects “maintenance work” and held that “[b]ecause no substantial reconstruction occurred between 1990 and the time of the accident, ODOT was not required to remove the brick walls or relocate the pipe according to the current design guidelines contained in the 1990 ODOT LD manual.” *Id.* at ¶29.

Eight years later, the Tenth District reviewed whether notice of prior accidents impacted ODOT’s duty to upgrade a roadway. In *Sobczak v. Ohio Dept. of Transp.*, 10th Dist. No. 09AP-388, 2010-Ohio-3324, a vehicle lost control while on an entrance ramp to U.S. Route 23. ODOT had received numerous requests several years before the accident to install a rigid barrier on the ramp to alleviate the ramp’s hazardous nature. *Id.* at ¶2-3. However, ODOT did not take any action in response to these notifications. *Id.* at ¶3. The court held that, despite the notice placed upon ODOT, “the statutory and precedential tenet” mandates that ODOT “has no duty to redesign and reconstruct a highway.” *Id.* at ¶12.

Shortly after *Sobczak*, the Tenth District decided whether ODOT had a duty to upgrade a bridge to include an approach guardrail when ODOT had previously developed a policy requiring bridge inspections to determine if bridges met current design standards – standards which required approach guardrails. In *Morgan v. Ohio Dept. of Transp.*, 10th Dist. No. 10AP-362, 2010 Ohio 5969, a vehicle lost control on State Route 41 in Adams County and plunged into a creek which ran beneath the roadway. *Id.* at ¶2-6. A claim was filed against ODOT alleging, in part, that ODOT was negligent in maintaining S.R. 42 in not installing a guardrail to protect motorists from the creek. *Id.* at ¶13.

The culvert which the creek flowed through and the accompanying bridge on S.R. 42 were built in 1939. *Id.* at ¶14. The court found that ODOT's duty to maintain the roadway did not include installing guardrails as "where no guardrails existed previously, the installation of new guardrails constituted an improvement, and thus, exceeded the scope of ODOT's duty." *Id.*

The claim against ODOT also included a claim that ODOT failed to adhere to its 1998 and 2001 Bridge Inspection Manual at the time of the June 2005 incident. The court held that this Court's decision in *Semadeni v. Ohio Dept. of Transp.*, 75 Ohio St. 3d 128 (1996), did not impose a duty on ODOT "to follow each and every policy it adopts." *Id.* at ¶18. The Tenth District reasoned that "[b]ecause the bridge here was originally constructed in 1939 and ODOT did not redesign or reconstruct it in 1998 or 2001, the Manual has no applicability." *Id.* at ¶19. However, "if ODOT had designed, redesigned, constructed, or reconstructed the bridge at issue in 1998 or 2001, the versions of the Manual introduced at trial could have provided evidence of the 'currently acceptable standard' for bridge design and construction as determined by ODOT." *Id.*

This case history firmly establishes that ODOT owes Ohio motorists a duty of care to comply with its own guidelines when redesigning or reconstructing a roadway under its supervision. An improvement to a roadway is one factor in determining whether a roadway is being redesigned or reconstructed and not just maintained.

B. ODOT's decisions relating to the allocation of its resources for roadway improvements needs to be decided by the legislature and administrative bodies, not the judiciary.

In the past, ODOT has attempted to argue to the Franklin County Appellate Court (now the Tenth District) that costs prohibit it from following the law as it relates to roadway safety. In *Knickle v. Dept. of Transp.*, 49 Ohio App.2d 335 (Franklin Co. App. Ct. 1976), a vehicle was propelled into the air on State Route 23 after striking a “blow-up” in the concrete roadway. *Knickle* at 337. ODOT “buttress[ed]” its argument that the blow-up condition was unavoidable with the claim that “budgetary and priority concerns made an earlier repair and rehabilitation impossible.” *Id.* at 337. Specifically, ODOT claimed that “the absolute elimination of the possibility of blow-ups would require the destruction of concrete highways and the substitution of asphalt or macadam type roads, and that such would be too costly to be economically borne by the state, as would the installation of pressure relief joints upon all concrete highways.” *Id.* at 340.

The court perceived ODOT's economic position to be “true” and understood the “dilemma that the state may be faced with in considering the economic alternatives in attempting to solve the problem, and that it is sometimes less expensive to pay the cost of damages caused by a hazard than to pay the cost of eliminating the hazard.” *Id.* The court declared, however, that dilemma to be “a policy decision and an economic question

to be solved by the legislative and administrative bodies of the state, rather than the judiciary.” *Id.*

C. ODOT’s concern about an unprecedented expansion of liability if the Tenth District is affirmed is unwarranted because a safety driven improvement which cures the safety concern abates the liability potential.

It is well-settled that, for ODOT to be held liable in negligence, it must be established that ODOT owes “a duty of care, that [ODOT] breached that duty, and that ...[claimants] suffered damages as a proximate result thereof.” *Lunar v. Ohio Dept. of Transp.* (1989), 61 Ohio App.3d 143, 146. ODOT argues that “[t]he Tenth District’s errant focus on whether ODOT’s actions as to the intersection here were maintenance or improvements subverts the discretionary-function doctrine and represents an unprecedented expansion of liability.” *See* Appellant’s Brief, p. 8. However, ODOT fails to acknowledge that a damaged party has to prove that its damages were directly caused by the roadway not meeting up-to-date standards. If an improvement addresses the concern which brought about ODOT’s involvement, liability concerns are abated. If, however, the improvements do nothing to rectify the identified safety issues, then the lack of an upgrade has the potential, and should have the potential, to result in liability.

D. If the Court finds that ODOT is entitled to discretionary immunity, the Court should follow its precedent and grant ODOT immunity in its policy choice to make a roadway safer, not to its time and manner of implementation of this policy choice.

Article 1, Section 16, of the Ohio Constitution provides “[s]uits may be brought against the state in such courts and in such manner, as may be provided by law.” In 1975, the Ohio legislature created the Court of Claims giving it “exclusive, original jurisdiction of all civil actions against the state permitted by the waiver of immunity contained in section 2743.02 of the Revised Code.” The state waived its immunity, with

certain exceptions, a to be sued and “have its liability determined, in the court of claims***in accordance with the same rules of law applicable to suits between private parties. R.C. 2743.03(A)(1). The waiver of immunity includes negligent acts of its employees and agents in the performance of certain activities. *Semadeni v. Ohio Dept. of Transp.*, 75 Ohio St.3d 128 (1996) at 11. These activities are those which carry out a basic policy decision of the State and a determination to engage in a “certain activity or function.” *Id.* The manner in which a basic policy decision is implemented could be actionable “even if implementation decisions require state employees to exercise some degree of discretion.” *Id.* at 12.

In *Semadeni*, ODOT established Policy 1005.1 in response to people dropping objects from bridges. In July 1985, this policy became effective mandating that protective fencing be installed for existing bridges which scored ten or more index points under the Policy unless adequate justification could be furnished. *Id.* at 12-13. Nearly five years later, at the time *Semadeni* was struck and killed by a piece of concrete thrown from the Blair Avenue bridge scoring twelve index points, no fencing had been installed on the bridge. *Id.* at 15. The state argued, and the Court of Claims agreed, that it was immune from liability for subsequent time and manner decisions made to implement the protective fencing policy. *Id.* at 12.

The Court disagreed noting that ODOT was aware of the dangers to the traveling public as early as May 1985 when it sent Policy 1005.1 to the Federal Highway Administration for approval. *Id.* at 13. As early as December 1986, ODOT acknowledged that the dropping of objects from freeway bridges was a “very real problem.” *Id.* It was not until two years after Policy 1005.1 was adopted and approved,

that ODOT established funding for any protective fencing. *Id.* at 14. The funding only covered ten per cent of the bridges qualifying for protective fencing leaving more than four hundred bridges, including Blair Avenue bridge, not funded. *Id.* In a five year period, ODOT only managed to fence a small percentage of the bridges on its list.

The Court held that “[t]he Court of Claims erred in its legal conclusion that subsequent “time and manner” decisions made to implement Policy 1005.1 were themselves entitled to immunity.” *Id.* at 12. This Court found ODOT’s failure to “timely implement Policy 1005.1” to be “negligent” and that “its negligence was a proximate cause of Pietro Semadeni’s death.” *Id.* at 15.

Since 1995, ODOT has had safety concerns with the intersection of S.R. 32 and Germany Road. The intersection had a high incidence rate of “angle accidents” caused by a “sight distance problem...caused by a vertical crest and structure over the railroad approximately 700 ft. east of the intersection.” *See* Safety Review Team Meeting Minutes attached as Exhibit 1 to Plts. Mot. Opp. Deft. Mot. Sum. Judg. (Appellant’s Supp. 78). Like this accident, ODOT determined that “most of the angle accidents involved motorists on westbound 32 colliding with vehicles crossing the intersection from the side roads.” *Id.* (Appellant’s Supp. 80). On two separate occasions prior to Amber Risner’s death, ODOT made a policy decision to attempt to correct the problem. The manner that ODOT chose to implement these policies (i.e. overhead flashers [year 2000] and advance warning signs [2004]) did nothing to improve sight distance or ensure the intersection complied with its written sight distance standards. Consequently, reasonable minds could conclude that ODOT’s manner of implementing its policy decision to make the intersection safer breached the duty it owed to Ohio motorists by not

updating the intersection to current design standards when such design standard would have eliminated the hazard.

ODOT has had a long standing duty to upgrade its roads when implementing improvements to roadways. When an improvement fails to address a known safety issue and an injury occurs because of this safety issue, ODOT must be held accountable if the roadway failed to meet design standards in place at the time the improvement was implemented. Choosing to improve a roadway because of safety concerns is a policy choice; the manner in which this improvement is accomplished is not.

CONCLUSION

For these reasons, the Court should affirm the judgment of the Tenth District below.

Respectfully submitted,

/s/Douglas J. Blue
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Attorney for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

A copy of the foregoing has been served via regular U.S. Mail this 22nd day of

December, 2014, to the following counsel of record:

Eric E. Murphy, Esq.
State Solicitor
30 East Broad Street, 17th Floor
Columbus, Ohio 43215

/s/Douglas J. Blue
Douglas J. Blue (0058570)

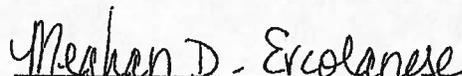
8. The median at the intersection of State Route 32 at State Route 220 and Germany Road is not large enough to permit a vehicle to safely stop in the median to observe traffic.

FURTHER AFFIANT SAYETH NAUGHT.

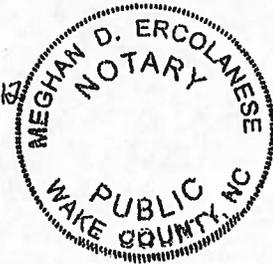


Daren E. Marceau

SWORN TO BEFORE ME and subscribed in my presence this 27 day of March, 2012.



Notary Public Comm.exp 7-31-2018



IN THE COURT OF CLAIMS OF OHIO

PAUL RISNER, as Co-Administrator
of the Estate of AMBER RISNER,
a Deceased Minor,
179 Hill Drive
Jasper, OH 45642

and

CATHERINE RISNER, as Co-Administrator
of the Estate of AMBER RISNER,
a Deceased Minor,
1812 Pennington Rd.
Waverly, OH 45690,

Plaintiffs,

v.

OHIO DEPARTMENT
OF TRANSPORTATION, DISTRICT 9
650 Eastern Ave.
Chillicothe, OH 45601
and

JOHN DOE,
any businesses, corporations, entities,
and/or individuals, names and
addresses, unknown, that/who were
responsible for the design and/or
maintenance of the intersection at
S.R. 32 and Germany Road,
Pike County, Ohio,

Defendants.

COMPLAINT

**First Claim: CLAIM OF PLAINTIFFS PAUL RISNER AND CATHERINE
RISNER AGAINST DEFENDANTS FOR WRONGFUL DEATH**

1. Plaintiffs Paul Risner and Catherine Risner are the duly appointed Co-Administrators of the Estate of Amber N. Risner, Deceased. They bring this action pursuant to

2011-03332
Case No.

Judge
JUDGE JOSEPH T. CLARK

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OF OHIO
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Ohio Revised Code §2125.01 and §2125.02 for the exclusive benefit of the next of kin of Amber N. Risner, Deceased. A copy of the Entry Appointing Fiduciary and Letters of authority are attached hereto as Exhibit A.

2. At all times relevant herein, decedent Amber N. Risner, Plaintiff Paul Risner and Plaintiff Catherine Risner was/are a resident(s) of the State of Ohio.

3. At all times relevant herein, Defendant Ohio Department of Transportation, District 9 and/or John Doe(s) was/were employees of acting under color of law in their official capacity as the Ohio Department of Transportation and under color of statutes, ordinances, regulations, policies, customs and usage of the State of Ohio. The State of Ohio is liable under the doctrine of respondeat superior.

4. On or about Saturday, September 12, 2009, at approximately 12:21 a.m. deceased, Amber N. Risner was an occupant in a vehicle driven by Ashley Royster, travelling northbound on Germany Road, at the intersection of Germany Road and State Route 32 in Pike County, Ohio.

5. The intersection of Germany Road and State Route 32 is guided by a stop sign on Germany Road as well as a "flashing" red light facing Germany Road. The intersection has a "flashing" yellow light for State Route 32 where it intersects with Germany Road. See Diagram in Accident Report, attached as Exhibit B.

6. Ms. Royster approached the intersection of Germany Road and State Route 32, intending to cross all four (4) lanes of State Route 32 to continue travelling northbound on Germany Road. See Diagram, attached as Exhibit B.

7. As Ms. Royster crossed the intersection, she was unable to see the transport truck driven by Robert Boring. Mr. Boring's truck collided with Ms. Royster's vehicle as she passed through the intersection, killing decedent, Amber N. Risner

8. Defendants Ohio Department of Transportation, District 9 and/or John Doe(s), alone and/or by and through their agents, actual or ostensible, were negligent in installing and/or using a "flashing" red and yellow light at the intersection of Germany Road and State Route 32 rather than a more appropriate traffic control device, such as a three-light "red, yellow and green" traffic control light, proximately causing the death of deceased, Amber N. Risner.

9. Defendants Ohio Department of Transportation, District 9 and/or John Doe(s), alone and/or by and through their agents, actual or ostensible, also were negligent in designing, operating and/or maintaining an intersection where the drivers could not properly see the oncoming traffic when travelling through the intersection of Germany Road and State Route 32, proximately causing the death of deceased, Amber N. Risner.

10. Defendants Ohio Department of Transportation, District 9 and/or John Doe(s), alone and/or by and through their agents, actual or ostensible, also were negligent in designing, installing and/or maintaining an intersection that was unsafe for the motoring public, proximately causing the death of deceased, Amber N. Risner.

11. As a further direct and proximate result of the conduct of the Defendants, the next-of-kin of the decedent have suffered pecuniary loss and non-pecuniary loss, including but not limited to the loss of support, services, consortium, care assistance, attention, protection, advice, guidance, counsel, instruction, training and education of the decedent, and further lost prospective inheritance and suffered mental anguish.

12. As a further direct and proximate result of the conduct of the Defendants, the

next-of-kin of the decedent incurred reasonable burial and funeral expenses.

Second Claim: CLAIM OF PLAINTIFFS PAUL RISNER AND CATHERINE RISNER AGAINST DEFENDANTS FOR SURVIVORSHIP

13. As Co-Administrators of the Estate of deceased, Amber N. Risner, Plaintiffs Paul Risner and Catherine Risner bring this action for the injuries and damages to deceased, Amber N. Risner, prior to her wrongful death for the benefit of the Estate of Amber N. Risner, and incorporates all of the allegations contained in paragraphs one (1) through twelve (13) as if they were fully rewritten herein.

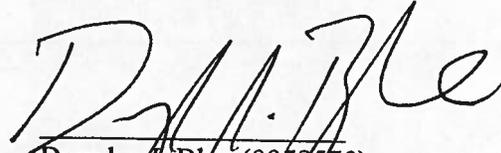
14. As a result of the conduct of the Defendants, deceased, Amber N. Risner, experienced much pain, suffering and mental anguish until the time of her wrongful death.

WHEREFORE, Plaintiffs Paul Risner and Catherine Risner, as Co-Administrators of the Estate of Amber N. Risner, demand judgment against the Defendants, jointly and severally, on the wrongful death action, in an amount in excess of Twenty-Five Thousand Dollars (\$25,000), plus interest, attorney's fees, the costs of this action and all other relief this Court deems just and equitable.

WHEREFORE, Plaintiffs Paul Risner and Catherine Risner, as Co-Administrators of the Estate of Amber N. Risner, demand judgment against the Defendants, jointly and severally, on the survivorship action, in an amount in excess of Twenty-Five Thousand (\$25,000), plus interest, attorney's fees, the costs of this action and all other relief that this Court deems just and equitable.

Respectfully submitted,

BLUE+ BLUE, LLC

A handwritten signature in black ink, appearing to read 'D. J. Blue', written over a horizontal line.

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PROBATE COURT OF PIKE COUNTY, OHIO

FILED
FEB 08 2011
JEROME D. CATANZARO
PROBATE JUDGE, DECEASED

ESTATE OF Amber N. Risner

CASE NO. 20101035

ENTRY APPOINTING FIDUCIARY; LETTERS OF AUTHORITY
(For Executors and all Administrators)

Name and title of fiduciary Paul Risner and Catherine Risner

On hearing in open court the application of the above fiduciary for authority to administer decedent's estate, the Court finds that:

Decedent died [check one of the following] testate intestate on September 12, 2009

domiciled in Pike County, Ohio

[Check one of the following] - Bond is dispensed with by the Will - Bond is dispensed with by law

Applicant has executed and filed an appropriate bond, which is approved by the Court; and

Applicant is a suitable and competent person to execute the trust.

The Court therefore appoints applicant as such fiduciary, with the power conferred by law to administer fully decedent's estate. This entry of appointment constitutes the fiduciary's letters of authority.

February 8, 2011
Date

[Signature]
Judge

CERTIFICATE OF APPOINTMENT AND INCUMBENCY

The above document is a true copy of the original kept by me as custodian of the records of this Court. It constitutes the appointment and letters of authority of the named fiduciary, who is qualified and acting in such capacity.

PLAINTIFF'S EXHIBIT
A

By [Signature] Deputy Clerk

Date February 8, 2011

[Seal]