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# Ohio must pay \$3.3 million for fatal pothole accident, court rules

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The state of Ohio must pay more than \$3 million for failing to fix potholes blamed for the 2008 traffic death of a Columbiana County nurse.

Ohio Court of Claims Judge Patrick M. McGrath on Thursday awarded \$3,343,025 to the husband and two adult children of East Palestine's Pauline Miller, 49, who was killed on a wintry morning when a truck hit potholes and swerved head-on into her four-door Dodge Intrepid. She was driving to her nursing job at St. Elizabeth's Health Center in Youngstown.



**Photograph of a portion of the actual pothole at the accident scene taken by the Ohio State Highway Patrol.**

The Ohio Department of Transportation's "negligence in failing to maintain the roadway in a reasonably safe condition was the sole proximate cause of a collision in which Pauline's automobile was struck by a box truck," the decision said. "The court determined that but for the existence of potholes in the roadway, the motor vehicle collision would not have occurred."

Spokesmen for ODOT and the Ohio Attorney General's Office, which handled the legal work for ODOT, said their agencies were still reviewing the decision.

ODOT spokesman Steve Faulkner said that after the review is complete "we will decide

how we may want to proceed."

In past legal filings, ODOT said it wasn't liable for Miller's death because it didn't know the precise condition of the potholes at the accident scene on Ohio 165 in Unity Township. It also said the truck driver shouldn't have lost control of his vehicle when he hit the potholes on the morning of March 11, 2008.

"In all likelihood, this pothole developed overnight – something that ODOT could not have foreseen," ODOT said in a 2012 legal document. "Finally, even if ODOT breached a duty owed, the truck driver's conduct was the proximate cause of this accident and his negligence should have been apportioned accordingly."

An attorney for Miller's family, Jamie R. Lebovitz, said his clients reached a confidential settlement with the trucker's insurance company and pursued ODOT because its negligence was "the sole cause of the collision" on the undivided two-lane highway.

A man who lived along the road told the court he'd reported the potholes to ODOT two to three weeks before the fatal accident, and an ODOT supervisor testified that he saw the potholes two days before the accident and determined they should be patched but weren't in need of immediate repair.

"ODOT allowed a dangerous condition to persist and to fester and because of their decision to not use the resources it had available to make the necessary repairs, a young wife, mother, nurse, neighbor and friend to many, perished," Lebovitz said.

McGrath awarded the family \$1.3 million for lost earnings that Miller would have had if she had continued to work as a nurse until her retirement age, and \$243,000 for the household services she would have performed.

On top of that, he determined that husband, Dennis, a retired electrician, should get \$1 million in non-economic damages for "loss of society and mental anguish," and her two grown children should each get \$400,000.

Lebovitz described the judgment as a "record-setting" wrongful death award against ODOT, and said the Miller family hopes it prompts the agency to more diligently maintain state roads.

"This is a tragedy that was easily preventable," Lebovitz said. "Had ODOT performed its responsibilities to safely maintain highways in the state of Ohio, particularly highways such as this with a history of pothole development, Pauline Miller would still be alive and we wouldn't be having this conversation."