

**IN THE SUPERIOR COURT OF ROCKDALE COUNTY
STATE OF GEORGIA**

HOWARD COLE, AS SURVIVING)
SPOUSE OF CASEY COLE, DECEASED)
AND HOWARD COLE AS)
ADMINISTRATOR OF THE ESTATE)
Of CASEY COLE, DECEASED)
Plaintiffs,)

FILE NO. 2021-CV-1421

vs.)

GEORGIA DEPARTMENT OF)
TRANSPORTATION, PITTMAN)
CONSTRUCTION COMPANY, and)
JESSICA FERGUSON)
Defendants.)

COMPLAINT

Plaintiff Howard Cole, as surviving spouse of Casey Cole, and Plaintiff Howard Cole, as Administrator of the Estate of Casey Cole, Deceased, file this Complaint against Defendant Georgia Department of Transportation (“Defendant GDOT”), Defendant Pittman Construction Company (“Defendant Pittman”), and Defendant Jessica Ferguson (“Defendant Ferguson”) showing the following:

1.

Plaintiff Howard Cole is a resident and citizen of Oconee County, Georgia. Plaintiff Howard Cole is also the surviving spouse of Casey Cole, Deceased.

2.

Plaintiff Howard Cole is the Administrator of the Estate of Casey Cole, Deceased.

3.

Defendant GDOT is a department of the State of Georgia which is subject to the jurisdiction of this Court by virtue of the facts hereinafter alleged and the application of O.C.G.A. § 50-21-20,

et. seq. Venue is proper in this Court pursuant to O.C.G.A. § 50-21-28 because the loss which is the subject matter of this case occurred in Rockdale County, Georgia.

4.

Pursuant to O.C.G.A. § 50-21-26, on March 14, 2020, counsel for Plaintiff sent Notices of Claim to the Risk Management Division of the Georgia Department of Administrative Services, to Defendant GDOT and to Defendant GDOT's General Counsel. The Notice of Claim was sent within 12 months of the occurrence which is the subject matter of this lawsuit. True and correct copies of the Notices of Claim and the certified mail receipts confirming delivery of the Notices of Claim are attached as Exhibit 1.

5.

This Complaint is being filed more than ninety (90) days after presentation of the Notices of Claim, during which the Risk Management Division of the Department of Administrative Services undertook no action.

6.

Service on Defendant GDOT may be made pursuant to O.C.G.A. § 50-21-35 by serving its Commissioner, Russell R. McMurry, P.E., at his usual office address located at One Georgia Center, 600 West Peachtree N.W., Atlanta, Georgia 30308; and by serving Wade Damron, Director of the Risk Management Division of the Georgia Department of Administrative Services, at his usual office address located at Georgia Department of Administrative Services, Suite 1220, West Tower, 200 Piedmont Avenue, S.E., Atlanta, Georgia 30334-9010.

7.

Pursuant to O.C.G.A. § 50-21-35, attached hereto as Exhibit 2 is an Affidavit certifying that a copy of this Complaint has been mailed this date by statutory overnight delivery, return

receipt requested, to the Attorney General at his usual office address located at 40 Capital Square, S.W., Atlanta, Georgia 30334.

8.

Defendant Pittman is a domestic corporation. Defendant Pittman's principal place of business is located at 1487 Farmer Rd NW, P. O. Box 155, Conyers, GA, 30012-7016. Defendant Pittman may be served with process through its registered agent, James E Mann, located at 1487 Farmer Rd NW, P. O. Box 155, Conyers, GA, 30012-7016. Defendant Pittman is subject to the venue and jurisdiction of the Court.

9.

Defendant Jessica Ferguson is a citizen of the State of Georgia and may be served with a copy of the Summons and Complaint at her residence: 109 Lost Forest Drive, McDonough, Georgia 30252. Once served with process, Defendant Jessica Ferguson is subject to the jurisdiction and venue of this Court.

10.

Defendants are joint tortfeasors.

11.

Defendants are subject to the venue and jurisdiction of this Court pursuant to Ga. Const. Art. VI, § II, ¶ IV, O.C.G.A. §§ 9-10-31, 14-2-510, 14-11-1108, and other applicable law.

FACTS

12.

This Complaint arises from an April 3, 2019 wreck on Highway 138 near milepost 17.36, north of Dial Mill Road in Rockdale County, Georgia ("subject section of Highway 138").

13.

At the time of the April 3, 2019 wreck, the subject section of Highway 138 had a vertical edge of pavement drop-off of approximately six inches on the east side of the roadway.

14.

Vertical edge of pavement drop-offs in excess of two inches like the one at the subject section of Highway 138 pose a well-known risk of “tire scrubbing,” oversteering, and loss of control to vehicles, and result in foreseeable injuries and deaths to members of the motoring public. Vertical edge of pavement drop-offs of two inches or less allow cars whose tires have dropped off the road to safely and easily return to the road.

15.

The subject section of Highway 138 where the wreck occurred was part of the State Highway System of Georgia prior to, on, and following April 3, 2019, and was planned, designed, constructed, inspected and maintained at the direction and under the supervision of Defendant GDOT.

16.

At all times on and prior to April 3, 2019, Defendant GDOT was responsible for planning, designing, constructing and maintaining the subject section of Highway 138 where the wreck occurred in substantial compliance with generally accepted design, construction and maintenance standards in effect.

17.

A safety edge is a safety measure used to reduce edge of pavement related crashes. It is a 30–40-degree angle asphalt file along each side of the roadway. The safety edge allows cars whose tires have dropped off the road to more easily and safely re-enter the roadway.

18.

On September 30, 2011, GDOT issued a policy announcement regarding the safety edge.

The policy announcement is attached as Exhibit 3. The statement read as follows:

“The decision was also made to establish a Pavement Edge Treatment or “Safety Edge” as the standard treatment for the outside edge of all uncurbed pavements whether edge of travel lane or shoulder (excluding pavement behind guardrail.) The new criteria is published in the GDOT DPM, **Chapter 6.5.2. Pavement Edge Treatment**. A new Construction Detail P-7 has also been created and is published with the GDOT Construction Standards and Details. The method for calculating additional pavement quantities related to the Safety Edge is included on the Detail P-7. If it is not practical to provide the Safety Edge, then a decision to omit shall require a comprehensive study by an engineer and the prior approval of a Design Variance from the GDOT Chief Engineer.

Implementation: Any project scheduled for FFPR after January 1, 2012, will require the Safety Edge.”

19.

In 2017, Defendant GDOT prepared a plan and design for Milling, Inlay and Plant Mix Resurfacing on Highway 138, Rockdale County, beginning at Sigman Rd and extending to the Rockdale-Newton County line (Federal Project M004973/Contract ID: B1CBA1701781-0) (“Project M004973”).

20.

At the time the plan and design for Project Number M004973 for the subject section of

Highway 138 was prepared, generally accepted design and engineering standards in effect prohibited a vertical edge of pavement drop-off in excess of two inches.

21.

At the time the plan and design for Project Number M004973 for the subject section of Highway 138 was prepared, generally accepted design and engineering standards in effect required pavement edge treatment with a safety edge.

22.

Defendant GDOT's Design Policy Manual version 4.21 was implemented June 1, 2017 and was in effect at the time the plan and design for Project Number M004973 for the subject section of Highway 138 was prepared. Section 6.5.2. Pavement Edge Treatment, states, "[t]he pavement edge treatment . . . , also known as a Safety Edge, has been identified by GDOT as having substantial importance to the operational and safety performance of a roadway such that special attention should be given to the design decision. Therefore, GDOT has defined the Safety Edge as the standard treatment for the outside edge of all uncurbed pavements, whether edge of travel lane or shoulder (excluding pavement behind guardrail). If it is not practical to provide the Safety Edge, then a decision to omit shall require a comprehensive study by an engineer and the prior approval of a Design Variance from the GDOT Chief Engineer."

23.

GDOT did not request a comprehensive study by an engineer, nor did GDOT obtain approval of a Design Variance from the GDOT Chief Engineer to plan, design and construct the subject section of Highway 138 without a safety edge as required by the GDOT policy announcement and Design Policy Manual.

24.

GDOT did not request a comprehensive study by an engineer, nor did GDOT obtain approval of a Design Variance from the GDOT Chief Engineer to plan, design and construct the subject section of Highway 138 with a vertical edge of pavement drop-off in excess of two inches as required by the GDOT policy announcement and Design Policy Manual.

25.

On November 17, 2017, the Georgia Department of Transportation awarded Project M004973 to Defendant Pittman.

26.

Project M004973 included road resurfacing on the subject section of Highway 138.

27.

The contract for Project Number M004973 contained plans that Defendant GDOT required Defendant Pittman to follow. The subject section of Highway 138 was expected to meet the specifications for "P-7 Note, Typical" which is a safety edge. At P-7 (GDOTORR_000431), labeled "Construction Detail – Pavement Edge Treatment", the plans state "General Notes: THE SAFETY EDGE SHALL BE CONSTRUCTED AS AN INTEGRAL OPERATION OF THE ROADWAY PAVEMENT PLACEMENT PROCESS."

28.

Defendant Pittman had experience and expertise in the area of road resurfacing when it was awarded Project M004973 and at all times during the course of performing work on Project M004973.

29.

Defendant Pittman began work on Project M004973 on or around January 5, 2018.

30.

Defendant Pittman constructed the subject section of Highway 138 without a safety edge.

31.

Defendant Pittman graded the shoulder of the subject section of Highway 138 flush with the road and covered the shoulder with shoulder material, thus concealing the lack of a safety edge.

32.

Alternatively, Defendant Pittman constructed the subject section of Highway 138 with a safety edge and it deteriorated to an approximately six inch edge of pavement drop-off by April 3, 2019.

33.

Defendant Pittman completed work on Project M004973 on or around November 2018.

34.

On November 28, 2018, Defendant GDOT performed its Final Inspection of Project Number M004973 and issued a final acceptance of the work performed by Defendant Pittman.

35.

Because the lack of a safety edge was covered with shoulder material, the lack of a safety edge constituted a hidden defect that Defendant GDOT was unable to identify upon its final inspection and acceptance of Defendant Pittman's work on Project Number M004973.

36.

Between Defendant GDOT's final inspection on November 28, 2018 and the wreck on April 3, 2019, the shoulder on the subject section of Highway 138 eroded and deteriorated, creating a vertical edge-of-pavement drop-off of approximately six inches and exposing the lack

of a safety edge on the east side of the roadway.

37.

Generally accepted maintenance standards in effect require that roads be inspected, maintained and repaired so that they do not have a vertical edge of pavement drop-off in excess of two inches.

38.

Generally accepted design, engineering and maintenance standards in effect require that motorists be warned of vertical edge of pavement drop-offs in excess of two inches.

39.

As stated above, at the time of the April 3, 2019 wreck, the subject section of Highway 138 had a vertical edge of pavement drop-off of approximately six inches on the east side of the roadway.

40.

On April 3, 2019, there was no sign or other traffic control devices warning motorists of the edge of pavement drop-off on Highway 138.

41.

On April 3, 2019, at approximately 8:25 AM, Casey Cole was driving south on Highway 138 in Rockdale County.

42.

On April 3, 2019, at approximately 8:25 AM, Defendant Ferguson was traveling north on Highway 138 with her minor child in the backseat of her SUV. At approximately Mile Post 17, Defendant Ferguson's passenger side wheel dropped off the east side of the roadway, which had an approximately six inch drop-off from the pavement onto the ground. After dropping off the

pavement edge, Defendant Ferguson attempted to re-enter the roadway. When Defendant Ferguson re-entered the roadway, she over-corrected and her vehicle crossed the center line and crashed into Casey Cole's vehicle head-on.

43.

The impact with Defendant Ferguson's car caused Casey Cole's car to travel off the road and down an embankment on the west side of the roadway, where it crashed into a tree.

44.

Casey Cole died as a result of injuries suffered in the wreck. She was pronounced dead at the scene of the incident. Ms. Cole's death certificate attributed her immediate cause of death to generalized trauma due to a head-on motor vehicle collision.

45.

Casey Cole experienced fright, shock and mental suffering in the moments before Defendant Ferguson's car struck her car.

46.

Casey Cole experienced physical and mental suffering when Defendant Ferguson's car struck her car.

47.

Casey Cole experienced fright, shock and mental suffering as her car went down the embankment and crashed into the tree.

48.

Casey Cole incurred medical bills and funeral expenses.

COUNT I
NEGLIGENT CONSTRUCTION BY DEFENDANT PITTMAN CONSTRUCTION
COMPANY

49.

Plaintiff re-alleges and incorporates herein the allegations contained in paragraphs 1 through 48 above as if fully restated.

50.

Defendant Pittman was required to use its experience and expertise in roadway resurfacing and ensure that all aspects of the work it performed met all generally accepted and applicable standards for similar roadway resurfacing on roadways such as Highway 138.

51.

Defendant Pittman negligently failed to use its experience and expertise in roadway resurfacing to ensure that all aspects of the work it performed met all generally accepted and applicable standards for similar roadway resurfacing on roadways such as Highway 138.

52.

While working on and completing Project M004973, Defendant Pittman was required to follow Defendant GDOT's contract specifications for the work that Defendant Pittman performed on Highway 138.

53.

Defendant Pittman negligently failed to follow Defendant GDOT's contract specifications for the work that Defendant Pittman performed on Highway 138.

54.

Defendant Pittman was negligent in repaving the subject section of Highway 138 because it repaved the subject section of Highway 138 without a safety edge.

55.

Defendant Pittman was negligent in repaving the subject section of Highway 138 because its repaving of the subject section of Highway 138 resulted in a vertical edge of pavement drop-off in excess of two inches.

56.

Due to Defendant Pittman's negligent performance of Project M004973, the subject section of Highway 138 was left without a safety edge and with a vertical edge of pavement drop-off in excess of two inches.

57.

The lack of a safety edge constituted a hidden defect that Defendant GDOT was unable to identify upon its final inspection and acceptance of Defendant Pittman's work on Project Number M004973.

58.

Because Defendant Pittman built the subject section of Highway 138 without a safety edge, the subject section of Highway 138 was so negligently defective that it was imminently dangerous to third persons.

59.

If Defendant Pittman constructed the subject section of Highway 138 with a safety edge and it deteriorated to an approximately six inch edge of pavement drop-off by April 3, 2019, then Defendant Pittman negligently constructed the safety edge.

60.

Defendant Pittman's negligent conduct directly and proximately caused Casey Cole's death and caused Casey Cole to suffer physical and mental pain and suffering, medical expenses

and burial expenses.

COUNT II
NEGLIGENT PLAN AND DESIGN BY DEFENDANT GDOT

61.

Plaintiff re-alleges and incorporates herein the allegations contained in paragraphs 1 through 60 above as if fully restated.

62.

Defendant GDOT, pursuant to OCGA §32-2-2(a)(1), “shall plan, designate, improve, manage, control, construct, and maintain a state highway system and shall have control of and responsibility for all construction, maintenance, or any other work upon the state highway system[.]”

63.

Defendant GDOT had a duty to design and plan Project M004973 in substantial compliance with generally accepted engineering or design standards in effect.

64.

At the time the plan and design for the subject section of Highway 138 was prepared, generally accepted design and engineering standards in effect prohibited a vertical edge of pavement drop-off in excess of two inches.

65.

At the time the plan and design for the subject section of Highway 138 was prepared, generally accepted design and engineering standards in effect required pavement edge treatment with installation of a safety edge.

66.

If Defendant GDOT planned and designed the subject section of Highway 138 with an

edge of pavement drop-off in excess of two inches, Defendant GDOT negligently violated generally accepted engineering and design standards in effect because the subject section of Highway 138 had a vertical edge of pavement drop-off in excess of two inches.

67.

If Defendant GDOT designed the subject section of Highway 138 without a safety edge, Defendant GDOT negligently violated generally accepted engineering and design standards in effect because the subject section of Highway 138 lacked a safety edge.

68.

Defendant GDOT's negligent conduct directly and proximately caused Casey Cole's death and caused Casey Cole to suffer physical and mental pain and suffering, medical expenses and burial expenses.

COUNT III

NEGLIGENT INSPECTION, MAINTENANCE, AND REPAIR BY DEFENDANT GDOT

69.

Plaintiff re-alleges and incorporates herein the allegations contained in paragraphs 1 through 68 above as if fully restated.

70.

Defendant GDOT, pursuant to OCGA §32-2-2(a)(1), "shall plan, designate, improve, manage, control, construct, and maintain a state highway system and shall have control of and responsibility for all construction, maintenance, or any other work upon the state highway system[.]"

71.

Defendant GDOT was responsible for inspecting Defendant Pittman's work on the subject section of Highway 138 to ensure that it complied with Defendant GDOT's applicable

specifications and did not create an unsafe hazard or condition for motorists.

72.

Defendant GDOT negligently failed to inspect Defendant Pittman's work on the subject section of Highway 138 to ensure that it complied with Defendant GDOT's applicable specifications and did not create an unsafe hazard or condition for motorists.

73.

After Defendant Pittman completed its work on the subject section of Highway 138, Defendant GDOT had a duty to inspect the subject section of Highway 138 for failure of the safety edge and the development of an edge of pavement drop-off in excess of two inches.

74.

After Defendant Pittman completed its work on the subject section of Highway 138, Defendant GDOT negligently violated its duty to inspect the subject section of Highway 138 for failure of the safety edge and the development of an edge of pavement drop-off in excess of two inches.

75.

After Defendant Pittman completed its work on the subject section of Highway 138, Defendant GDOT had a duty to warn motorists that the subject section of Highway 138 had an edge of pavement drop-off in excess of two inches.

76.

After Defendant Pittman completed its work on the subject section of Highway 138, Defendant GDOT negligently violated its duty to warn motorists that the subject section of Highway 138 had an edge of pavement drop-off in excess of two inches.

77.

After Defendant Pittman completed its work on the subject section of Highway 138, Defendant GDOT had a duty to maintain and repair the subject section of Highway 138 so that safety edge failures and edge of pavement drop-offs in excess of two inches were timely and appropriately repaired.

78.

After Defendant Pittman completed its work on the subject section of Highway 138, Defendant GDOT negligently violated its duty to maintain and repair the subject section of Highway 138 so that safety edge failures and edge of pavement drop offs in excess of two inches were timely and appropriately repaired.

79.

After Defendant Pittman completed its work on the subject section of Highway 138, Defendant GDOT had a duty to inspect, maintain and repair the subject section of Highway 138 so that it was in substantial compliance with generally accepted design, engineering construction and maintenance standards in effect.

80.

Defendant GDOT negligently violated its duty to inspect, maintain and repair the subject section of Highway 138 so that it was in substantial compliance with generally accepted design, engineering, construction and maintenance standards in effect.

81.

Defendant GDOT's negligent conduct directly and proximately caused Casey Cole's death and caused Casey Cole to suffer physical and mental pain and suffering, medical expenses and burial expenses.

82.

Pursuant to O.C.G.A. §9-11-9.1, the Affidavit of Robert E. Stammer, Jr., Ph.D., P.E. is attached hereto as Exhibit 4 and incorporated herein in the event that said statute is determined to be applicable to Defendant GDOT and/or Defendant Pittman's negligent conduct giving rise to this lawsuit.

NEGLIGENCE OF DEFENDANT JESSICA FERGUSON

83.

Plaintiff re-alleges and incorporates herein the allegations contained in paragraphs 1 through 82 above as if fully restated.

84.

Defendant Jessica Ferguson was negligent for failing to operate her vehicle with due caution and circumspection, failing to keep her vehicle under control and failing to maintain her lane.

85.

On the incident date, Defendant Jessica Ferguson violated O.C.G.A. § 40-6-48 by failing to drive her vehicle entirely within a single lane.

86.

Defendant Jessica Ferguson's violation of O.C.G.A. § 40-6-48 is negligence per se.

87.

Defendant Jessica Ferguson's negligent conduct directly and proximately caused Casey Cole's death and caused Casey Cole to suffer physical and mental pain and suffering, medical expenses and burial expenses.

DAMAGES

88.

Plaintiff re-alleges and incorporates herein the allegations contained in paragraphs 1 through 87 above as if fully restated.

89.

Defendants' negligent conduct directly and proximately caused Casey Cole's death.

90.

Plaintiff Howard Cole, as surviving spouse of Casey Cole, is entitled to recover the full value of the life of Casey Cole.

91.

Defendants' negligent conduct directly and proximately caused Casey Cole to suffer physical and mental pain and suffering, medical expenses and burial expenses.

92.

Plaintiff Howard Cole, as Administrator of the Estate of Casey Cole, Deceased, is entitled to recover for Casey Cole's physical and mental pain and suffering, medical bills and burial expenses.

WHEREFORE, Plaintiffs pray as follows:

- (a) That Plaintiffs have issuance and service of process and summons in terms of the law;
- (b) That Plaintiffs have a trial by jury;
- (d) That Plaintiffs have judgment against Defendants for the claims asserted herein in amounts to be determined at the trial of this civil action;
- (e) That Plaintiffs recover all costs and have such other and further relief as is appropriate under the law and the evidence.

This 29th day of March, 2021.

**BLASINGAME, BURCH, GARRARD &
ASHLEY, P.C.**

/s/ Michael Ruppensburg

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