

**IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE  
EASTERN DIVISION**

**LOUIS CUNNINGHAM,**

**Claimant,**

v.

**STATE OF TENNESSEE,**

**Defendant.**

}  
}  
}  
}  
}  
}  
}  
}

**Claim No. 20090325  
Small Docket  
Heard on Affidavits**

COMPUTER \_\_\_\_\_  
DOCKETED \_\_\_\_\_  
C/S-COMM \_\_\_\_\_  
DCA \_\_\_\_\_  
AG \_\_\_\_\_  
ALI \_\_\_\_\_  
FEE PAID \_\_\_\_\_  
NOTICE SENT \_\_\_\_\_  
FILED \_\_\_\_\_

**FILED**

**JUN 29 2009**  
Tennessee Claims Commission  
CLERK'S OFFICE

**ORDER OF DISMISSAL**

**THIS MATTER IS BEFORE** the undersigned on the State's Response to Notice of Appeal from Denial of Claim and Motion to Dismiss with an attached Affidavit, and the record as a whole.

Motions pending before the Tennessee Claims Commission are to be decided without oral argument pursuant to Tennessee Claims Commission Rule 0310-1-1-.01(5)(a) unless otherwise ordered. There has been no order for oral argument in this matter. Further, there has been no motion by either party for oral argument. Therefore, the State's Motion is properly before the Commission and will be heard on the record.

Additionally, pursuant to Tennessee Code Annotated section 9-8-403(a)(2), this claim is on the Commission's small claims docket and shall proceed upon affidavits filed with the Commission without a hearing. The Commission would note the Claimant has neither requested an in-person hearing nor paid the \$25.00 filing fee for a hearing. Therefore, pursuant to Tennessee Claims Commission Rule 0310-1-1-.01(2)(d)(1), this claim shall be heard upon the

Notice of Appeal, Claim for Damages form, Complaint Form, Affidavits on file, the State's Response and Motion, and the record as a whole.

### **I. Procedural History**

This claim arises from an incident that occurred on July 7, 2008, on Interstate 40 near the Hamblen/Jefferson County line. The Claimant, Louis Cunningham, timely filed a claim against the State of Tennessee with the Division of Claims Administration ("the Division") on September 19, 2008. The Division denied the claim and the Claimant filed a timely appeal with the Tennessee Claims Commission on February 18, 2009. Mr. Cunningham requests the Commission award him damages in the amount of One Thousand Six Hundred Seventy-Eight and 21/100 Dollars (\$1,678.21) as a result of the State's negligence because of the bridge disrepair.

In response to this claim, the State filed a Response and Motion to Dismiss on April 7, 2009. Attached to its Motion, the State also filed the Affidavit of Lester W. Matthews. The Claimant has filed no response to the State's Motion.

### **II. Facts**

In the Claim for Damages form filed with the Division, the Claimant, Louis Cunningham, maintains that on July 7, 2008, at approximately 4:50 p.m. he was traveling on Interstate 40 near mile marker 420 at the Hamblen/Jefferson County line, when his motorcycle hit a portion of the bridge expansion joint that had come loose. In his Complaint Form, Mr. Cunningham states the date of occurrence as July 12, 2008. Mr. Cunningham also stated in his Complaint Form that the expansion joint was protruding into the roadway, and that he struck it with his motorcycle. He avers that "as a direct result of the expansion joint being in disrepair, [he] sustained damage to the front and rear rims and both tires of [his] motorcycle." Additionally, he stated that he had no

notice of the bridge expansion joint being in disrepair, thus he could not give notice to the state. Attached to his claim is an estimate of repair for the damages to his motorcycle, which totals One Thousand Six Hundred Seventy-Eight and 21/100 Dollars (\$1,678.21).

Also attached to his claim is a Tennessee Department of Safety Incident Report verifying that on July 12, 2008, Mr. Cunningham was traveling east at mile marker 420 on Interstate 40 when his motorcycle struck a portion of the concrete bridge expansion joint which had become dislodged in the roadway. The Officer in his report noted that damage was observed to the Claimant's front and rear rims as well as the rear tire on the motorcycle.

The State in its Response and Motion to Dismiss submits that dismissal of this action is appropriate pursuant to Tennessee Rules of Civil Procedure 12.02(6) for failure to state a claim for which relief can be granted. The State maintains that it did not have any notice of problems with the bridge expansion joint in time sufficient to take appropriate measures to prevent Claimant's damages. The State avers that the types of problems experienced in this case with the bridge expansion joint can occur at anytime without any advance notice. Therefore, the State maintains the Claimant has not stated a claim for which relief can be granted and his appeal should be dismissed.

In support of its position, the State filed the Affidavit of Lester W. Matthews. As Highway Maintenance Supervisor #2, Region I, for the Tennessee Department of Transportation ("TDOT"), which includes Hamblen and Jefferson counties, Mr. Matthews stated that a part of his job responsibilities include assuring that a daily inspection of Interstate 40 from mile marker 429.77 (Sevier County) to 451.83 (North Carolina State line) is made by highway maintenance workers in Region I. Mr. Cunningham testified that on Friday, July 11, 2008, a maintenance crew did conduct a highway inspection and litter pickup on Interstate 40 in Jefferson County and

that no problems were reported in their Daily Work Report regarding any repair work that needed to be done in the area of Interstate 40 at issue in this claim.

Mr. Matthews stated that on July 12, 2008, the Tennessee Highway Patrol called to inform him that a bridge expansion gap on I-40 near mile marker 420 “had popped out and that there had been an accident because of it”.

### **III. Issues**

Whether Claimant is entitled to the relief sought in his claim or whether the Defendant’s Motion to Dismiss should be sustained.

### **IV. Decision**

In this case, proceeding alternatively under either subsections (I) or (J) of Tennessee Code Annotated, Section 9-8-307(a)(1), this Commission simply cannot and does not find in this case that the State has been negligent as contemplated by the Tennessee Claims Commission Act. Those provisions provide as follows:

(a) (1) The commission or each commissioner sitting individually has exclusive jurisdiction to determine all monetary claims against the state based on the acts or omissions of ‘state employees,’ as defined in § 8-42-101(3), falling within one (1) or more of the following categories:

.....

(I) Negligence in planning and programming for, inspection of, design of, preparation of plans for, approval of plans for, and construction of, public roads, streets, highways, or bridges and similar structures, and negligence in maintenance of highways, and bridges and similar structures, designated by the department of transportation as being on the state system of highways or the state system of interstate highways;

(J) Dangerous conditions on state maintained highways. The claimant under this subdivision (a)(1)(J) must establish the foreseeability of the risk and notice given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures;...

Regarding the alleged negligence of the State in maintaining Interstate 40 and specifically the bridge located near mile maker 420 at the Hamblen/Jefferson County boundary line on July 12, 2008, it is surely foreseeable that a bridge expansion joint could come loose on this heavily traveled roadway. In fact, District 13 maintenance supervisor Lester Mathews affied that such an event "can occur at any time without advance notice." Mr. Mathews' affidavit goes on to state that immediately after he was notified on Saturday, July 12, 2008, by the Tennessee Highway Patrol that such a joint had come loose at mile marker 420, he traveled to that location, observed the damage and dispatched two employees immediately to correct the problem by filling the expansion hole with cool mix. However, the mere fact that it was foreseeable or conceivable that an expansion joint problem could suddenly develop in a roadway does not automatically establish negligence and therefore liability. In addition, the claimant must show that the Defendant State "could have taken some action to prevent the injury". See *Hodge v State*, 2006 W.L.36905 at \*3 (Tenn. Court App.), Number M2004-00137-COA-R3-CV (Middle Section Court App.); *West v East Tennessee Pioneer Oil Company* 172 S.W.3d545, 551 (Tenn. 2005). The incident involved in this claim happened around 4:50 p.m. on a Saturday and the proof shows that immediately upon having been notified of the problem, the State moved rapidly to correct the same. Based upon the fact that no problems had been observed on July 11, 2008, during an inspection of this stretch of road by workers and the further sworn statement by Mr. Mathews that immediately after having been notified of the problem, TDOT corrected the same establishes that there was no negligence in the maintenance of this bridge. Therefore no liability can be attributed to the State under Tennessee Code Annotated, Section 9-8-307(a)(1)(I). In other words, the State could only correct a situation after having been notified of this issue and here it did. Unfortunately, the accident happened before the notification.

These same considerations apply in connection with Mr. Cunningham's claim if it is analyzed under Tennessee Code Annotated, Section 9-8-307(a)(1)(J). That section requires not only that there be a foreseeable risk, but also "notice given to the proper State officials at a time sufficiently prior to the injury for the State to have taken appropriate measures". The Legislature, in waiving the State's sovereign immunity to the extent set out in that section of the Tennessee Claims Commission Act, has nevertheless required claimants, such as Mr. Cunningham, to establish that not only was the risk he encountered foreseeable but also that the State had sufficient advance notice to carry out any necessary repairs. See *Pool v State* 987 S.W.2d 566, 567 (Tenn. Court App. 1998).

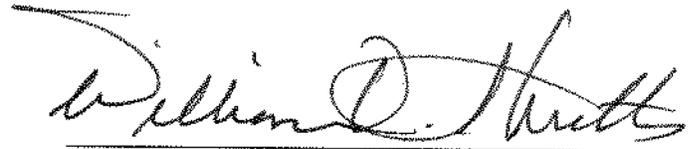
Here, as indicated above, the State had inspected the roadway the day before and no problems were identified. The first notice that the State had of the problem with the expansion joint was the following afternoon when the Tennessee Highway Patrol notified the district maintenance supervisor of Mr. Cunningham's event.

The jurisdiction of the Tennessee Claim Commission Act represents a partial waiver of the State's innate sovereign immunity against suit by the General Assembly of the State. The legislation is in derogation of the common law and therefore must be strictly construed. *Stewart v. State*, 33 S.W.3d785, 790-791 (Tenn. 2000). Additionally, determination of negligence and liability is decided upon the basis of "traditional tort concepts of duty and the reasonably prudent person's standard of care". (Tennessee Code Annotated, Section 9-8-307(c).)

Here, there has been no evidence submitted that the State was negligent in the maintenance of this roadway or that it was notified of the problem encountered by the claimant prior to the occurrence of the event described in his claim.

Of course, it extremely unfortunate that Mr. Cunningham's motorcycle was damaged but under very well established principles of Tennessee tort law, as well as cases decided under in the Tennessee Claims Commission Act, I simply cannot find negligence and therefore liability in this case and therefore, the claim must be respectfully **DISMISSED**.

ENTERED this the 26<sup>th</sup> day of June, 2009.



**William O. Shults, Commissioner**  
P.O. Box 960  
Newport, TN 37822-0960  
(423) 613-4809

#### CERTIFICATE

I certify that a true and exact copy of the foregoing Order has been forwarded to:

**Louis Cunningham**  
2852 Old State Route 34  
Limestone, TN 37681

**Lionel R. Joiner, Esq.**  
Office of the Attorney General  
P.O. Box 20207  
Nashville, TN 37202

This the 29 day of June, 2009.



Marsha Richeson, Administrative Clerk