

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE  
MIDDLE DIVISION

CLAIMS COMMISSION  
CLERK'S OFFICE

2015 FEB 12 A 10: 04

LINDSAY CRUTCHFIELD, )  
 ) Claim No. T20120850  
 Claimant. )  
v. )  
 )  
STATE OF TENNESSEE )  
 ) Regular Docket  
 Defendant; )

**JUDGMENT FOR CLAIMANT**

This matter came on for trial on the merits before Robert N. Hibbett, Commissioner and Trial Judge of the facts and law. The Claimant, Lindsay M. Crutchfield, seeks damages arising from hearing loss she incurred when the fire alarm activated in her dorm room at Tennessee Tech University (Tech). The claim was tried on December 11, 2014 in the Mount Juliet City Courtroom. William A. Cameron, Esq., appeared for Ms. Crutchfield. The State was represented by Assistant Attorney General Joseph Ahillen, Esq. The Claims Commission has jurisdiction of this matter under the following sections of Tenn. Code Ann. § 9-8-307(a)(1):

(C) Negligently created or maintained dangerous conditions on state controlled real property. The claimant under this subdivision (a)(1)(C) must establish the foreseeability of the risks and notice

given to the proper state officials at a time sufficiently prior to the injury for the state to have taken appropriate measures;  
(E) Negligent care, custody and control of persons;  
(M) Negligent operation of machinery or equipment;

Tenn. Code Ann. § 9-8-307

Pursuant to Tenn. Code Ann. § 9-8-403(i), the Tribunal makes the following findings of fact and conclusions of law.

### FINDINGS OF FACT

#### **Testimony of Lindsay Crutchfield**

At the time of the incident in question, Ms. Crutchfield was a freshman at Tennessee Tech University. She began having problems with her hearing when she was four years old. Between that age and the time she entered Tech, she had infections and tumors in her left ear. Her right ear did not have as many medical problems although her hearing deteriorated in that ear also.

When she graduated from high school in 2011, she decided to enroll at Tennessee Tech University. She preferred to live off campus because she did not want a roommate. She knew some type of system for the hearing impaired would have to be placed in her room and she did not want it to disturb a roommate. School officials denied her request to live off campus. Instead, she received a single dorm room in Jobe Hall on campus.

She went to disability services and the housing office to determine what accommodations Tech was making for her. On the day she arrived, she still did not know what system had been put into place for her: a flashing light system or a bed shaker. She met briefly with a housing resident assistant who explained that both a strobe light and bed shaker were connected to a doorbell outside her dorm room. In addition, a school fire alarm was connected to her wall, as it was in every room.

She had been attending Tech a month and a few days during which time students would push her doorbell for no good reason. It was very disturbing to her. She began unplugging the doorbell at night, so she would not be disturbed throughout the night. Therefore, at night the bed shaker and the strobe light were disabled.

On September 30, 2011, at approximately 6:00 a.m. she was in her dorm room sleeping. At approximately 6:15 a.m., she awoke to a high-decibel pitch. She did not hear the alarm beforehand because she was asleep on her right side and lying on her relatively good ear. When she rolled over, she heard it out of her right ear. She thought the alarm was coming from the smoke alarm on the

bookcase.<sup>1</sup> Her ears were in piercing pain. She looked out the peephole in her door and thought that the doors to the staircases were closed. She opened the door and saw the light was going on above the entry door that went to the hallway. She did not see anyone in the building, and then she put on her hoodie and left the building.

Outside the dormitory, she saw all the students from both Jobe Hall and the dorm that is connected to Jobe. She found Erica Hunt, a housing assistant coordinator, to find out what was happening. Ms. Crutchfield told her that her alarm did not go off until fifteen minutes after the initial alarm went off. However, she did not know when the alarm in her room sounded. When she was speaking to Ms. Hunt, she realized she could not hear her, and that her ears were constantly ringing. She had to read her lips.

After a few minutes, everyone went back inside. However, she did not know whether the building alarm was still sounding. She went to class that morning but had trouble with her hearing, and it has not returned. She has the same hearing at time of trial that she had after the September 30, 2011 fire alarm

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<sup>1</sup> She was mistaken. The totality of the evidence shows that sound was coming from the school fire alarm on the wall above the door that is located in every room.

incident. She wears a hearing aid but it does not help her with verbal communication. It only helps her to feel vibrations.

After the incident, the Claimant and her mother met with Mr. Macke, Director of Residential Life. He told them the Crutchfields must have installed the smoke alarm in her dorm room that was on the bookshelf (not the school fire alarm that was on the wall). They told him that particular alarm was already there when she arrived. He then stated a former student must have left it there.<sup>2</sup> The Claimant stated the fire alarm located on the wall was eight to ten feet from her head when she was in bed.

She finished the fall semester at Tech but had difficulty doing so because of her hearing loss. She was a Spanish major and all of her instruction was in classrooms. She was not native to the language so it was very difficult for her to know whether she was pronouncing the words correctly. She did not attend Tech anymore after the fall semester. She wanted to take online courses because she cannot read everyone's lips. She has read lips all her life and that is how she communicates.<sup>3</sup> However, she knows it is frustrating for everyone when she is talking to people and she must ask them to repeat what they are saying.

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<sup>2</sup> There is more testimony concerning this smoke alarm. It is apparent that this was not the alarm that sounded. The alarm that sounded was the school fire alarm on the wall.

<sup>3</sup> The Tribunal notes that she was well spoken with only a hint of speech impairment.

She has furthered her education by taking one class at a time from community college. She has changed her major to business management and wants a minor in culinary arts. She currently works at the Powell, Tennessee Zaxby's restaurant. She has been promoted twice since joining Zaxby's on April 27, 2013. They made her a crew leader on March 4, 2014. Since then she has been promoted to management. She loves her job and plans to continue with Zaxby's. Currently, to the best of her knowledge, she has five percent hearing in her right ear. She does not hear anything in her left ear. Although she was mistaken concerning what alarm damaged her hearing, the Tribunal accredits and believes the testimony of the Claimant.

### **Testimony of Angela Crutchfield**

Angela Crutchfield is the mother of Lindsay Crutchfield and an alumnus of Tech. Her daughter was a straight A student in high school. Her daughter had a hearing aid during high school that had a receiver attached to her teacher's microphone that helped her understand what was being said. During the summer before the fall term at Tech, she and her daughter requested that Lindsay live off campus. Dr. Merwin submitted a form requesting she be allowed to live off-campus or to have a single room. Lindsay could

communicate fairly easily before attending Tech because she had grown up reading lips. When they arrived at Tech, they met with Disability Services and Housing to learn what accommodations would be in place. They understood she would have a strobe light and bed shaker. She did not recall being told about the fire alarm on the wall but she remembered seeing it. She thought the fire alarm on the wall was wired to the doorbell system.<sup>4</sup>

After the September 30, 2011 incident, she met with Dean Boucher, Mr. Macke and Mr. Burnett. Mr. Macke visited Lindsay's dorm room and commented that the smoke alarm on the bookshelf had not been installed by Tech and that the Crutchfields must have placed it there. After being told they had not, Mr. Macke responded that perhaps a former student had emplaced it.<sup>5</sup> Ms. Crutchfield testified that she had been both a Resident Assistant and Head Resident at Tech. She stated when she attended Tech, the residence hall staff had five to seven minutes after an alarm to clear the dorm and ensure that it had been properly evacuated. Mr. Macke told her that if anyone was disabled, the staff was expected to go back and make sure that person was out of the building.

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<sup>4</sup> She was mistaken on this point. The fire alarm was not wired to the doorbell, strobe light, or bed shaker.

<sup>5</sup> Again, the smoke alarm was not wired to any other alarm and there is no proof that it sounded during the September 30, 2011 incident because there was no fire or smoke.

Lindsay went home the weekend after the incident and it was apparent to her mother that she was not hearing anything. Previously, she had been able to whistle at a high pitch to get her attention. After the incident, she did not even hear the whistle. It did not appear that she could hear any sound at all. The Tribunal accredits and believes the testimony of Ms. Crutchfield.

### **Testimony of Randy Brewington**

Mr. Brewington works for Housing at Tennessee Tech University. He testified that he installed the silent alarm system in Lindsay Crutchfield's dorm room. He explained the Simplex system, which is the school fire alarm system that has an alarm horn in every dorm room. Although the Tribunal finds that the testimony of Mr. Brewington was credible, it mostly concerned the installation of the silent alarm system that consisted of the doorbell, the strobe light, smoke alarm and the bed shaker. This system had been unplugged by the Claimant before the September 30, 2011 incident. The silent alarm system has no relevance to the fact that the school fire alarm was activated and sounded in the Claimant's dorm room. His testimony indicates he installed the self-contained smoke detector on the bookshelf. However, there is no proof that the smoke detector was activated on the day of the incident and therefore, is not relevant to the facts

of this claim. The Tribunal accredits and believes the testimony of Mr. Brewington.

### **Testimony of George Elwell by deposition**

George Elwell owns and is the founder of Silent Call Communications. He worked for General Motors for twenty-one years as an engineering tech. His company develops and manufactures alerting device products for the deaf and deaf/blind. His products are sold throughout the United States and Canada. Silent Call has a product called the Sidekick receiver. It is a receiver unit that sits on a tabletop that has a strobe light and an output for a vibrator. When it picks up a signal from a transmitter, whether it is a doorbell, telephone, smoke detector, carbon monoxide detector, fire, or weather alert, it causes the strobe light to flash and the bed to vibrate. Mr. Elwell testified that the model SK09214 receiver was the original receiver and operated as he testified. A smoke detector can be added that is made by System Sensor. If the smoke detector is activated, it causes the receiver to turn on the strobe light and vibrate the bed. The smoke detector meets NFPA regulation for sound, which is an 80-decibel horn at ten feet. However, no sound comes from the Sidekick receiver; it only turns on the strobe light and the bed vibrator.

Mr. Elwell testified that the only way the dormitory's alarm system could be connected to the Silent Call system is if the school had a Silent Call fire transmitter wired into the building system via a contact. If the Silent Call system is connected to the building's fire alarm system, then the receiver would turn on the strobe light and bed vibrator.

No expertise is necessary to set up the Silent Call system. The receiver plugs into an electrical outlet. You can then connect it to your doorbell chime or if there is no doorbell then you can install a wireless doorbell transmitter. However, the fire alarm transmitter must be installed by a licensed fire alarm person and not a maintenance man. If you do not connect it correctly then you will disable the entire fire system. A fire transmitter, if it is connected to the Silent Call receiver, will cause the strobe light to flash and the bed to vibrate. It will not cause the smoke detector to activate.

If the person has a Silent Call smoke detector, if it activates, it will cause the strobe light to flash and the bed to vibrate. The Silent Call system does not turn on any sound. Silent Call does not make a unit that has sound that can be activated by a general alarm. It has nothing that makes a sound, except a smoke detector. If a fire alarm transmitter is connected to the system, if the dorm fire

alarm is activated, it will turn on the strobe lights and the vibrator but will not turn on any sound. The Tribunal accredits and believes the testimony of Mr. Elwell.

### **Testimony of Erica Hunt by deposition**

Erica Hunt was an assistant coordinator for Jobe and Murphy Residence Halls at the time of the incident in question. She was supervisor of the resident assistants (RAs) for the residence halls. Her duties also included the day-to-day operation of the buildings, monitoring the maintenance requests and meeting the student's needs. She also lived in Jobe/Murphy. She was also responsible for completing fire reports for the Office of Residential Life. She followed up and filed reports on all emergencies. She filed a report on the September 30, 2011 fire alarm.

According to Ms. Hunt, the fire alarm activated and they exited the building. Her staff gathered rosters and took roll to see who is there. After the police or fire department arrived, they reset the alarm and gave the all-clear signal. The students were allowed to re-enter the building.

Before this particular alarm, the alarm system had not been reset correctly, which caused it to activate spontaneously. There was no threat of fire at the

time. She admitted that she had probably not reset the system correctly after the last fire drill. This was the second malfunction of the system during that semester.

It was her understanding that most students with disabilities meet with disability services and then housing is informed concerning their needs. They work with students to meet their needs whether it involves room location or extra assistance. She was not directly involved in the process and if a student came to her with a need, she would refer them to disability services.

Although she did not know Lindsay Crutchfield personally, she knew that her room was on the second floor near the elevator. After refreshing her memory with the report, she testified that the Tech Police Department responded on September 30, 2011. This was in response to a telephone call and not the alarm activation. The report reflected that the alarm system in Jobe 203 “did not go off on time.” The fire department was not notified because there was no fire in the building. She further noted that several students did not exit the building. There is one RA per floor. They do not have a key for all the rooms on their floor. There is a master key that is located in the Jobe/Murphy staff office.

She knew that students were mindlessly pushing Claimant's doorbell when they were walking down the hallway before the incident. She discussed the situation with the Claimant's RA. She did not know about the mechanics of how the various devices were installed in the Claimant's room. The Tribunal accredits and believes the testimony of Ms. Hunt.

### **Testimony of Charles Macke**

Charles Macke is currently the Director of Residence Life at Tech and held that position before and on September 30, 2011. He is responsible for all the residence halls and their auxiliary services. He also receives the fire alarm reports. Other than the Claimant, no student has ever complained that the fire alarms are too loud. A building-wide alarm means that when an alarm is activated then everything is activated and his expectation is that everyone would leave the building. The fire alarm in the Claimant's room is part of the dormitory alarm system and is located above the door. He was aware there was a Silent Call unit installed in the Claimant's room but was unaware if there was any connection between it and the building's alarm system.

Concerning the building's fire alarm system, if someone pulled the alarm then the police would reset the system. If it were a fire drill, then the Assistant

Coordinator, Ms. Hunt, would reset it. There is a central system that must be reset. She would not reset the Silent Call system. He reviewed the picture of the Silent Call system and identified the smoke detector, the strobe light, the bed shaker, and the doorbell.

The alarm activated on September 30, 2011 was not a drill. It occurred because the alarm was not reset properly. He does not know what happened in the Claimant's room at that time. He took possession of the smoke detector after the incident because it did not make sense that the smoke alarm would be activated in her room.

During an alarm situation, he does not talk directly to the RAs to tell them what to do. He does speak to the coordinators concerning what needs to be done. He directs that the RAs are supposed to walk down their floors and herd people to leave the building. They are to meet at the desk, go to the doors and try to ensure everyone leaves the building. It is not the policy of Tech to check on each student. If they have available staff, they are to go back to see if someone on crutches or like the Claimant has left the building. The reason the Residence Life employees leave the building is because Tech is as concerned about their safety as everyone's.

In order for RAs to enter a dorm room, they would go down to the dorm office and use a key that allows them access to the master key. They would not do this by themselves. They would be accompanied by another staff member or assistant coordinator.

The smoke detector that is part of the Silent Call system does not communicate with the building fire alarm system. Furthermore, the Simplex smoke detector was never in the Claimant's room. Only the Silent Call smoke detector connected to the receiver, the strobe light and the bed shaker was in her room. The Tribunal accredits and believes the testimony of Mr. Macke.

### **Testimony of Jim Cobb**

Jim Cobb is the Director of Capital Projects and Environmental Health and Safety for Tennessee Tech University. He oversees construction and renovation projects and supervises all functions regarding the Environmental Health and Safety Office. He has been involved with this work for Tech for almost thirty years. His duties include responsibility for the fire alarm systems on campus.

All the fire alarm systems in the residence halls are similarly emplaced. Each dorm has a main panel. All the dorm rooms have detectors with sounder bases. The common areas may have smoke detectors and they have speakers

and strobe lights. The buildings have whatever is required by code. If a building fire alarm is activated, then speakers in the hallways sound a pre-recorded message that gives the evacuation order. The sounder base in each dorm room also activates. The alarms in the dorm rooms are not voice alarms. They are horn or buzzer type alarms.

If the technicians are not happy with the volume, then they will check the decibel levels. If they are not high enough, then they can put wires on a different terminal that elevates the sound up to the next level. However, the sounds on the sounder bases in the dorm rooms are pre-set. They cannot be adjusted. The volume in the dorm rooms is preset at the pillow of 75 decibels pursuant to National Fire Protection Association Code 72, the fire alarm code.

Tech contracts with Simplex Grinnell, a private company that manufactures and supplies fire alarm equipment. Simplex Grinnell provides maintenance, testing and inspection services for Tech and inspections and testing are done once per year. They are contracted because the code and possibly the Tennessee Code Annotated requires anyone working on the systems be certified and its technicians have the proper certifications. Mr. Cobb, however, had not

checked the systems but the systems are checked in December of each year. The Tribunal accredits and believes the testimony of Mr. Cobb.

**Testimony of William Merwin, Jr., M.D.**

William Merwin is a medical doctor and otolaryngologist licensed to practice in Tennessee. He is the Claimant's primary specialist in treating her hearing impairment. He first saw the Claimant in October of 2000. She was diagnosed with recurrent otitis media and tonsillitis. He recommended that a tube be placed in her ear and her tonsils and adenoids be removed. He also discovered she had cholesteatoma in her left ear and performed surgery to remove it. Cholesteatoma is a benign tumor of the eardrum that erodes the bone and holds infection. In 2007, she had a mastoid infection and he reconstructed her eardrum and placed a prosthesis in her left ear. The Claimant had nerve type impairment in her right ear.

The most recent audiogram before the incident in question occurred on June 24, 2011. It showed an approximate fifty percent hearing loss in her right ear and a seventy-five percent hearing loss in her left ear. This calculates to be a 49.4 percent binaural hearing impairment. Before the incident in question, she had some difficulty with communication, but she was able to function without

hearing aids. She could not hear people whispering to her, but she could understand if they spoke directly to her. Before the injury, her hearing was fairly stable and she had not shown any significant deterioration of her hearing.

Dr. Merwin was aware that she was attending Tech beginning in August 2011. He saw her again on October 5, 2011 after the incident in question. The Claimant told him the fire alarm was actually located by her bed and that it had gone off in the middle of the night and she could not get away from it fast enough. Since then, she had been unable to hear at all in either ear. He found that her mastoid cavity was clean and dry and her eardrums were intact. There was essentially no change in her examination but she was clearly showing difficulty in communicating. She was basically having to read his lips. This was not normal for her. He diagnosed her with a noise-induced injury and opined that her hearing had gotten much worse.

He saw her again on August 10, 2012 but they had done several hearing tests in the interim. The August 10 test was most representative of her post injury hearing. On that day, the tests showed an approximate 90-decibel loss on the right ear and 85-decibel loss on the left ear. If you have a hundred decibel

loss, you are essentially deaf. She has a severe loss of hearing in both ears.

Furthermore, she now has 100 percent binaural hearing impairment.

The Claimant has a permanent sensorineural hearing loss in both ears because of her injury at Tech. She needs hearing aids and without hearing aids, she is essentially deaf. She will not be able to use the telephone at all and she will have great difficulty with standard verbal communication. In his opinion, within a reasonable degree of medical certainty, the Claimant is deaf.

With hearing aids, however, she should be able to hear within 10 to 20 decibels of normal. A good hearing aid would cost about \$3,000.00 per aid. An average hearing aid will last between three and four years. So based on sixty years of hearing aids, the cost would calculate to be \$180,000.00 over her lifetime. She will also need doctor visits on a yearly basis and each would cost \$120.00. Dr. Merwin testified that the medical treatment and bills and the testing at Bridgewater after her injury were all medically necessary to her treatment and were reasonable charges

Dr. Merwin testified that he did not think the Claimant will need a cochlear implant, but that she needs hearing aids instead. He opined that there would have been a ten percent chance that her hearing would have worsened if

the incident had not occurred. There were no other potential causes for her hearing loss except for the incident that occurred on September 30, 2011.

However, she may have been slightly more susceptible to noise as a result of her existing hearing loss. According to Dr. Merwin, it is not likely for people to sleep through a sound that is causing damage to their ear. The Tribunal accredits the expert testimony of Dr. Merwin and finds that it aided the Tribunal in applying the facts to the law.

#### **Testimony of Gregory Faulk, Ph.D. by deposition**

Gregory Faulk is a professor of finance at Belmont University in Nashville, Tennessee. He is also a forensic economist and a member of the Association of Forensic Economists. He evaluated the personal injury case of the Claimant.

The issue in a personal injury case is the ability a person has to earn wages post-accident relative to pre-accident. The difference between the two would be the economic loss. In addition, there could be health care associated loss. A vocational evaluator will calculate an assessment of what a person can do in his or her current state post-accident. In coming to his conclusions, Dr. Faulk relied upon the evaluation performed by George Barrett of Brookshire, Barrett and

Associates. He is Certified Vocational Evaluation Specialist. This was the first time that Dr. Faulk had evaluated a person with hearing loss.

There are two scenarios that could apply to the Claimant. The first one entails her obtaining and wearing hearing aids. Under this scenario, she would not have an economic loss but she would incur medical costs.

The other scenario is based on her not wearing hearing aids. Under this scenario, she could not be a Spanish teacher or translator but would become either a head chef or kitchen manager with an associate's degree in business. He calculates, if the various scenarios are assigned probabilities, the estimated present value of the Claimant's future earnings capacity loss is \$1,504, 189.

Although the Tribunal respects Dr. Faulk's education, experience and methods, his conclusions are based on too many variables to be considered conclusive. The Tribunal is not discounting his opinions out of hand and has considered them, but in the final analysis, they are not persuasive enough to be used to calculate future economic loss under the second scenario.

**Factual Conclusions concerning the alarms**

1. The Claimant had unplugged the Silent Call system at the time of the incident. The smoke alarm attached to the system was not activated and made no sound during the event.
2. The school fire alarm on the wall above the door in the Claimant's room was the sole factual cause of the Claimant's further hearing loss on the morning of the incident.

### CONCLUSIONS OF LAW

#### I. Liability

Tenn. Code Ann. § 9-8-307(c) provides that the State's liability "shall be based on the traditional tort concepts of duty and the reasonably prudent person's standard of care." Under these concepts, a plaintiff in a negligence action must prove (1) a duty owed to the plaintiff; (2) conduct below the applicable standard of care that amounts to a breach of that duty; (3) injury or loss; (4) cause in fact; and (5) proximate cause. *Kilpatrick v. Bryant*, 868 S.W.2d 594 (Tenn.1993); *Lewis v. State*, 73 S.W.3d 88, 92 (Tenn.Ct.App.2001).

The facts in this case are unusual and there is very little in the way of precedent for the Tribunal to consider in making legal conclusions. However, the

General Assembly clearly intends for the Commission to consider traditional tort principles in adjudicating negligence claims.

(c) The determination of the state's liability in tort shall be based on the traditional tort concepts of duty and the reasonably prudent person's standard of care.

Tenn. Code Ann. § 9-8-307

The Tribunal shall review and discuss each legal requirement for this tort action.

### **Duty owed to Claimant**

Once Tech was notified by the Claimant and her doctor that she was hearing impaired, Tech had a duty to make accommodations for her disability to protect her safety, health and hearing. When it refused to allow her to live off campus, it assumed the mantle of providing for her health and safety. This was magnified by the fact that the Claimant was a disabled person. This does not mean that Tech had to foresee every possible scenario that would affect Claimant's health, safety, and hearing. It does mean that it had the duty to make reasonable efforts to provide for her safety and health in light of her disability.

### **Breach of duty**

To its credit, Tech installed a silent alarm system in Claimant's dorm room with an attached smoke alarm. It should have connected the school's fire alarm system to the Silent Alarm system as described by Mr. Elwell. In addition,

because of the Claimant's disability, the University should have planned for someone to physically notify the Claimant and escort her out of the building once the fire alarm was activated. It is apparent Tech had no plan to ensure the Claimant's exit in an emergency. Just because it was not Tech's policy to ensure her exit out of the building in the event of an alarm does not abrogate its duty. The Claimant also was never briefed concerning the school's fire alarm or what her actions should be in case of an emergency. It should have been reasonably foreseen that extended exposure to 75 decibels could have caused hearing damage, which it actually did. In addition, the fire alarm should not have activated because there was no fire or drill. Ms. Hunt admitted that she had incorrectly reset the alarm. But for her action, this event would not have taken place. Because Tech did not allow the Claimant to live off campus, it did not have a plan to immediately extricate her from the dorm in the event of an alarm, and it had incorrectly reset the alarm, Tech breached its duty to the Claimant to reasonably provide for her health and safety in light of her disability.

#### **Cause in fact and proximate cause**

The Tribunal has found that the sounding of the school fire alarm above Claimant's door was the cause of her further hearing loss. It is also the

proximate cause of her further hearing loss. Dr. Merwin opined that there was only a ten percent chance that the Claimant's hearing would have worsened in absence of the alarm on September 30, 2014. He opined, within a reasonable medical certainty, there were no other potential causes for her further hearing loss except for the alarm. The Tribunal also finds there are no other intervening causes, other than comparative fault, for her hearing loss. Therefore, the sounding of the fire alarm is found to be the proximate and legal cause of her further hearing loss.

### **Comparative fault of Claimant**

Just as Tech should have reasonably foreseen that extended exposure to the fire alarm could cause further hearing loss, the Claimant, having full knowledge of her own condition, should have foreseen this probability. She had the responsibility to take steps to protect her hearing. The first step she should have taken was to keep her Silent Alarm connected at all times. It is apparent that both the staff and students were aware of her doorbell that could have been activated during the alarm, and may have been. However, since the Claimant unplugged it, it was useless to the Claimant. She could have done more to put school officials on notice of her obviously fragile hearing that was super sensitive

to prolonged loud noise. Furthermore, the Claimant could have worn ear protection. Because of her comparative negligence, the Claimant bears thirty percent fault for her hearing loss.

## **II. Damages**

### **Economic Damages**

The past economic damages in this case are uncomplicated to ascertain. The Tribunal finds that for medical care and services in the past the treating physician's testimony is accredited and judgment is rendered for \$1,383.01. The Claimant did not request damages for loss of earning capacity in the past therefore, no award is rendered.

The Tribunal shall rely on the testimony of Dr. Merwin to determine future economic damages. He stated that she needed hearing aids and that these would cost \$180,000.00 over her lifetime. As the Tribunal has previously found, the proof on future earning capacity is too speculative to be used to calculate damages. The Tribunal also accredits Dr. Merwin's opinion that she will not require implant surgery. Therefore, economic damages total \$181,383.01.

## Non-Economic Damages

In deciding pain and suffering, permanent injury, and loss of enjoyment of life, the law prescribes no definite standard or method of calculation. *See 8 Tenn. Prac. Pattern Jury Instr. T.P.I. Civil 14.01 (2011)*. The Trier of fact shall use calm and reasonable judgment in fixing just and reasonable damages in light of the evidence. *Id.* The Court of Appeals in its all-encompassing opinion on compensatory damages, *Overstreet v. Shoney's, Inc.*, 4 S.W.3d 694 (Tenn. App. 1999), gives guidance as to the Trier of fact in the determination of non-economic damages.

It will be helpful at the outset to define each of the non-economic damages that the jury awarded – pain and suffering, permanent impairment and/or disfigurement, and loss of enjoyment of life – both past and future. Although conceptually they all can be encompassed within the general rubric of pain and suffering, each of these types of damages are separate and distinct losses to the victim. *Id. at 715*.

With this directive firmly in mind, the Tribunal will adjudicate each loss.

There was very little in the way of testimony concerning past or future physical pain and suffering and the Claimant did not request a specific award. However, there is evidence to base non-economic damages. There is certainly permanent impairment considering she started with a 49.4 percent binaural

hearing impairment that became a 100 percent after the incident. The Tribunal grants \$100,000.00 for her permanent impairment. In determining past and future loss of capacity for enjoyment of life, one must consider the value of a fifty percent hearing loss as it affects day-to-day life. The Tribunal shall choose the figure of \$50,000.00 to compensate this loss. Therefore, non-economic damages total \$150,000.00 with the grand total of compensatory damages being \$331,383.01.

However, this amount must be reduced by the ten percent chance that Claimant's hearing would have deteriorated even without the fire alarm incident. Therefore, compensatory damages are decreased to \$298,244.70.

**Comparative fault of the Claimant**

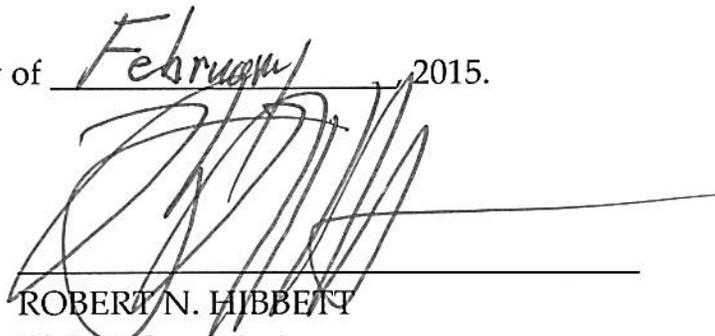
The Tribunal has found the Claimant to be thirty percent comparatively at fault for her injury. Therefore, the State of Tennessee's portion of the compensatory damages is adjudged to be \$208,771.29.

**IT IS, THEREFORE, ORDERED, DECREED AND ADJUDGED:**

1. That the State of Tennessee is found liable for the injury to the Claimant.
2. That final judgment in the amount of \$208,771.29 is rendered against the State of Tennessee.

3. That each party shall bear its own discretionary costs.
4. That the court costs and the costs of the court reporter are taxed to the State of Tennessee.

ENTERED this 10 day of February, 2015.

A large, stylized handwritten signature in black ink, appearing to read 'R. Hibbett', is written over a horizontal line. The signature is somewhat illegible due to its cursive and overlapping nature.

ROBERT N. HIBBETT  
Claims Commissioner  
Sitting as the Trial Judge of Record

**CERTIFICATE OF SERVICE**

This is to certify that a true and exact copy of the foregoing document has been served upon the following parties of record:

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This 12<sup>th</sup> of Feb., 2015.

*Paula Swanson*

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PAULA SWANSON  
Administrative Clerk  
Tennessee Claims Commission