

Dismiss and a Motion for Summary Judgment¹, it has never filed any proof, affidavits, or documentation to rebut the claim.

In Claimant's original affidavit supporting his claim, he states the following on page 3:

When Claimant arrived at WTSP, his property was unloaded from the HCCF van, "by TDOC drivers, thrown on the concrete in front of the Intake Building, then later tossed on the TDOC chain bus." Each Inmate on the TDOC bus watched as their approved personal property was thrown on the concrete in front of the Intake Building and then tossed on the TDOC chain bus. One Inmate's approved TDOC personal property was left on the concrete. The TDOC driver stopped the bus, walked back to retrieve the property, and then tossed the personal property on the chain bus. From the moment Claimant departed HCCF he was in restraints and never in possession or sight of his approved TDOC personal property.

Although the proof is minimal and circumstantial, the Claimant has made a case showing negligence. He has alleged that it was TDOC employees and not HCCF employees that mishandled his property. The Tribunal finds it is more likely than not that his property was damaged during this exchange from the HCCF van to the TDOC bus.

The starting point for any discussion of whether a claimant has established, by a preponderance of the evidence, the amount of his loss is the

¹ Both previously denied by the Tribunal.

Western Section Court of Appeals' decision in *E. L. Reid v. State* 9 S.W.3d (Tenn. Ct. App. 1999) (perm. app. denied, Nov. 22, 1999). There, Judge Farmer, speaking for a unanimous court, said the following:

As a general rule, damages for the loss or destruction of personal property are measured by the market value of the property at the time of its loss. ... Alternatively, if no market for the property exists, or if the market value is inadequate, the proper measure of damages for the loss of personal property is the actual value of the property to the owner. ... In either event, damages are calculated with reference to the date of the loss of the property, not the date of its acquisition or purchase by the owner. ²

A second decision, *Crawford v. Delta Airlines, Inc.* No. 02801-9612-CV-00296, 1997 WL 576535 (Tenn. Ct. App., 1997), involved a claim by an airline passenger that Delta had lost her luggage. Judge Tomlin, writing for a unanimous court, cited two Court of Appeals' decisions, *Cook & Nichols, Inc. v. Peat, Marwick, Mitchell & Company*, 480 S.W.2d 542, 544 (Tenn. Ct. App. 1971) and *Clift v. Fulton Fire Ins. Co.*, 315 S.W.2d 9 (Tenn. App. 1958), in holding that plaintiff did not adequately prove her damages. The court quoted extensively from *Clift* which observed that decision explained with "the greatest clarity" the concept of "value to the owner".

² Although the Court did not find it necessary to decide this issue, it did discuss whether or not claimant Reid's affidavit filed in support of his damage claim was adequate. *Id* at 794-795.

Clift, in discussing the valuation of lost property where there existed no market for the property or where the market value was inadequate, held that the proper measure of damages was actual cash value” of that property. Judge Felts explained as follows:

The phrase “the actual cash value”, in the law of insurance as well as in the law of damages, may mean “market value”, or the more elastic standard of “value to the owner”. If the goods are readily replaceable in a current market, “market value” is the measure; but if there is no market, or if the market value is inadequate, the proper measure is the “value to the owner”, or the loss her suffers in being deprived of the goods. McCormick on Damages (1935 Ed.), 170-171; *Third National Bank v. American Equitable Ins. Co. of New York*, 27 Tenn. App. 249, 270-271, 178 S.W.2d 915, 924.

“This doctrine [of ‘value to the owner’] is most frequently and conveniently resorted to in cases of loss of, or damage to, articles which the plaintiff has acquired for personal or domestic use and not for business purposes, such as household goods, clothing, pictures, books, and the like. While usually these things have some slight value for sale at secondhand, this market value would be a very inadequate compensation to the plaintiff who acquired them for use, not for sale. The fact that the property was of this character, that is, used clothing or household goods intended for the owner’s use, is a sufficient showing that the market value as **12 secondhand goods is an inappropriate standard, and “the casual holdings that proof must be made that there is not market value can hardly *489 be supported.” McCormick on Damages, *supra*, 171.

In ascertaining the value of goods under this more elastic standard of "value to the owner", evidence of the original cost, of the cost of replacement, the condition of the goods, the use to which they were being put, and all other relevant facts, are to be taken into consideration. *Clift*, 315 S.W.2d at 488 (Citing *McCormick on Damages, supra; Third National Bank v. American Equitable Ins. Co. of New York, supra. Id.* at 488-489).

In this case the Claimant has sworn that the following items were damaged with the price of each item:

Koss CL-5 Headphones	\$12.65
Wahl Beard Trimmer	\$13.95
Sony Am/Fm Walkman Radio	\$11.50
Hair Brush No Handle	\$2.55
Du Rag	\$4.10
Acrylic Mirror w magnet	\$2.85

Because the Claimant has limited access to a supplier to replace the items listed on his property document, the Tribunal shall give him full value for the headphones, beard trimmer and radio. This totals to \$38.10.

For the rest of his damaged property, the Tribunal shall award fifty percent of its alleged value. This totals to \$4.75.

The Claimant has requested pre-judgment interest in this claim. In its discretion, the Tribunal shall not award pre-judgment interest. The Claimant has

also requested discretionary costs. The Tribunal does not have the authority to award discretionary costs:

The claims commission statute specifically prohibits taxing discretionary costs against the state. Tenn.Code Ann. § 9-8-307(d).

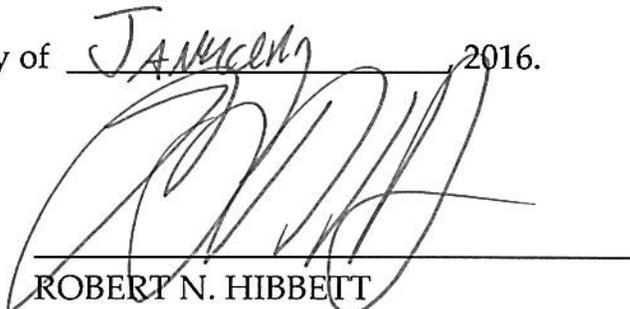
Phillips v. Tennessee Tech. Univ., 984 S.W.2d 217, 218 (Tenn. 1998)

Therefore, the Claims Commission shall only award actual damages.

IT IS THEREFORE ORDERED:

1. That the State of Tennessee is found negligent in the damage to the Claimant's property.
2. That the Claimant is awarded \$42.85 for the damage to his property.
3. That the court costs, if any, are taxed to the State of Tennessee.
4. This is a final judgment.

ENTERED this 8 day of JANUARY 2016.



ROBERT N. HIBBETT
Claims Commissioner
Sitting as the Trial Court 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 11th day of Jan., 2016.

Paula Merrifield

PAULA MERRIFIELD
Administrative Clerk
Tennessee Claims Commission