

**IN THE CLAIMS COMMISSION FOR THE STATE OF TENNESSEE
WESTERN DIVISION**

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**ROBERT CRITTENDON and,
TRACY CRITTENDON,**

Claimants

v.

**Claim Number T20110825
REGULAR DOCKET**

STATE OF TENNESSEE,

Defendant

JUDGMENT

I.

INTRODUCTION

This personal injury action arose from a January 19, 2010 collision on Highway 412 North in Crockett County, Tennessee. A truck driven by Tennessee Wildlife Resource Agency employee Paul Richard Brown hit the rear of a 1997 Saturn driven by Claimant Robert Crittendon. Claimants, Robert and Tracy Crittendon, bring this action against the State of Tennessee under Tenn. Code Ann. §9-8-307(a)(1)(A), relating to negligent operation of a motor vehicle. A hearing was held on July 22, 2014, before Nancy C. Miller-Herron, Commissioner of Claims for the Western Grand Division. Jeffrey L. Stimpson, Esq., represented Claimants. Michael L. DeLisle, Esq., represented the State of Tennessee.

II.

FACT TESTIMONY

Trooper James Smith of the Tennessee Highway Patrol, hereinafter referred to as THP, investigated the January 19, 2010 accident that is the subject of this claim. (Tr., Vol. 1, p. 23, lines 11-16) He said when he arrived at the scene he found the parties vehicles around five hundred feet west of the on-ramp at State Route 188. (Tr., Vol. 1, p. 24, lines 7-14) Trooper Smith stated that the small car showed a rear end impact and the truck was damaged on the front. (Tr., Vol. 1, p. 24, lines 22-25) When asked whether he could identify anything on the roadway to indicate the point of impact, Smith replied, "I was able to identify a scuff mark along the fog line of U.S. 412." (Tr., Vol. 1, p. 26, lines 23-24) He said this mark was approximately 145 feet, or fourteen and a half car lengths, from the yield sign. (Tr., Vol. 1, p. 27, lines 2-5) Smith stated that he probably got this measurement using a roller wheel. (Tr., Vol. 1, p. 33, lines 20-21)

After using the accident report to refresh his memory, Smith indicated Brown told him he swerved to avoid the accident, but said he didn't recall a statement about braking. (Tr., Vol. 1, p. 27, line 11- p. 28, line 19) He also didn't recall Brown telling him that he looked down at the floorboard prior to the accident or that his view of Crittendon's car was obstructed by another vehicle. (Tr., Vol. 1, p. 30, line 11- p. 31, line 4) Smith said Mr. Crittendon reported that he was traveling approximately 40 miles per hour when Brown's truck hit him. (Tr., Vol. 1, p. 34, lines 24-25)

Claimant Robert Alexander Crittendon, a production supervisor at the Haywood Company in Brownsville, Tennessee, testified on his own behalf. Crittendon stated that he gets from work every by driving from Brownsville back to his home in Ridgley, taking "Highway 54 to 88 to 188 to 412 to 78." (Tr., Vol. 1, p. 40, lines 3-4) He noted that there is an exit ramp from 188 to 412.

Crittendon said when the accident occurred he was traveling in the right lane of 412, which he called a straightaway with a visual range of a mile. (Tr., Vol. 1, p. 43, lines 2-23) He recalled that it was a clear, sunny day. (Tr., Vol. 1, p. 44, lines 1-2) When asked whether there were traffic control devices at the location of the accident, Crittendon replied that there was a yield sign at the on-ramp from 188 to 412. (Tr., Vol. 1, p. 44, lines 4-8)

When asked what he tried to do when he realized there was going to be a collision, Crittendon replied, "When I realized he wasn't going to slow down and an accident was going to happen, I just swerved my car to the right to try to get out of the way." (Tr., Vol. 1, p. 45, lines 4-6) He further explained that just prior to the accident he had stopped at the yield sign at the end of the ramp on 188. He said he saw Paul Brown's truck "down by the overpass." (Tr., Vol. 1, p. 45, line 13) Crittendon said he pulled out on 412 and when he got to second gear saw in his rearview mirror that Brown was "coming on pretty strong." (Tr., Vol. 1, p. 45, lines 17-18) Crittendon reported that he changed gears again and looked up to see that Brown "was still coming on strong." (Tr., Vol. 1, p. 45, line 20) As he was changing gears again, he realized Brown wasn't going to stop, so he jerked his car to the right (into the emergency lane) to get out of Brown's way.

(Tr., Vol. 1, p. 45, lines 21-23) Crittendon went on, "I don't think he saw me until the last second." (Tr., Vol. 1, p. 46, lines 2-3) Brown said he was traveling at about 40 mph and was still accelerating at the time of impact. (Tr., Vol. 1, p. 46, lines 4-8) Crittendon said he thinks Brown hit his car when it was "halfway in between the right lane and the emergency lane." (Tr., Vol. 1, p. 49, lines 21-22) Crittendon said he didn't see any skid marks in the area of the collision. (Tr., Vol. 1, p. 49, lines 23-25)

Crittendon testified that he measured the distance between the ramp and the overpass where he saw Brown's vehicle; "it was .15 miles," (Tr., Vol. 1, p. 47, line 25- p. 48 line 2) or approximately 800 feet. (Tr., Vol. 1, p. 48, lines 4-5) Crittendon testified again on cross-examination that Brown was "at the overpass" when Crittendon pulled out. (Tr., Vol. 1, p. 93, lines 11-13) When asked whether he had testified during his deposition that Brown was south of the overpass, Crittendon replied, "Okay." (Tr., Vol. 1, p. 96, line 20)

When asked about where the vehicles were after the impact, Crittendon noted the location of a house past the ramp and said "my car was sitting on the south side of that house and Mr. Brown was behind me." (Tr., Vol. 1, p. 50, lines 7-8) He further noted that Brown's truck was closer to a telephone pole near a driveway to the house. (Tr., Vol. 1, p. 50, lines 12-15) He said he measured 325 feet between the ramp where he was stopped and that pole. (Tr., Vol. 1, p. 83, lines 12-17) When asked whether he was contesting the fact that the accident occurred 145 feet from the yield sign, Crittendon replied, "I don't think so." (Tr., Vol. 1, p. 94, line 22)

Crittendon said his rear wheel was "tore up," (Tr., Vol. 1, p. 85, lines 12-13) and when Brown's truck hit his car, Crittendon was thrown into the steering wheel, then slung backwards, which broke his seat and caused him to fall into the backseat. (Tr., Vol. 1, p. 53, lines 12-15)

Crittendon testified that Paul Brown sat in the trooper's car and talked with him "between 20 and 30 minutes." (Tr., Vol. 1, p. 52, lines 1-2)

Crittendon testified that he was injured in his lower and middle back and his neck. (Tr., Vol. 1, p. 52, line 20) He said his pain was probably only a four right after the accident, but it went up to an eight or a nine on a ten point scale by the next day. It started to get better when he started going to the chiropractor. (Tr., Vol. 1, p. 86, lines 8-20) He said when he finished therapy, his pain was probably a four and is probably a three or a four today when he does something strenuous. (Tr., Vol. 1, p. 86, line 23- p. 87, line 7) On cross-examination, Crittendon acknowledged testifying that his pain after the accident was four in his back and seven in his neck. (Tr., Vol. 1, p. 101, lines 1-17)

Crittendon testified that his wife and kids took him to Dyersburg Hospital for treatment. (Tr., Vol. 1, p. 53, line 23- p. 54, line 6) Crittendon said providers at Dyersburg did a CAT scan and x-rays after he reported headaches and pain in his neck and upper and lower back. (Tr., Vol. 1, p. 61, lines 7-19) Crittendon said he was prescribed a cervical collar and told to follow up with his family doctor. (Tr., Vol. 1, p. 62, lines 1-15)

Crittendon said he followed up with his family doctor, Dr. Dowling, as instructed. Dowling prescribed medication and rest. He took pain medicine for a

couple of weeks after the accident. (Tr., Vol. 1, p. 63, lines 23-24) He followed up his visit with Dowling with a trip to Beasley Chiropractic. He received chiropractic treatment from Dr. Beasley, including physical therapy and heat therapy 17 times. He took pain medicine for a couple of weeks after the accident. (Tr., Vol. 1, p. 64, lines 6-23)

Crittendon stated he also received treatment from Dr. Sweo and Sports Ortho between 12 and 15 times. (Tr., Vol. 1, p. 65, lines 2-11) At Sports Ortho, Claimant received deep massage, was taught neck exercises and worked with weights. (Tr., Vol. 1, p. 65, lines 20-22) Claimant stated that he still does these exercises today. (Tr., Vol. 1, p. 66, lines 6-7)

Crittendon testifies that he still has pain when he does anything strenuous. He continues to do exercises he learned in physical therapy, use a TENS unit and take BC or Tylenol. (Tr., Vol. 1, p. 54, lines 11-17) He continues to have "numbing pain all the time," (Tr., Vol. 1, p. 55, line 12) and stiffness. He has problems at work if he sits at the computer for a long time. (Tr., Vol. 1, p. 55, line 24- p. 56, line 1) Crittendon says he frequently has to weigh whether doing what he wants to do will be worth the pain it is going to cause him later. (Tr., Vol. 1, p. 56, lines 13-15)

Robert Crittendon testified that his injuries have caused problems sleeping. He explained he has difficulty getting comfortable so he can go to sleep. The injuries have also caused problems in his marriage, including "not being able to perform at times" (Tr., Vol. 1, p. 56, lines 23-24) and having difficulty if his wife touches him while he sleeps. (Tr., Vol. 1, p. 57, lines 12-17)

He is often irritable and is stiff when he first gets up. (Tr., Vol. 1, p. 90, lines 5-25) Crittendon says he has gained fifteen or twenty pounds since the accident, which he attributes partially to inactivity. (Tr., Vol. 1, p. 89, lines 16-19)

Crittendon testified that his main hobbies have been hunting and fishing. (Tr., Vol. 1, p. 58, lines 11-12) He noted these hobbies involve a lot of physical activity and said when he does them he knows he "is going to be hurting afterwards." (Tr., Vol. 1, p. 59, lines 15-16) He said he hardly fishes at all any more. (Tr., Vol. 1, p. 59, lines 20-21) Crittendon testified on cross-examination that he has used the chain saw, done weed-eating and painting since his accident. (Tr., Vol. 1, p. 102, lines 7-15)

Robert Crittendon acknowledged a prior fall off a ladder, but said he had not had difficulties related to that fall prior to this accident. (Tr., Vol. 1, p. 60, lines 14-16)

Robert Crittendon stated he was driving his 1997 Saturn the day of the accident. He estimated it was worth between \$2,900 and \$3,000 prior to the collision and just \$200 after the accident. He is asking for damages in the amount of \$2700 for the loss of the vehicle. (Tr., Vol. 1, p. 67, lines 7-13)

Robert Crittendon testified that he was off work after the accident for 9 days and had to use his vacation days. He was earning \$24.80 an hour and seeks lost wages of \$1,587. (Tr., Vol. 1, p. 79, lines 9-22)

Robert Crittendon testified that he incurred a medical bill from Dyersburg Regional Medical Center in the amount of \$5,590.78 (Ex. 11), one from Dr. Clarey Dowling in the amount of \$348 (Ex. 12), one from the chiropractor for

\$1,815 (Ex. 13), one from Sports Ortho for \$389 (Ex. 14) and one from Jackson-Madison County General Hospital for physical therapy in the amount of \$3,140 (Ex. 15) (Tr., Vol. 1, p. 80, line 1- p.82, line 25) His last medical treatment for his injuries was May, 2010. (Tr., Vol. 1, p. 104, lines 9-11)

Claimant, Tracy Crittendon, spouse of Claimant Robert Crittendon, also testified in this matter. Ms. Crittendon said when she arrived at the scene of the accident, her husband was "standing there with his neck kind of tilted." (Tr., Vol. 1, p. 109, lines 5-6) She said Mr. Brown told her that when he hit her husband, "he thought he was sitting in the middle of the road." (Tr., Vol. 1, p. 109, lines 18-19)

When asked how the accident has affected Robert Crittendon, Tracy Crittendon said, "When he does strenuous activities, he gets sore and irritable." (Tr., Vol. 1, p. 110, lines 9-10) When asked to describe him before the accident, she replied: "Happy-go-lucky, always on the go, nothing ever got him down." (Tr., Vol. 1, p. 110, lines 19-20) Tracy Crittendon testified that her husband was not doing as many of the household chores as he did prior to the accident. (Tr., Vol. 1, p. 115, lines 7-23)

Tracy Crittendon said the accident had definitely "put a damper on" their sex life. (Tr., Vol. 1, p. 111, line 21) She explained: "If there is anything sexual going on, he has to be very careful how he moves or whatever because of his neck and back." (Tr., Vol. 1, p. 111, line 25- p. 112, line 2) She said the diminishment of their sex life had definitely caused friction between them. (Tr., Vol. 1, p. 112, line 18- p. 113, line 1) Tracy Crittendon said overall the quality of

their marriage had gone from a nine or a ten before the accident to about a six now. (Tr., Vol. 1, p. 113, lines 8-15)

On cross-examination, Tracy Crittendon acknowledged that her husband continues to use a chain saw and a weed-eater and mow the lawn and take out the garbage. (Tr., Vol. 1, p. 117, lines 7-25)

Paul Richard Brown, an employee of the TWRA, also testified in this matter. Brown testified that he was required to submit a statement to his employer about his collision with Robert Crittendon within 24 hours. (Tr., Vol. 1, p. 119, lines 22-24) Brown identified this statement as the one attached as "Exhibit A" to Defendant's response to Claimant's first set of interrogatories. (Tr., Vol. 1, p. 119, line 24- p. 120, line 19) Brown then read from the statement as follows:

There was light traffic, and in front of me was a pick-up truck with a camper top turning onto State Route 20. That vehicle exited 412. Something was under my foot, and I momentarily looked down at my floorboard.

When I looked, the red Saturn, driven by Butch Crittendon, had pulled from the on-ramp onto 412 in front of me. He was not doing the speed limit at the time, he was still accelerating. I applied my brakes, swerved to the right to avoid a collision. However, Mr. Crittendon also swerved to the right, therefore making the collision inevitably (sic). (Tr., Vol. 1, p. 122, line 16- p. 123, line 4; Ex. 16)

Brown also read into the record a portion of the statement which noted that "no citations were issued by the responding officer." (Tr., Vol. 1, p. 123, lines 12-13) Brown acknowledged that he was driving the truck for the State of Tennessee on the day of the accident. (Tr., Vol. 1, p. 125, lines 17-20) Brown

noted that the “brush guard” on his 2008 Silverado truck hit Mr. Crittendon’s car. He said the impact was “on the right or passenger rear quadrant.” (Tr., Vol. 1, p. 128, lines 6-7)

When asked about the something that was under his foot just before the collision, Brown testified that it was “the floor mat.” (Tr., Vol. 1, p. 131, line 25) He said his glance down at the mat was “a brief glance,” (Tr., Vol. 1, p. 132, lines 10-11), just “part of a second.” (Tr., Vol. 1, p. 132, lines 4-5) He explained that he looked down to see what was under his foot, to make sure that it was not something like a cell phone that was “going to get under the brake pedal, the gas pedal.” (Tr., Vol. 1, p. 133, lines 1-2) When asked whether he could see clearly from his seat to the floorboard, Brown responded, “I absolutely could see to my heel where the floor mat was wadded up underneath it.” (Tr., Vol. 1, p. 134, lines 11-12) Brown said he thinks the floor mat got wadded up under his foot “while I was coming upon the trucks that were in the lane ahead of me.” (Tr., Vol. 1, p. 134, line 24- p. 135, line 1)

When asked why he talked about two trucks in his deposition but his January 20, 2010 statement to his employer did not mention that there was more than one truck in the lane ahead of him, Brown said, “The only truck that was of concern was the truck in front of me.” Brown acknowledged he did not report the presence of any trucks to the trooper investigating the collision. He said he only reported on what the trooper asked him about. (Tr., Vol. 1, p. 136, lines 8-9) Brown said he didn’t know whether he told the officer about looking down at the mat. (Tr., Vol. 1, p. 136, lines 17-19)

Brown acknowledged that he told the trooper that Crittendon “seemed to be going at a slow rate of speed that he had more or less just appeared in front of me.” (Tr., Vol. 1, p. 140, lines 22-25) Brown also acknowledged that he did not look at his speedometer at the time of the collision (Tr., Vol. 1, p. 139, lines 9-11), although he thought he was going less than 65 because he had taken his foot off the accelerator. (Tr., Vol. 2, p. 156, lines 18-19)

Brown testified that he began taking his foot off the accelerator because the truck in front of him had blinkers on, though he acknowledged he did not put that in his statement. (Tr., Vol. 1, p. 148, lines 1-21) Brown said of the trucks in front of him that he was “slowly, you know, coming closer to them but still all the time gauging my distance to the most rear of those two trucks.” (Tr., Vol. 2, p. 179, lines 6-8) Brown stated that he did not look to see if he could get into the left lane of traffic. (Tr., Vol. 2, p. 155, lines 12-20)

When asked how many seconds had passed between when he looked down at the floorboard and when he hit Crittendon’s car, Brown said:

[T]he truck in front of me had just cleared the right-hand lane. I glanced down, saw that it was a floor mat, used my heel. That’s when I looked. There was Mr. Crittendon. Five, six seconds at most. (Tr., Vol. 2, p. 157, lines 2-6)

Brown then testified that he “could not truthfully say how many seconds. It was a split second, it seemed like, and I was there.” (Tr., Vol. 2, p. 157, lines 16-18) Brown acknowledged that if he hadn’t been following the trucks in front of him so closely and if he had moved his vehicle into the left lane, the accident might have been avoided. (Tr., Vol. 2, p. 162, lines 6-10)

Brown testified that he put on his brakes, but could see he was still going to hit Mr. Crittendon, so he moved over to the right. Unfortunately, Mr. Crittendon also moved over to the right and they collided. (Tr., Vol. 2, p. 195, line 17- p. 196, line 14) Brown testified that Crittendon continued on about 300 feet before he stopped. Brown said he then pulled his vehicle “over to the left to shield his [Crittendon’s] vehicle.” (Tr., Vol. 2, p. 198, lines 17-18) Brown said after he checked on Crittedon, he called 911. (Tr., Vol. 2, p. 199, lines 22-24)

When asked what speed he was going when he hit Mr. Crittendon, he estimated he “was going 10 or something like that.” (Tr., Vol. 2, p. 202, line 22) On re-direct, Brown was given a chance look at the photographs of the damage to Crittendon’s car, then asked, “And you did all that damage going 10 miles an hour?” Brown replied, “I testified that that’s how fast I thought I was going.” (Tr., Vol. 2, p. 207, lines 3-4. Brown estimated that there were “six or eight or more” (Tr., Vol. 2, p. 205, line 5) pops of the anti-lock brake system before the collision.

Brown said he didn’t believe he told the officer and Claimant that Claimant was sitting in the middle of the road. “I said it may—it appeared. Mr. Crittendon when I first saw him, was fully into 412, just had immediately pulled out from the entrance ramp.” (Tr., Vol. 2, p. 163, line 25- p. 164, line 3) However, Brown went on to say, “I determined that he [Crittendon] was traveling at a very low rate of speed that I believe I even asked the question, why were you stopped?” (Tr., Vol. 2, p. 166, lines 1-3) In his deposition testimony, Brown seemed to indicate not that Crittendon was fully into 412 when he first saw him, but that he saw him [w]hen he was pulling out into 412.” (Tr., Vol. 2, p. 169, line 9)

II.

MEDICAL EVIDENCE

Dr. Clarey Dowling testified by deposition on July 2, 2014. Attached to Dowling's deposition as exhibits are Claimant's medical records and bills from Dyersburg Regional Medical Center, Beasley Chiropractic Center, Sports Ortho, Jackson-Madison County General Hospital, as well as Dr. Dowling's own medical records and bills.

Dr. Dowling, who has a general practice, has been practicing medicine in Tennessee since 1980. (Dowling Dep., p. 7, line 13- p. 8, line 8) Dr. Dowling testified that Robert Crittendon has been a patient for several years. (Dowling Dep., p. 9, lines 18-24) Dr. Dowling examined Crittendon on January 21, 2010, following his motor vehicle accident two days earlier. (Dowling Dep., p. 10, lines 1-8) Dowling said Crittendon explained that he had been "hit from behind and got a whiplash-type injury." (Dowling Dep., p. 10, line 24- p. 11, line 1) Crittendon had been to the emergency room in Dyersburg right after his collision; he was now "complaining of chest and lower back discomfort as well." (Dowling Dep., p. 11, lines 2-5)

Dr. Dowling stated that the first examination on September 21, 2010, revealed muscle tenderness in his upper and lower back and muscle spasms. (Dowling Dep., p. 16, line 24- p. 17, line 11) Dowling indicated Claimant was suffering from chest and back trauma and also complained of neck pain. (Dowling Dep., p. 18, lines 6-13) Dowling explained that Claimant's pain "appears to be related to muscles and the muscles would have been injured in

this rapid flexion/extension, tearing of muscle fibers, straining of muscle fibers”
(Dowling Dep., p. 23, lines 19-22)

Dowling said four days later, when he examined Claimant again, he was still sore, tight and stiff. (Dowling Dep., p.18, lines 18-20) He received a steroid shot and a refill on a muscle relaxer and an anti-inflammatory. (Dowling Dep., p. 18, line 22- p. 19, line 2) Dowling said he did not see Crittendon again after that, but he continued to receive treatment (physical therapy) until May 28, 2010. (Dowling Dep., p. 19, lines 14-17) Dowling stated that Crittendon’s x-rays indicate a straightening of the lordotic curve, which is an objective finding of muscle spasms in the spine. (Dowling Dep., p. 26, line 14- p. 27, line 13) Dowling said the therapy he received would have help to relax his muscles and relieve some of the pain. (Dowling Dep., p. 28, line 23- p. 29, line 4)

Dowling testified that the physical therapy discharge notes indicate that his cervical range of motion was normal, the pain now 2 out of 10 and he has mild pain upon waking. (Dowling Dep., p. 29, lines 9-23)

Dr. Dowling opined that the injuries for which he treated Crittendon were caused by the car accident; he said he thought Claimant had an excellent prognosis. (Dowling Dep., p. 30,lines 12-22) Dr. Dowling further opined that the charges for his services and those of the remaining health care providers were reasonable and necessary and customary for such treatment in the community. (Dowling Dep., p. 31,line 1- p. 40, line 14)

On cross-examination, Dr. Dowling acknowledged that the January 21, 2010 x-rays showed degenerative disc disease at L2, L3 and mild spondylosis at L2, L3 and L4. (Dowling Dep., p. 49, lines 9-14)

II.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commissioner has thoroughly reviewed the record in this case, including the testimony of the witnesses who appeared at the hearing of this cause, the testimony of Dr. Clarey Dowling, M.D., whose deposition was introduced for proof, the arguments of counsel and, indeed, the entire record as a whole.

A. Negligence Under Tennessee Law

Under Tennessee law, a negligence claim requires that Claimant prove:

- (1) a duty of care owed by the defendant to the plaintiff;
- (2) conduct by the defendant falling below the standard of care;
- (3) an injury or loss;
- (4) causation in fact; and
- (5) proximate or legal cause.

Coln v. City of Savannah, 966 S.W. 2d 34, 37 (Tenn. 1998).

Mr. Brown has told so many different stories about what happened that it is hard to compare his version with Crittendon's in evaluating whether he breached a duty to Claimant and whether that breach was a legal cause of Claimant's injuries. For example, Brown gave a statement to the trooper the day of the accident, but apparently did not think to mention that there were any large trucks immediately in front of him, obstructing his view of Claimant's vehicle, (Tr., Vol. 1, p. 136, lines 8-9) or that he looked down to see what was under his foot just before the collision. (Tr., Vol. 1, p. 30, line 11- p. 31, line 4) The day after

the accident he submitted a statement to his employer stating that there was one truck in front of him. (Tr. Ex. 16) Both in his deposition testimony and at trial, he stated that there were two large trucks in front of him. (Tr. Vol. 2, p. 179, lines 6-8) He also indicated in this employer statement that [s]omething was under my foot and I momentarily looked down at the floorboard.” (Tr. Ex. 16) At trial he stated that the “something” was “the floor mat.” (Tr., Vol. 1, p. 131, line 25)

Although Brown claims he was braking and slowed his truck down to 10 mph prior to the collision, the extensive damage to Crittendon’s car and fact that he made no mention of braking to the trooper investigating the accident make this claim less than credible. As has already been mentioned, the trucks allegedly obscuring his ability to see Claimant’s vehicle did not appear in Brown’s story until the next day and their numbers kept shifting, further undercutting his credibility. The Commission **FINDS** that Claimant proved by a preponderance of the evidence that the fact that Brown was looking down at his floor mat and not at the road until just before the collision was a cause of the collision. The Commission **FURTHER FINDS** that Mr. Brown’s failure to keep his eyes on the road was a legal cause of the accident.

B. Claimant’s Failure to Yield

Under § 55-8-130(a), Tenn. Code Ann.:

The driver of a vehicle shall stop as required by § 55-8-149 at the entrance to a through highway and shall yield right-of-way to other vehicles which have entered the intersection from the through highway or which are approaching so closely on the through highway as to constitute an immediate hazard, but the driver so yielded may proceed and the drivers of all other vehicles approaching the intersection on the

through highway shall yield right-of-way to the vehicle so proceeding into or across the through highway.

According to Claimant's version of the facts, the Brown vehicle was some 800 feet from the yield sign when Claimant saw it and he pulled out onto 412. (Tr., Vol. 1, p. 47, line 25- p. 48, line 2) There seems to be no dispute that the two vehicles collided 145 feet from the yield sign. (Tr., Vol. 1, p. 94, line 22) Claimant proffered as Exhibit 23 a table of the number of feet per second a vehicle travels from ten to ninety miles per hour. According to the chart, if Claimant's version of the facts is true, Claimant would have had 9.91 seconds to merge onto 412 safely if Brown were traveling 65 mph. However, if Claimant pulled out as soon as he saw Brown, Claimant would have been averaging just over 10 miles per hour to have reached the point of impact 145 feet from the yield sign in 9.9 seconds. So, either Claimant did not start moving onto 412 as soon as he saw Mr. Brown's truck or Mr. Brown's truck was closer to the yield sign than Claimant now remembers--or he was, as Mr. Brown alleges, going "extremely slow" on this limited access four lane road at the time of the collision.¹

The Commission **FINDS** that Claimant entered the highway at a time when Brown's truck constituted "an immediate hazard." § 55-8-130(a), Tenn. Code Ann. The Commission **FURTHER FINDS** that Claimant's failure to yield also was a legal cause of the collision.

¹ Another possibility was that Brown was traveling at a high rate of speed, but aside from Claimant's bald assertion that Brown was, in his opinion, going "well over the speed limit," (Tr., Vol. 1, p. 85, lines 1-2), no evidence of this was presented.

C. Comparative Fault

In 1992, Tennessee adopted a modified comparative fault system which allows a negligent Claimant to recover so long as the Claimant's negligence *is less than* the defendant's. In such a case, the Claimant's damages are reduced in proportion to the percentage of negligence properly attributed to Claimant. However, where the Claimant's negligence exceeds that of the defendant, no recovery is allowed. *McIntire v. Ballentine*, 833 S.W.2d 52, 57 (Tenn. 1992).

The Commission **FINDS** that **sixty percent** (60%) of the fault reasonably can be apportioned to Claimant Robert Crittendon for his violation of § 55-8-130(a), Tenn. Code Ann. The Commission further **FINDS** that forty (40%) of the fault reasonably can be apportioned to Defendant's employee, Paul Brown. Thus, under *McIntire*, 833 S.W.2d at 57, Claimant Robert Crittendon is barred from recovery.

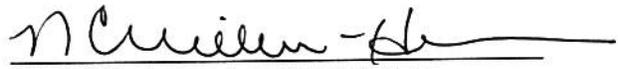
Because spousal loss of consortium claims are considered derivative under Tennessee law, Tracy Crittendon also is barred from recovery. *Tuggle v. Allright Parking Systems*, 922 S.W.2d 105, 109 (Tenn. 1996).

III.

CONCLUSION

For the foregoing reasons, Claimants' claims are hereby **DISMISSED**.

IT IS SO ORDERED.


NANCY C. MILLER-HERRON,
COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing has been mailed by first class U.S. mail, postage prepaid, electronically transmitted, or hand-delivered to:

Mr. Jeffrey L. Stimpson, Esq.
P.O. Drawer H
1512 Munford Avenue
Munford, TN 38058

Mr. Michael L. DeLisle, Esq.
Assistant Attorney General
P.O. Box 20207
Nashville, TN 37202

on this the 5th day of November, 2014



PAULA SWANSON, CLERK
TENNESSEE CLAIMS COMMISSION