

IN THE CLAIMS COMMISSION OF THE STATE OF TENNESSEE  
WESTERN DIVISION

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TN CLAIMS COMMISSION  
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TERRY PHILLIPS,

Claimant,

v.

CLAIM NO. T20140741

STATE OF TENNESSEE,

Defendant

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**JUDGMENT**

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This matter came to be heard on the 2<sup>nd</sup> day of October, 2015, before the Commission sitting in Savannah, Tennessee. The Claimant, Terry Michael Phillips, filed a claim against the Defendant, State of Tennessee, pursuant to Tenn. Code Ann. §9-8-307(a)(1)(F) for damages allegedly sustained by Claimant due to Defendant's negligent care, custody and control of Claimant's personal property

I.

**FACTUAL HISTORY**

The basic material facts are not in dispute. In 1998 Claimant, Terry Phillips, a resident of Savannah, Tennessee, purchased a 1979 Chevrolet Corvette automobile for the sum of Seven Thousand Eight Hundred and No/100 Dollars (\$7,800.00). The Corvette was not Mr. Phillips' primary means of transportation. He drove the vehicle for pleasure approximately 100 times per year. The vast majority of the use of the car consisted of short trips of twenty (20) miles or less although he had driven the car to Gatlinburg, Tennessee, on one occasion and to Panama City, Florida on one occasion.

As of 2005 the Corvette was in good mechanical condition and was operating properly. Mr. Phillips did testify the door locks were not working correctly. Claimant's vehicle had cosmetic imperfections. Hairline cracks had developed in the paint, there was one burn spot on the vehicle's exterior which was the result of a burning cigarette landing on the car and the carpet needed to be replaced.

Mr. Phillips was familiar with Jerry Alexander who in 2005 was an instructor at Tennessee College of Applied Technology located in Crump, Tennessee, hereinafter referred to as TCAT Crump. TCAT Crump is an educational institution operated by the State of Tennessee designed to provide vocational training to its students. Mr. Alexander taught a body repair class at TCAT Crump. During a conversation in 2005 Mr. Phillips learned from Mr. Alexander the students in the body repair class at TCAT Crump could re-carpet and repaint his Corvette since the students often learned through a hands-on experience. Mr. Phillips agreed to allow the students at TCAT Crump to repaint and re-carpet his vehicle. In the fall of 2005 Mr. Alexander took possession of Claimant's vehicle. Pursuant to the oral agreement between Mr. Phillips and Mr. Alexander, Mr. Phillips would purchase and provide the necessary supplies while the students would, under Mr. Alexander's supervision, provide the labor.

No timeframe was established by which the repainting and re-carpeting would be completed. Mr. Phillips purchased and provided the necessary supplies consisting of sandpaper, filler, sealer and paint. For some inexplicable reason the re-carpeting and repainting of the vehicle was not made soon after Mr. Alexander took possession of the car. <sup>1</sup> After some passage of time Mr. Phillips was asked to once again furnish the

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<sup>1</sup> Mr. Jarrod Alexander did not testify at the hearing.

supplies necessary to complete the repairs. In fact, Mr. Phillips was asked to furnish the same supplies on numerous occasions.

Several months after surrendering possession of his vehicle Mr. Phillips began to call TCAT Crump to inquire as to the status of his car. On most every occasion he was assured work was being done on the vehicle. More than a year after having given possession of his car to TCAT Crump Mr. Phillips personally went to the school to check the progress. Upon his arrival Mr. Phillips found his car in a state of disassembly. The car doors had been removed, wire harnesses had been cut into, windows had been taken out of the car doors, and the windshield as well as the lights had been removed. The vehicle remained disassembled for months thereafter. Each time Mr. Phillips made an inquiry to school officials at TCAT Crump he was assured the repainting and re-carpeting would be done and the car reassembled.

The repainting and re-carpeting remained uncompleted for years. Even though he knew the repairs were not being made Mr. Phillips did not retake possession of his car and parts nor did he ask a professional to reassemble his car. Mr. Phillips eventually attempted to contact the school director, Jeff Sisk, but was never able to communicate with him. Approximately two years later Mr. Phillips spoke to Henrietta Lusk, the Assistant Director of TCAT Crump. By the time Mr. Phillips spoke with Ms. Lusk, Jerry Alexander had been replaced by Danny Wells as the class instructor. Ms. Lusk stated to both Mr. Phillips and Mr. Wells the repairs would be completed promptly and the car reassembled. The car was reassembled by Mr. Wells and his students. Mr. Wells secured the services of a local body shop repairman, Scotty Brown, to actually paint the Corvette. Mr. Wells wanted the students to see how a professional would paint the car

rather than having the students themselves paint the vehicle. Mr. Phillips agreed to pay Mr. Brown the sum of Two Hundred and No/100 Dollars (\$200.00) to repaint the car.

After the car had been repainted and reassembled, it would not run. Mr. Wells was replaced as the class instructor by Dean Walker. Mr. Walker removed the car hood in order to work on the engine. While doing so Mr. Walker damaged the car hood. The hood was repaired and repainted. However, the paint on the car hood did not match or blend with the paint on the rest of the car.

Since TCAT Crump did not offer mechanic's training it was agreed by Mr. Phillips and school officials the vehicle would be transported to TCAT Hohenwald where a mechanic's class was taught. It was hoped the necessary mechanical repairs could be performed at TCAT Hohenwald in order to put the car back in operating condition. The expense associated with transporting the vehicle from TCAT Crump to TCAT Hohenwald was paid by TCAT Crump.

Approximately one month after the vehicle had been taken to TCAT Hohenwald Mr. Phillips was told the mechanical repairs had been completed and the vehicle could be picked up. Upon his arrival at TCAT Hohenwald, Mr. Phillips found the car windows had been left down and it had rained inside the car. Mr. Phillips tried to start the vehicle but it would not start. An instructor at TCAT Hohenwald advised Mr. Phillips the car was not drivable. It was believed a new carburetor might fix the problem. The carburetor was replaced but it did not fix the mechanical problem. Following unsuccessful attempts to repair the mechanical problems TCAT Hohenwald shipped Mr. Phillips' vehicle back to TCAT Crump. Between the fall of 2005 and 2012 Mr. Phillips did not request the return of his vehicle and he did not attempt to retake possession of the

vehicle. Mr. Phillips' vehicle remained at TCAT Crump until 2012 when he was asked by school officials to remove the car from school property. The vehicle was then removed from TCAT Crump and stored at the home of Mr. Phillips' son.

In recent months, repairs have been made to Mr. Phillips' vehicle by professional repairmen. James Justice, an auto mechanic, testified regarding the work which he had performed to restore the vehicle's mechanical condition. Tommy Mayberry, the owner of an auto body repair shop, testified he had repainted a portion of the Philips vehicle. Mr. Mayberry explained the repainting was necessary because after the car hood was painted the second time at TCAT Crump it did not match the rest of the car. Mr. Mayberry explained a portion of the car was repainted in order to blend and match the paint on the hood and front of the car to the remainder of the car. Testimony was presented concerning the cost of the mechanical repairs and repainting of Mr. Phillips' vehicle. The cost of the additional paint job, mechanical repairs and other improvements to the vehicle as presented by Claimant's witnesses totaled Nine Thousand Five Hundred Fifty-Nine and 25/100 Dollars (\$9,559.25). Included in the repair costs was the sum of Five Hundred Twenty-Eight and 80/100 Dollars (\$528.80) for a set of tires and Forty Six and 25/100 Dollars (\$46.25) for door locks.

Mr. Phillips maintains the work performed by Mr. Mayberry was necessary because after the car hood was damaged and repainted by Mr. Walker it did not blend with the rest of the car. According to Claimant, the mechanical work was required because after the extensive disassembly that was unnecessarily performed the car would not run. Also, while in the possession of school officials the vehicle was unprotected from the weather which caused damage to the car.

Defendant denied any liability with regard to the repainting of the vehicle. Defendant maintained TCAT Crump did not owe a duty to Claimant to perform work up to professional standards since Claimant was aware the work was to be done by students. Alternatively, Defendant maintained Mr. Philips assumed the risk the finished product may not be up to professional standards. Defendant further contended a substantial amount of the repairs were incurred because car parts will and did deteriorate over a number of years.

Defendant presented the testimony of Joe Paul Bryant, Henrietta Lusk and Paul Nolan, all of whom are employees of TCAT Crump, and John Bryan Blair, an employee of TCAT Nashville. However, the involvement of each of Defendant's witnesses' in this project was very limited. Mr. Bryant serves as the Student Services Coordinator. In his capacity as Student Services Coordinator he is primarily responsible for the student's financial aid, coordinating the recruiting efforts for the school, overseeing the book store and dealing with student issues. Upon Mr. Bryant's arrival at TCAT Crump in 2007 he saw Mr. Phillips' vehicle in a disabled state. He learned the vehicle had been on campus for some time. Mr. Bryant testified a prior instructor, Jarrod Alexander, started various automotive projects but had not seen them through to completion. Mr. Bryant's only direct involvement with the Phillips vehicle was to make arrangements to have it transported to TCAT Hohenwald for mechanical repairs.

Henrietta Lusk serves as Assistant Director of TCAT Crump. Ms. Lusk testified that TCAT Crump paid to have Mr. Phillips' vehicle transported to and from TCAT Hohenwald. She was also asked by school officials to contact Mr. Phillips and make arrangements for his car to be removed from school property in 2012.

Paul Nolan is the current collision repair instructor at TCAT Crump. He has served in that capacity for three years and four months. He explained how the collision repair course is taught. Mr. Nolan was familiar with the history of the Phillips vehicle but never inspected or worked on the vehicle. Mr. Nolan explained that on occasions disassembly of a car may be necessary before repainting. The extent of disassembly of the car that is required is dependent upon the extent of the paint job to be performed. It is possible that a paint job would require removal of molding on the side of a car, door handles, locks, belt weather stripping, moldings around the windshield, the windshield, lights and possibly additional parts. Mr. Nolan testified Mr. Phillips car was eventually moved to a separate storage garage because he needed additional space in the workshop.

John Bryan Blair is currently the collision repair instructor at TCAT Nashville. Mr. Blair had inspected the hood of the Phillips car in 2014. He thought the paint job on the hood was acceptable since it had been painted by a student. He did observe one run in the paint on the hood. Mr. Blair explained that the hood itself did not need to be repainted but the front of the car would need to be repainted so that the color of the hood and the color of the remainder of the car would blend.

Mr. Blair reviewed the repair estimates submitted by Claimant. He testified items shown on James Justice's repair estimate consisting of spark plugs, vacuum hoses, transfilter, fuel filter and fuel sending unit would have to have been replaced due simply to age and deterioration.

One of Claimant's experts, James Justice, had himself also identified certain items shown in Trial Exhibit 7 which would have to be replaced due simply to age and/or maintenance consisting of:

Air Conditioner Hose Assembly	\$105.58
Compressor	\$335.98
Spark Plugs	\$ 25.00
EGR Valve	\$125.98
Fuel Filter	\$ 5.68
Vacum Canister	\$ 9.00
Vacum Hoses	\$ 5.00
Head Lights	\$ 55.00
Transmission Fluid	\$ 35.60
Tag Light	\$ 25.19
Oil Change (maintenance)	<u>\$ 35.00</u>
	\$763.01

In addition, Mr. Blair was of the opinion the tires on Mr. Phillips' vehicle would have to be replaced over a period of nine (9) years either from wear and tear or, if the car remained parked, dry rot.

In addition to the repainting and repair costs Mr. Phillips claims he is entitled to reimbursement of car rental expense of Forty Five and No/100 Dollars (\$45.00) per day for the time he was without his 1998 Chevrolet Corvette.

## II.

### ISSUE

1. Was the State of Tennessee negligent in the care, custody and control of Terry Phillips' vehicle during the seven (7) years it maintained possession?
2. Was Terry Philips negligent by allowing the Defendant to possess his motor vehicle for seven (7) years when he knew or should have known the repainting was not being timely performed?

## III.

### RULING

With regard to claims occurring prior to July 1, 2014, Tenn. Code Ann. §9-8-307(a)(1)(F) provides:

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, falling within one (1) or more of the following categories:

(F) Negligent care, custody and control of personal property.

The definition of "state employee" found in Tenn. Code Ann § 8-42-101 includes "any person who is employed in the service of and whose compensation is payable by the state."

It is undisputed that the individuals who dealt with Mr. Phillips or performed work on his vehicle including Jerry Alexander, one and the same person as Jarrod Alexander, Danny Wells, Dean Walker, Joe Paul Bryant, and Henrietta Lusk were employed by either TCAT Crump or TCAT Hohenwald both of which are State owned and operated facilities and as such were state employees as defined by Tenn. Code Ann § 8-42-101.

The standard applicable in deciding claims against the state is set forth in Tenn. Code Ann § 9-8-307(c) which provides:

- (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.

The elements which must be proven to establish a claim for negligence are: (1) a duty of care owed by the defendant to the plaintiff; (2) conduct falling below the applicable standard of care amounting to a breach of that duty; (3) an injury or loss; (4) causation in fact; and (5) proximate or legal cause. *McClenahan v. Cooley*, 806 S.W.2d 767, 774 (Tenn. 1991)

In this case, Mr. Phillips, acting pursuant to the arrangement reached with Jarrod Alexander, gave possession of his 1998 Chevrolet Corvette to Mr. Alexander with the expectation the car would be repainted and re-carpeted by students at TCAT Crump within a reasonable period of time although no specific time frame for completing the work was discussed by Mr. Phillips and Mr. Alexander. Mr. Alexander, acting in his capacity as an instructor at TCAT Crump, took possession of Claimant's vehicle to teach vocational skills to the students at TCAT Crump through a hands on activity.

Possession of the vehicle was given to Defendant in the fall of 2005. It is undisputed Defendant retained possession of the car until the fall of 2012. In the interim Claimant's vehicle was disassembled, left in a state of disassembly for a protracted period of time and, on occasion, unprotected from the weather. It was foreseeable that damage to the vehicle or vehicle parts was likely to be sustained under such conditions. No testimony was presented which established Claimant's vehicle was intentionally

tampered with, vandalized or otherwise damaged by a person or persons not a student or instructor at TCAT Crump or TCAT Hohenwald.

The Commission **FINDS** Defendant owed a duty to exercise reasonable care to properly safeguard, protect and prevent damage to Claimant's personal property while Defendant had possession of the vehicle; that Defendant breached its duty and Defendant's negligence was the cause in fact and proximate cause of Claimant's damages.

The testimony presented established the cost of repairing and re-painting Mr. Phillips' vehicle was Nine Thousand Five Hundred Fifty-Nine and 25/100 Dollars (\$9,559.25). In addition, Claimant sought damage of loss of use at the rate of Forty Five and No/100 Dollars (\$45.00) per day for the time he was without the use of his car. The testimony established Claimant's car had initially been painted by a professional body repairman, Scotty Brown. The paint job of Mr. Brown was quite good. However, after Mr. Brown painted the vehicle Dean Walker, then an instructor at TCAT Crump, damaged the hood while attempting to repair a mechanical problem with the engine had developed while the car was in the possession of TCAT Crump. Although the car hood was repaired and repainted it did not match the rest of the car. Thus, another painting of the car was required in order to blend the color of the hood with the front of the car. The most recent paint job had been performed by Tommy Mayberry, owner of Kustom Kars, at a cost of Two Thousand Two-Hundred Eighty-Six and 08/100 Dollars (\$2,286.08).<sup>2</sup> Claimant claims as part of his damages the cost of new tires for the vehicle in the amount of Five Hundred Twenty Eight and 80/100 Dollars (\$528.80). The

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<sup>2</sup> The repair estimate was \$2,776.08. However, the repair estimate included repair estimated to cost \$490.00. The repair of \$490.00 was performed by James Justice, therefore, the sum of \$490.00 should be deducted from the estimate.

remainder of the repairs was for replacement of various parts, including but not limited to, hoses, lights, power windows switch, carpet, compressor and various engine parts.

Claimant submits the damages necessitating the repairs were the result of excessive disassembly of the car and/or the car's exposure to the weather. Defendant contends the repairs are the type which are normally incurred to maintain a vehicle and as such are required as the car parts age and deteriorate.

Claimant's witness, James Justice, and Defendant's witness, James Bryan Blair, both confirmed certain of the mechanic work shown on the Trial Exhibit 7 was required due simply to the age of the parts and would have been incurred by Claimant even if Defendant had never taken possession of Claimant's vehicle. Mr. Justice, in his testimony, testified the cost of the parts which had to be replaced based solely upon age, all of which are specifically set forth hereinabove, was \$763.01.

As part of his claim Claimant seeks damages for loss of use of the vehicle for the period of approximately seven (7) years when Defendant had possession of the vehicle. Tennessee law recognizes a recovery for loss of use of a personal vehicle may be permitted when the personalty has been damaged by the tortious conduct of the defendant and the personalty is reparable. In fact, the actual rental of another vehicle is not necessary to recover "loss of use" damages. *Perkins v. Brown*, 132 Tenn. 294, 177 S.W. 1158 (1915); *Tinker v Wix Corp.*, 1986 WL 1457, \*3 (Tenn. Ct. App. April 22 (1986)). The measure of damages for loss of use is reasonable compensation to the plaintiff for being deprived of the use of the property *during the time reasonably necessary for repair* of the damage caused by the incident. *Perkins v. Brown*, 132 Tenn. 294, 177 S.W. 1158 (1915).

Proof was presented regarding the daily cost of a rental car. Claimant asserts he is entitled to loss of use damages in excess of Thirty Thousand and No/100 Dollars (\$30,000.00) since he claims he drove the car one hundred times per year, was deprived of use of the car for approximately seven (7) years and the cost of a rental vehicle would be \$45.00 per day. Claimant's argument is flawed. Claimant knew from the outset his vehicle was going to be used for teaching purposes and that he would be without the use of his vehicle longer than he might have been if he had chosen to have his car repaired by a professional. Even when the re-carpeting and repainting was not timely performed Claimant did not complain nor did he attempt to retake possession of his vehicle. Under the circumstances of this case it would be unjust to award loss of use damages for a seven (7) year period. The testimony established Claimant's vehicle was eventually repaired by professionals, namely, James Justice and Tommy Mayberry. Although there was proof presented as to the daily rental cost of a vehicle, no testimony was presented as to prove the length of time that was reasonably necessary for Mr. Justice and Mr. Mabry to repair the Philips vehicle. Since Claimant failed to carry his burden of proof the claim for damages due to loss of use he is barred from any recovery.

The Commission **FINDS** the damages actually sustained by Claimant to be in the amount of Eight Thousand Two Hundred Twenty-One and 19/100 Dollars (\$8,221.19) which is the repair cost shown in Exhibits 2, 3, 4, 6, 7 and 8 less the cost of parts which had to be repaired due to age which totaled \$763.01. The cost of the door lock of Forty Six and 25/100 Dollars (\$46.25) as shown on Exhibit 4 is also deducted because Claimant acknowledged the door lock was not working prior to surrendering possession

of the car to Mr. Alexander in 2005. The Commission has not included the cost of new tires as part of Claimant's damages since no evidence was presented to show the tires were damaged by the actions or inactions of any State employee. The proof did establish the tires would have had to have been replaced either due to wear and tear or dry rot even in the absence of any negligence.

While Defendant owed a duty of reasonable care to safe guard Claimant's property, Claimant also had a duty to exercise reasonable care to avoid loss or to minimize damages once he realized his property was not being safe guarded or had been damaged. Claimant is not entitled to recover for losses which he could have prevented through reasonable efforts or by expenditures that might reasonably have been made to mitigate a loss. Claimant testified he called TCAT to check the progress being made on his car but did not go to the school until six months after Mr. Alexander had taken possession of the vehicle. When Claimant saw his car it was already in a state of disassembly. Although he believed the vehicle was being mishandled he left it in the possession of the school. Claimant by his own testimony acknowledged he provided the same supplies needed to prep and paint the car on numerous occasions, that the paint job was not timely performed and that his vehicle remained disassembled. According to Claimant's own testimony, once the car had been painted by Scotty Brown it looked "nice" but would not run. Claimant deliberately chose not to retake possession of the car after it had been painted but instead allowed the vehicle to be transported to TCAT Hohenwald to undergo mechanical repairs. According to the towing records (Exhibit 10) the car was not transported to TCAT Hohenwald until April 12, 2012, or almost seven years after possession of the car had been turned over to TCAT Crump.

Later in 2012 Claimant was notified his car had been repaired and could be picked up at TCAT Hohenwald. Upon his arrival at TCAT Hohenwald Claimant found the car windows were down, it had rained inside the car soaking the carpet and seats and the engine still would not start.

The fact Claimant repeatedly had to provide supplies yet the car remained unpainted, knew the car was disassembled and remained disassembled for an extended period of time and, on occasion, unprotected from the weather should have been indicators his car was not being safe guarded or protected from potential damage. However, Claimant never attempted to retake possession of his vehicle or request that safeguards be taken. Consequently, the Commission **FINDS** Claimant was also negligent by failing to prevent harm to his property and failing to exercise reasonable care to mitigate his damages.

#### **RULING**

Based on the testimony presented the Commission **FINDS** Claimant has met his burden of proof and that his vehicle is capable of repair so as to restore its function, appearance and value. The Commission **FURTHER FINDS** the damages sustained are in the amount of Eight Thousand Two Hundred Twenty-One and 19/100 Dollars (\$8,221.19). The sum of Eight Thousand Two Hundred Twenty-One and 19/100 Dollars (\$8,221.19) constitutes the repairs testified to during the hearing of Nine Thousand Five Hundred Fifty-Nine and 25/100 Dollars (\$9,559.25) minus the costs of new tires of Five Hundred Twenty-Eight and 80/100 Dollars (\$528.80) since there is no proof Defendant caused damage to the tires, the cost of power door locks of Forty Six and 25/100 Dollars (\$46.25) since Claimant testified the power door locks did not work before

possession of the vehicle was given to TCAT Crump, and the repairs totaling Seven Hundred Sixty-Three and 01/100 Dollars (\$763.01) incurred due to the aging of the car.

The Commission **FINDS** Claimant failed to meet his burden of proof as to damages for loss of use, therefore, is not entitled to a recovery for loss of use.

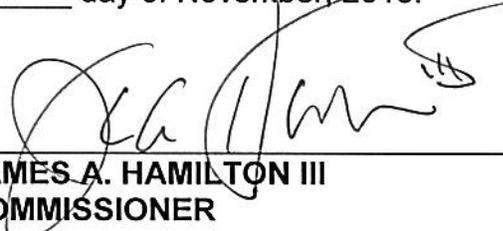
The Commission **FURTHER FINDS** that Fifty-Five percent (55%) of the negligence is apportioned to the State of Tennessee and Forty-Five percent (45%) of the negligence is apportioned to Claimant.

### **CONCLUSION**

**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** that Claimant, Terry Michael Philips, be and is hereby awarded a judgment against the Defendant, State of Tennessee, in the amount of Four Thousand Five Hundred Twenty-One and 65/100 Dollars (\$4,521.65).

Costs of this cause are taxed pursuant to Tenn. Code Ann. §9-8-307(d).

**IT IS SO ORDERED** this the 13<sup>th</sup> day of November, 2015.

  
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**JAMES A. HAMILTON III**  
**COMMISSIONER**

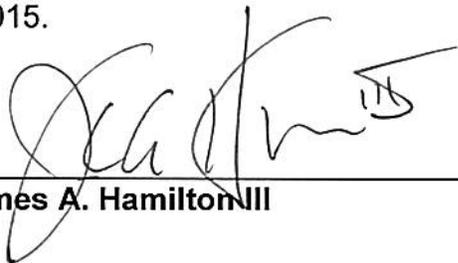
**CERTIFICATE OF SERVICE**

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:

Benjamin S. Harmon, Esq.  
Attorney at Law  
370 North Street  
Savannah, TN 38372

Office of Attorney General  
Civil Rights & Claims Division  
P.O. Box 20207  
Nashville, TN 37202-0207

on this the 13<sup>TH</sup> day of November , 2015.

  
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James A. Hamilton III