



# Case Studies of Transportation Issues

Sarah McBride, Esq.

August 1, 2019

# House v. State of Tennessee - Complaint

## Passing Zones and Intersections

TENNESSEE CLAIMS COMMISSION  
EASTERN DIVISION

GARY HOUSE,  
Plaintiff,  
vs.  
STATE OF TENNESSEE and  
TENNESSEE DEPARTMENT OF  
TRANSPORTATION,  
Defendants.

NO.

RECEIVED  
OCT 10 2013  
DIVISION OF  
CLAIMS ADMINISTRATION

was driving his 2002 Ford F250 north on Highway 70 South and attempting to turn left onto Fillers Mill Road when he pulled into the path of travel of a car approaching from behind, trying to pass him and struck the other car seriously injuring the Plaintiff, Gary House.

4. The Plaintiff, Gary House, brings this civil action against the Defendants, State of Tennessee and Tennessee Department of Transportation, for personal

9. The State of Tennessee, the State of Tennessee Department of Transportation, and unknown engineers employed by the State of Tennessee Department of Transportation were negligent in the following:

a. By failing to erect signs giving notice of an upcoming intersecting road at the point where the Plaintiff's accident occurred and, notwithstanding the existence of an intersecting road not readily visible to oncoming traffic, marked that portion of highway with broken yellow lines in the center of the roadway denoting that

allowed, contrary to accepted and proper signage and marking and in violation of

and the Tennessee Department of Transportation Highway 70 safe for travel for motorists and design, maintain, and inspect the roads with applicable regulations and external

### NOTICE OF

**Tennessee and/or the Tennessee Department of Transportation in a sum of not less than Three Hundred Thousand Dollars (\$300,000) in compensatory damages, up to any applicable statutory limit or cap upon such damages and the costs of this cause. Plaintiff further seeks such other relief to which she may be entitled.**

Comes the Plaintiff, Gary House, by and through her undersigned counsel, to file this Complaint in accordance with Tenn. Code Ann. § 9-8-402(a), of a claim against the State of Tennessee and the Tennessee Department of Transportation for negligence, notice and cause of action state

1. The Plaintiff, Gary House, resides at 530 Gre

2. Plaintiff's notice and cause of action arises from an automobile accident that occurred on State Highway 70 in Greene County, Tennessee on July 9, 2012, at approximately 11:51 a.m. State Highway 70 is a State Highway which is part of the State of Tennessee Highway System. Specifically, State Route 70 where the accident occurred is a State Highway; therefore, The State of Tennessee is responsible for the construction and maintenance of this highway and signage on said highway.

3. On July 9, 2012, at approximately 11:51 a.m., the Plaintiff, Gary House,

6. The injuries suffered by the Plaintiff, Gary House, for which damages and redress are sought are: pain and suffering, loss of enjoyment of life, disfigurement, loss of earning capacity, permanent and total disability, including mental and emotional anguish.

7. Due to the improper signage and/or lack of signage, the Plaintiff, Gary House encountered an unreasonably dangerous condition.

8. State Highway 70 is designated by the Department of Transportation as being on the state system of highways: see Tenn. Code Ann. §9-8-307(a)(l);

11. The negligent acts and/or omissions of the State of Tennessee and the Tennessee Department of Transportation were the direct and proximate cause of the crash and injury of Gary House.

12. The monetary value of Plaintiff Gary House claims exceed the limitation on awards contained in Tenn. Code Ann. §9-8-307(e), so Plaintiff claims the entire \$300,000.00 allowed under that statutory provision.

WHEREFORE, the Plaintiff asks for relief and/or judgment against the State of

# House v. State of Tennessee - Answer

## Passing Zones and Intersections

IN THE CIRCUIT COURT FOR GREENE COUNTY, TENNESSEE  
AT GREENEVILLE

GARY HOUSE, )  
 )  
 Claimant, )  
 )  
 vs. )  
 )  
 STATE OF TENNESSEE, )  
 )  
 Defendant.<sup>1</sup> )

Case no. 13CV303

FILED  
TIME \_\_\_\_\_  
MAY 08 2014

CIRCUIT

ANSWER OF STATE OF TENNESSEE

The Defendant, State of Tennessee, by and through the undersigned Senior Counsel, Robert E. Cooper, Jr., Attorney General and Reporter, and the undersigned Senior Counsel, Robert E. Cooper, Jr., Attorney General and Reporter, as follows:

1. Admitted on information and belief.
2. It is denied that the State is liable to this claimant. All other allegations in this paragraph are admitted.
3. Defendant is without information sufficient to admit or deny the extent of claimant's injuries. Except as otherwise denied, the allegations in this paragraph are admitted.
4. It is denied that the State is liable to this claimant. Defendant is without information sufficient to admit or deny the extent of claimant's injuries.

5. It is denied that the State is liable to this claimant. Defendant is without information sufficient to admit or deny the extent of claimant's injuries.
6. It is denied that the State is liable to this claimant. Defendant is without information sufficient to admit or deny the extent of claimant's injuries.
7. Denied.
8. Admitted.
9. Denied.

1. Admitted on information and belief.

2. It is denied that the State is liable to this claimant. All other allegations in this paragraph are admitted.

3. Defendant is without information sufficient to admit or deny the extent of claimant's injuries. Except as otherwise denied, the allegations in this paragraph are admitted.

William Downs, Case no. 13CV303. Claimant Gary House was negligent in the operation of his vehicle which proximately contributed to cause the parties' accident in that he: (1) failed to maintain his vehicle under proper control; (2) failed to maintain a

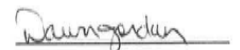
<sup>1</sup> The State of Tennessee is the only proper defendant in the Claims Commission.

proper lookout; and (3) operated his vehicle in violation of the following public statutes at that time in full force and effect, the violation of which constitutes negligence per se:

- a. T.C.A. § 55-8-115 Re: Driving on Right Side of Highway;
- b. T.C.A. § 55-8-117 (2) Re: Vehicles Being Overtaken and Passed;
- c. T.C.A. § 55-8-136(b) Re: Drivers to Exercise Due Care;

T.C.A. § 55-8-136(b) Re: Drivers to Exercise Due Care; and  
signals for Turns.  
of claimant bars his claim, or in the alternative,  
t.

Respectfully submitted,  
ROBERT E. COOPER, JR.  
Attorney General and Reporter

  
Dawn Jordan, BPR 20383  
Senior Counsel  
Civil Rights and Claims Division  
P.O. Box 20207  
Nashville, Tennessee 37202  
(615)741-6440

# Discovery

A. Nathan Sanford Vatter.

Q. Sanford, S-A-N-F-O-R-D?

A. That is correct.

Q. And what is your age?

A. Thirty-seven.

Q. And what's your residential address?

MS. JORDAN: I object to that. That's confidential.

MR. KILDAY: Why? I might want to subpoena him for the trial.

MS. JORDAN: You can subpoena him through me.

# Tennessee Claims Commission Act

The State of Tennessee is immune from suit for monetary claims, under the doctrine of “**sovereign immunity**,” except for claims determined by the Tennessee Legislature. This sovereign immunity is contained within the Tennessee Constitution.

**Tenn. Code Ann. §9-8-301**, et seq. created the Tennessee Claims Commission to adjudicate claims against the State based upon the acts or omissions of State employees.

**State employees are immune from liability** for acts/omissions within scope of employment except for those that are willful, malicious, criminal or done for personal gain. Tenn. Code Ann. §9-8-307(a)(3)(h).

# Tennessee Claims Commission Act

- Tennessee Claims Commission Act allows claims against the State such as the following types of claims:
  - (1) negligent operation of a motor vehicle
  - (2) nuisances
  - (3) dangerous conditions on real property
  - (4) negligent construction of sidewalks/buildings

# Tennessee Claims Commission Act

(5) Negligence in planning, programming, inspection, design, preparation of plans, approval of plans and construction of public roads, bridges and other structures.

(6) Negligence in maintenance of roads, bridges and other structures.

(7) Dangerous conditions on State maintained highways.

(8) Negligent operation of machinery or equipment.

# Tennessee Claims Commission Act

- Limits of Liability
  - **\$300,000 per Claimant** for bodily injury or death and \$ 1 million per occurrence
  - **No punitive damages** may be awarded against the State.



# Governmental Tort Liability Act (“GTLA”)

- Local governments are immune from suit for monetary claims, under the doctrine of “sovereign immunity,” except for claims determined by the Tennessee Legislature.
- In 1973, the Tennessee Legislature enacted the Tennessee Governmental Tort Liability Act (“GTLA”), Tenn. Code Ann. §29-20-101, et seq., which allows certain claims to be filed against local governments.
- Generally, suits must be in Circuit Court except for some larger counties where suits may also be filed in General Sessions Court. This is different from claims against the State which must be filed with the Tennessee Claims Commission in which an appointed Claims Commissioner adjudicates the case.

# Governmental Tort Liability Act (“GTLA”)

- A governmental entity is liable if an employee’s acts or omissions were negligent in certain circumstances and within the scope of their employment. Tenn. Code Ann. §29-20-310(a).
- If the governmental entity is subject to liability, the employee of the entity is immune from suit. Tenn. Code Ann. §29-20-310(b).
- Local government employees may be liable if acts/omissions are willful, malicious, criminal or done for personal gain. Tenn. Code Ann. §29-20-310.

# Governmental Tort Liability Act (“GTLA”)

- Governmental entity boards, commissions, authorities and other governing bodies are entitled to absolute immunity. TCA § 29-20-201(b)(1) et seq.
- Members of those boards, commissions, agencies, authorities, shall be immune from suit arising from the conduct of the affairs of such entities and such immunity will only be removed when the conduct is willful, wanton or gross negligence. TCA § 29-20-201(b)(2 ) et seq.

# Governmental Tort Liability Act (“GTLA”)

- Types of claims for which a governmental entity can be sued:
  - (1) Negligent operation of a motor vehicle in the scope of employment
  - (2) Defective, unsafe, or dangerous controlled on streets, alleys, sidewalks or highways; notice (actual or constructive) is needed
  - (3) Dangerous structures; notice needed
  - (4) General negligent acts of employee unless an exception applies
  - (5) Intentional torts if proximately caused by the negligent act or omission of a governmental employee

# Governmental Tort Liability Act (“GTLA”)

- Limits of Liability
  - \$300,000 per Claimant for bodily injury or death and \$700,000 per occurrence.
  - Punitive damages are not recoverable from the governmental entity or its employees.

# Wineland v. City of Cleveland, et al.

- Plaintiff was riding her bike to work on SR 60 within the municipal limits of Cleveland, Tennessee.
- The accident occurred when the front wheel of her bicycle fell into an open slot of a metal grate along the concrete gutter between the asphalt of the roadway and the concrete curb.
- Plaintiff sustained a broken nose and jaw, damage to her teeth and her face was left severely scarred.
- Plaintiff sued the State and City of Cleveland and alleged that a dangerous condition existed on SR 60 and that the State and City were negligent in failing to maintain the highway.

# Wineland v. City of Cleveland, et al.



- The slots of the grate, and the bars that form the slots, ran parallel with the direction of traffic.
- The function of the grate was to operate as the inlet of a surface water drainage system that disperses water from the road surface. The grate was the same level as the concrete gutter surface and it covered a catch basin so that water could be directed away from the road through an underground drainage system.

# Wineland v. City of Cleveland, et al.

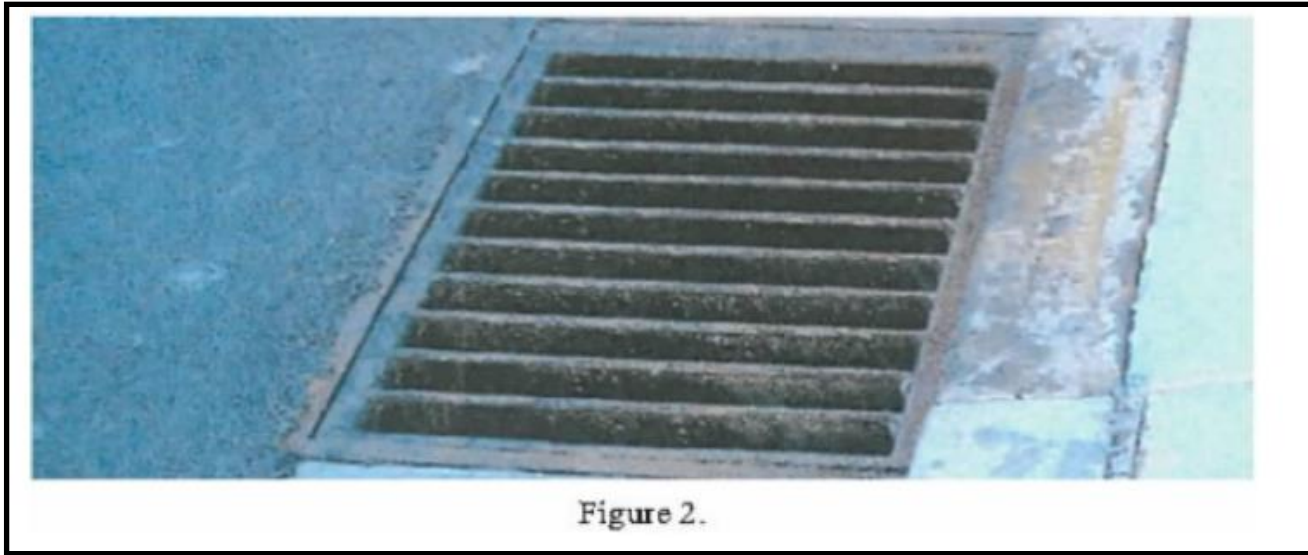
## Evidence

- The particular section of the roadway was built in 1968.
- This type of grate – with the bars and slots running parallel with the direction of traffic – was typical of those installed by the State until the 1980's.
- About 1990, the State began using drainage grates that are more “bicycle friendly.”



# Wineland v. City of Cleveland, et al.

- The new style of grates features the metal bars running perpendicular to the direction of traffic.



- One of the reasons the State adopted the new grate design was to avoid the hazard to bicycles created by the old grates.

# Wineland v. City of Cleveland, et al.

In a long-range transportation plan published in 2005, TDOT recognized that “some older drainage grates on State highways in urban areas are hazardous for bicyclists since they can catch a bicycle wheel, causing the cyclist to fall.”

- However, the plan also stated that these provisions for bicycles would be integrated in new construction and reconstruction of road projects. Retrofits were not going to be made absent new construction or reconstruction projects.

# Wineland v. City of Cleveland, et al.

- The subject grate was not located within either an area of new construction or reconstruction.
- **However,** the intersection adjacent to the subject grate was completely reconstructed in 2004. The reconstruction included changes to the traffic lanes and a complete rebuild of the drainage system.
- **New catch basins were installed to accommodate new style grates.**

# Wineland v. City of Cleveland, et al.

- **The construction boundaries of this 2004 reconstruction project were approximately 300 feet from the subject grate.**
- Plaintiff had also ridden over some of the new style grates within seconds before falling into the old style of grate at issue.

# Wineland v. City of Cleveland, et al.

**BASED UPON THE EVIDENCE,**  
**HOW DO YOU THINK THE TRIAL COURT RULED?**

**IN FAVOR OF**  
**THE PLAINTIFF OR THE STATE/CITY?**

# Wineland v. City of Cleveland, et al.

- The trial court dismissed the case against both the City and the State
- The Court found that the City was not liable under its maintenance contract because the agreement did not authorize the City to upgrade a functioning drainage grate. The grate had not failed in its purpose – redirecting drainage – so there was no duty to replace it.
- The Court found that the State had no duty to replace the grate because it met design and construction standards when the road was built in 1968. The Court found that the portion of Highway 60 that contained the grate had not been reconstructed and, therefore, the State had no duty to upgrade it.

# Wineland v. City of Cleveland, et al.

- Plaintiff appealed the dismissal of her case.
- The Court of Appeals reversed the judgment of the trial court and found the State 100% at fault.
- The Court of Appeals agreed with the Plaintiff's arguments that the grate was a hazard which the State had been aware for many years.
- The Court of Appeals also determined that the State did not have discretionary function immunity which is sometimes accorded to cities and counties since the TN Claims Commission Act did specifically allow for the immunity to apply to the State.

# Wineland v. City of Cleveland, et al.

- Although there was no proof of previous accidents and no expert testimony offered by the Plaintiff regarding the design of the grate, the Court found that the State was aware of the potential danger to bicyclists because it mentioned the potential hazard in the long range planning document.
- In finding that the State was 100% at fault, the Court of Appeals also determined that the Plaintiff was not at fault, notwithstanding that the Plaintiff was riding her bicycle in the concrete gutter and had previously traveled this same route and been aware of the characteristics of the grate.



# Usher v. Charles Blalock and Sons, Inc., et al.

- **Fatal Crash**

- Involved the exposed metal edge of a device known as a “Guardrail Energy Absorbing Terminal” (“the crash cushion”) penetrated the window of the cab of his moving overturned tractor-trailer.

- **The Claim**

- Plaintiff claimed that this crash cushion was negligently placed at the end of a series of concrete barriers that served to separate traffic entering on and exiting from the roadway connecting to the temporary end of Interstate 140 in Blount County.
- The alleged negligence was the failure to install a “transition panel” between the last concrete barrier and the crash cushion. Such a panel is designed to cover the otherwise exposed edge of the crash cushion thereby preventing vehicles from “snagging” the exposed metal edge.

# Usher v. Charles Blalock and Sons, Inc., et al.



Figure 1.

# Usher v. Charles Blalock and Sons, Inc., et al.

- The Decedent was traveling eastbound on I-140 (Pellissippi Parkway) toward Maryville/Alcoa and was transporting 40,000 pounds of butter in his tractor trailer.
- No witnesses to the accident and the accident was reported about 3:30 a.m. by a passing motorist.
- An officer from a local police department responded to the call and, in trial testimony, stated that he had passed the accident scene about 12 hours prior and noted to himself the exposed rail without the transition panel could “rip a vehicle open like a can opener” and had the makings of a “very ugly accident.”

# Usher v. Charles Blalock and Sons, Inc., et al.



# Usher v. Charles Blalock and Sons, Inc., et al.



Figure 2.

# Usher v. Charles Blalock and Sons, Inc., et al.



# Usher v. Charles Blalock and Sons, Inc., et al.

## Evidence at trial

- The purpose of the crash cushion is to protect traffic approaching the end of the concrete barrier from the blunt trauma of hitting the exposed end of the concrete barrier.
- Crash cushions are more sophisticated than a simple guardrail. It is designed to absorb some of the force of impact and to deflect the crashing vehicle.
- The manufacturer of the crash cushion, in the instruction panel, stated that the end of the crash cushion (parallel rails) could either be offset away from approaching traffic or a transition panel could be installed.

# Usher v. Charles Blalock and Sons, Inc., et al.

## Evidence at trial

- The day before the accident, the contractor removed the concrete barriers and crash cushion from one part of the project and relocated them to the area of this accident. The transition panel, which had been on the crash cushion at the prior location, was not installed at this new location.
- This left the end of the one of the rails of the crash cushion facing toward traffic and jutting out away from the concrete barrier about 1 foot.
- This situation was intended to be temporary and with the transition panel to be installed the following day – hours after the accident occurred.
- The testifying experts for all parties agreed that Decedent had been speeding and was likely traveling at least 15 mph over the speed limit and that it was foggy in the early morning hours of the crash.



# Usher v. Charles Blalock and Sons, Inc., et al.

**BASED UPON THE EVIDENCE,**  
**DO YOU THINK THE JURY FOUND IN FAVOR OF**  
**THE PLAINTIFF OR THE STATE/CONTRACTOR?**

# Usher v. Charles Blalock and Sons, Inc., et al.

## The Verdict

- The jury returned a verdict **in favor of the Plaintiff.**
- The jury found that the Plaintiff's total damages were \$2,000,000.
- Fault
  - 25% to the Decedent,
  - 37.5% to the State, and
  - 37.5% to Blalock.

# Usher v. Charles Blalock and Sons, Inc., et al.

## AFTER THE JURY RENDERED ITS VERDICT

Trial court **went against the advice of the jury** and dismissed the claim against the State. The Court found:

- (1) that the plaintiff failed to carry the burden of proof with respect to the applicable standard of care for installing crash cushions;
- (2) that the plaintiff failed to prove that the State breach a duty; and
- (3) that the Decedent was at least 50% at fault for speeding through a construction zone in foggy conditions.

# Usher v. Charles Blalock and Sons, Inc., et al.

## AFTER THE JURY RENDERED ITS VERDICT

- Trial court granted Blalock's motion for judgment notwithstanding the verdict and entered judgment in its favor.
  - The Court held:
    - (1) that Blalock was not responsible, as a matter of law, for leaving off the transition panel because the State's inspector on the scene “directed” Blalock to leave it off;
    - (2) that the plaintiff failed to carry the burden of proving, by expert testimony, what a reasonably prudent contractor would have done under the circumstances; and
    - (3) a reasonable juror would have to conclude that the Decedent was at least 50% at fault.

# Usher v. Charles Blalock and Sons, Inc., et al.

The Plaintiff appealed to the Tennessee Court of Appeals which:

**Affirmed the judgment in favor of the State.**

**No liability to the State.**

**Determined that the trial court erred in setting aside the jury's verdict as to the contractor.**

# Harper v. State of Tennessee

Fatality case involving a pedestrian who was crossing at an intersection in Johnson City and was struck by a City of Johnson City garbage truck.

The allegations in the Complaint were that Plaintiff's mother was crossing North Roan Street (SR 34) from Browns Mill Road on a clear February day.

She was crossing within the painted crosswalk when the garbage truck allegedly made a right turn from Browns Mill Road onto North Roan Street and struck and killed her.



# Harper v. State of Tennessee

- Plaintiff sued the City of Johnson City for 1.5 millions dollars claiming that it was liable for failing to provide pedestrian control signals at one of the most heavily traveled intersections within the City of Johnson City and that the intersection constituted a dangerous condition of which the City allegedly had knowledge. Plaintiff also alleged that the City failed to place a green turn arrow for vehicle traffic running from Browns Mill Road onto North Roan Street.
- Plaintiff also sued the State for 1 millions dollars, after the City alleged that the State was at fault for designing the intersection, and made identical allegations against the State with regard to the intersection and the failure to provide pedestrian control signals or a right turn arrow for traffic turning on North Roan Street.

# Harper v. State of Tennessee

The State filed a motion for summary judgment to dismiss the case.

(1) Intersection was designed in 1981. Therefore, the 1978 Manual on Uniform Traffic Control Devices (“MUTCD”) controlled.

(2) To meet the minimum pedestrian volume warranting a pedestrian control signal under the 1978 MUTCD, at least 105 pedestrians would need to cross the intersection per hour during the same 8 hour period on an average day.

(3) Even under the 2009 MUTCD, the most recent version published prior to the accident, the number of pedestrians required would be (1) at least 75 pedestrians for each of any 4 hours on an average day or (2) 93 pedestrians during the peak pedestrian hour.



# Harper v. State of Tennessee

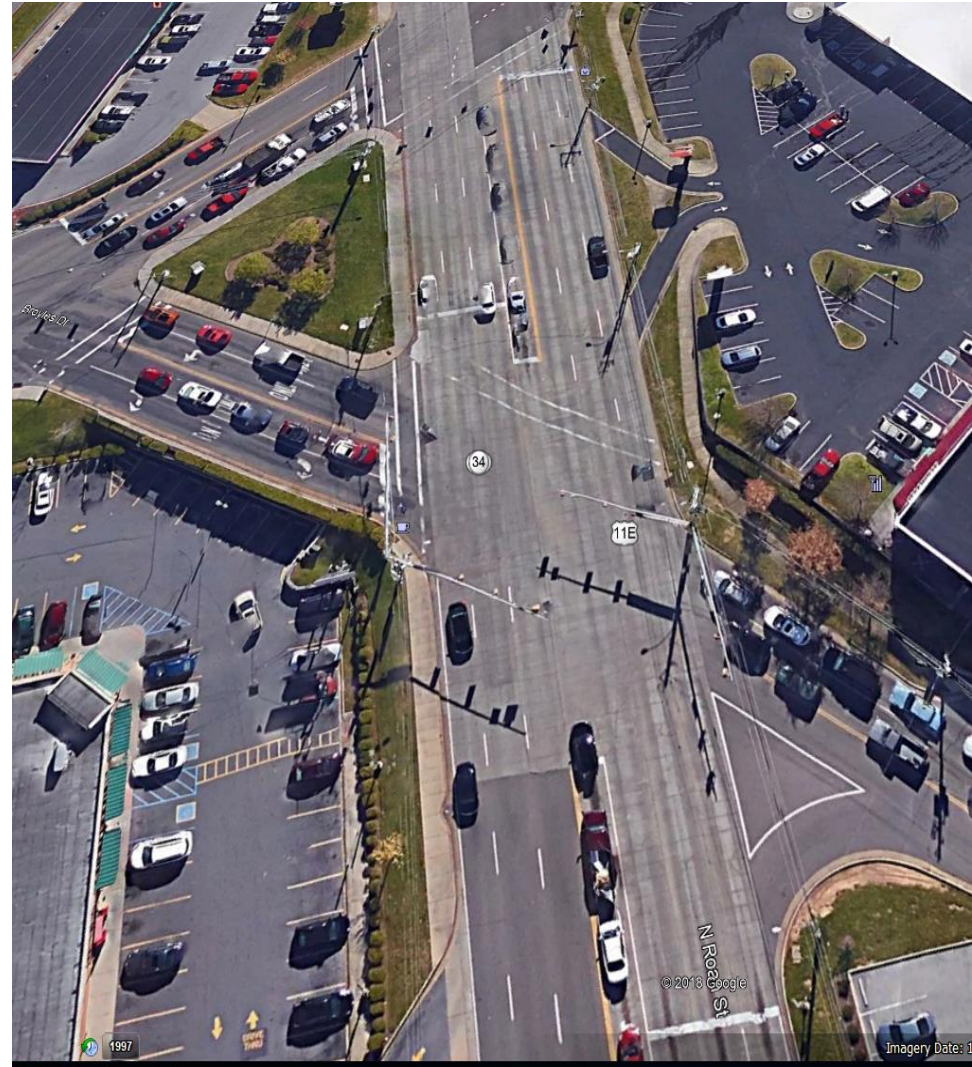
(4) The State commissioned a pedestrian study of this intersection at State Route 34 and Browns Mill Road.

(5) The study revealed that during an 8 hour period, only 8 pedestrians crossed the intersection. Far below the volume necessitating a pedestrian control signal under the MUTCD.

(6) The intersecting also lacked features such as one-way streets, T-intersections or split-phase timing that would tend to warrant the need for pedestrian signal heads.

# Harper v. State of Tennessee

- Also, the right lane on the Browns Mill Road approach is a shared lane for Thru and Right traffic, therefore a protected phase indicated by a right-turn arrow is not allowed on this approach.
- Right turn arrow signals are allowed when an exclusive right turn lane exists.



# Harper v. State of Tennessee

- There was also a maintenance contract between the State and the City where the City was responsible for maintenance of State highways within the City.
- Those responsibilities includes crosswalk striping and traffic control signs and signals and any other traffic control or monitoring devices.
- There were no accidents involving a pedestrian at this intersection in the 10 years prior to this accident.
- No other accidents at this intersection involving a fatality or serious injury.

# Harper v. State of Tennessee



# Harper v. State of Tennessee

**BASED UPON THE EVIDENCE PRESENTED TO THE COURT,**  
**DO YOU THINK THE COURT RULED IN FAVOR OF THE**  
**STATE?**

# Harper v. State of Tennessee

## The Court ruled in favor of the State.

- The case was never tried against the City of Johnson City. The case ultimately settled.

# Church v. Charles Blalock and Sons, Inc., State Route 91 in Johnson County

Fatal accident at the intersection of State Route 91 and Old State Route 91 (Divide Road) in Johnson County.

Plaintiff's decedent was traveling north on Divide Road.

When she reached the intersection of Divide Road and the newly constructed State Route 91, she failed to stop her automobile at the stop sign.

Her vehicle skidded into the path of an oncoming vehicle resulting in a collision. Plaintiff's decedent and her passenger were fatally injured.



# Church v. Charles Blalock and Sons, Inc., State Route 91 in Johnson County

## Evidence at trial

(1) New State Route 91 was constructed as a bypass to divert traffic away from downtown Mountain City. As a result, of the new State Route 91, Old State Route 91 was reconstructed from a road that formerly continued non-stop to Damascus, VA.

(2) Old State Route was now reconfigured into a T -intersection with the new roadway.

(3) There was initially a “Stop Ahead” sign, a Stop sign and white “stop bar” on the roadway pavement. These signs were in conformity with the MUTCD.



(4) A junction sign for State Route 91 before the intersection, two “Stop Ahead” signs before the intersection, a directional sign with a right-hand pointing toward Damascus, two stop signs on either side of the road at the intersection and a horizontal arrow across from the intersection to alert motorists of the requirement to turn left or right all were added.

(5) The State considered installing rumble strips but did not.

(6) Plaintiff called several witnesses who testified that they had experienced difficulties with the new intersection because they were so familiar with the way the roadway used to be configured.

# Church v. Charles Blalock and Sons, Inc., State Route 91 in Johnson County



# Church v. Charles Blalock and Sons, Inc., State Route 91 in Johnson County

**BASED UPON THE EVIDENCE,**  
**DO YOU THINK THE JUDGE FOUND IN FAVOR OF**  
**THE PLAINTIFF OR THE STATE?**

# Church v. Charles Blalock and Sons, Inc.,

## The Court granted judgment to the Plaintiff.

- The Court found the State was negligent because the risk of drivers running the stop sign was foreseeable, the State had notice to take appropriate measures to address the risk, the State was negligent in failing to install rumble strips and the measures adopted by the State did not address the dangerous condition.
- The Court found the State to be 53% at fault for the accident and the decedent to be 47% at fault.
- The Court awarded damages to Plaintiff of approximately \$280,000.00 and the passenger of about \$186,000.00.

# Church v. Charles Blalock and Sons, Inc., State Route 91 in Johnson County

- The Court of Appeals reversed the trial court's decision and found in favor of the State.
- The Court found that while rumble strips might have added some benefit, the State did not have a duty to make the intersection "absolutely safe" and the absence of additional warning measures did not mean that the intersection was a dangerous condition.
- The signage exceeded the standards set forth in the MUTCD and provided motorists ample time to react.



**Thank you**