

COMMONWEALTH OF KENTUCKY
BOARD OF CLAIMS
Consolidated Claim Nos. BC-07-480 & BC-07-487

IN RE: TANA HAYES, by BILLY HAYES, CLAIMANTS
ADMINISTRATOR; and HANNAH GRIFFITH,
by her Next Friend and Guardian
CECIL GRIFFITH

V. RECOMMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER

COMMONWEALTH OF KENTUCKY, RESPONDENT
TRANSPORTATION CABINET,
DEPARTMENT OF HIGHWAYS

* * * * *

This matter is before the Hearing Officer subsequent to a three-part hearing, held April 18, 2013 and May 21, 2013 at the Whitley County Judicial Center in Williamsburg, Kentucky, with the third day held on July 26, 2013 at the Board of Claims Hearing Room in Frankfort, Kentucky. The Claimants have been represented by the Hon. Paul K. Croley II, while the Respondent Cabinet is represented by the Hon. P. Kevin Moore. The claim was reassigned to this Hearing Officer following the resignation of Hearing Officer Eric Lycan. The Hearing Officer, having reviewed the record, depositions, transcripts, and exhibits, and being otherwise sufficiently advised, hereby renders the following Recommended Findings of Fact, Conclusions of Law, and Order:

Findings of Fact

1. The incident related to the consolidated claim was a truly horrific single vehicle collision that took place at approximately 4:50 p.m. on July 5, 2006. Much of what information is known about the crash scene is derived from the testimony, case report, and photographs

provided by the first officer on the scene, David Lennon, a deputy sheriff with the Whitley County Sheriff's Department.

2. Jonathon Taylor was driving his vehicle, a 1993 Honda Civic, east on KY 92, located in Whitley County, Kentucky. KY 92 is a public highway maintained by the Respondent Transportation Cabinet. Also within the vehicle were Taylor's girlfriend, Tana Hayes (age 18) and Tana's cousin, Hannah Griffith (age 14). Tana was seated in the front passenger seat, and Hannah was seated behind Tana. Taylor and the two girls were traveling from a McDonald's restaurant to the home of Tana and Hannah's grandmother, where Tana was then residing. At some point near the intersection of KY 92 and State Highway 904, Mr. Taylor "looked away from the roadway and looked at his girlfriend in the passenger seat and the next thing he knew he was off the road way and struck the guard rail." (Case Report of Officer Lennon, Hearing Transcript 1, Exhibit 12).

3. The struck guardrail contained a "gap" to allow ingress and egress into an adjacent field. The end pieces of each portion of guardrail were turned inward, creating a "knuckle," according to Officer Lennon. (Testimony of Officer Lennon, Hearing Transcript 1, pp. 66-67). Hannah Griffith, one of the occupants of the vehicle, remembers it another way, saying that the guardrail end piece "wasn't bent back or put in the ground, and it was just like a dagger." (Deposition of Hannah Griffith, p. 38). Either way, the result of the impact was catastrophic. Taylor's vehicle struck one of the end pieces of the guardrail in such a way that the guardrail went over the hood and through the windshield and passenger area, effectively impaling the vehicle. (See diagram in the Traffic Collision Report, Hearing Transcript 1, Defendant Exhibit 1, p. 2). In doing so, the guardrail forcibly struck Tana Hayes, causing traumatic amputation of one of her arms, as well as severe head and face trauma. Hannah

Griffith, who was seated behind Tana, had significant injuries, though not as severe as her cousin. Tana and Hannah were flown by EMS to the University of Tennessee Medical Center in Knoxville, where Tana died that evening due to massive blood loss. (Case Report of Officer Lennon, Hearing Transcript 1, Exhibit 12). Hannah suffered from a shattered jaw and eleven lost teeth, a shattered eye socket, and a broken nose, in addition to a burn, cuts and lacerations that resulted in facial scarring. She initially required a tracheotomy, but eventually recovered after several surgeries to repair her face and reconstruct her jaw. (Deposition of Hannah Griffith, pp. 22-24).

4. The roads were wet at the time of the crash. Officer Lennon testifies that it was "a rainy day" and that it was raining very hard when he got the call from dispatch about the incident of this claim. (Testimony of Officer Lennon, Hearing Transcript 1, pp. 14-15). Compounding the problem of wet roads, there is photographic and testimonial evidence that the tires in use on the Taylor vehicle were not only not made for the Honda Civic, but the treads on those tires were also significantly worn. (Deposition of Jonathon Taylor, pp. 14-15). Although it is unknown exactly how fast Mr. Taylor's vehicle was traveling at the moment of the crash, multiple witness reports indicate that Mr. Taylor was traveling at a high rate of speed prior to the accident. Terry Davidson, a resident of Williamsburg, Kentucky, testified that the Honda Civic that turned out to be the Taylor vehicle was "driving way too fast," was "definitely" above 55 miles per hour, and that the engine sounded like "just like those little fast and furious cars." (Deposition of Terry Davidson, pp. 5-6). Another witness, Harry Baird, a resident of LaFollette, Tennessee, told Officer Lennon that just prior to the collision scene, he had been passed by the Honda Civic while he was traveling 45-50 miles per hour, and that the vehicle "passed me like I was standing still." (Case Report of Officer Lennon, Hearing Transcript 1, Exhibit 12).

Deposition testimony by Hannah Griffith, who was a passenger in the vehicle, also indicates that the vehicle was traveling "... a little too fast for the conditions." (Deposition of Hannah Griffith, p. 35).

5. Two experts testified in this case: Joseph Stidham for the Claimant, and Quinton Smith for the Respondent Cabinet. Mr. Stidham is a former Kentucky State Trooper, who served the Commonwealth in that capacity for 8 years. During his time as a state trooper, he received his Bachelor's of Science in police studies from Eastern Kentucky University and then extensive training in traffic collision reconstruction from the Institute of Police Technologies and Management at the University of North Florida. He performed accident reconstructions as a state trooper from 1996 through 1998. Mr. Stidham then struck out on his own, forming "Stidham Reconstruction and Investigation," where he has worked for the last 15 years and employs 6 people, performing accident reconstructions as a private enterprise for either plaintiffs or defendants. Mr. Stidham has approximately 1100 hours of continuing education in the area of reconstruction. He has performed thousands of collision reconstructions over the last 22 years, both as an employee of the Commonwealth and as a private business. (Testimony of Joseph Stidham, Hearing Transcript 3, pp. 5-7, 69-70).

6. Although not an engineer, Mr. Stidham has had training by law enforcement as well as engineers in the field of accident reconstruction. (Testimony of Joseph Stidham, Hearing Transcript 3, p. 37). When asked to define his field of study, Mr. Stidham replied that "[i]t is an in-depth study into the causation of a traffic collision in 3 areas; environmental, human, and mechanical. And to decide in those 3 broad areas why a traffic collision occurred and why injuries occurred." (Testimony of Joseph Stidham, Hearing Transcript 3, p. 33). Mr. Stidham's opinion is that the cause of the collision was driver inattention, but the cause of the injuries was

the guardrail. (Testimony of Joseph Stidham, Hearing Transcript 3, p. 28). If the guardrail had not been in that location, Mr. Stidham believes that Tana would not have been injured, as the car would have "dropped off the roadway, went into a field and come to a stop." (Testimony of Joseph Stidham, Hearing Transcript 3, pp. 11, 28).

7. Mr. Stidham also testified that there were three things wrong with the guardrail itself: (1) it was too high for the roadway, (2) it did not end correctly, and (3) the guardrail was split in the middle to allow ingress / egress to the neighboring field. (Testimony of Joseph Stidham, Hearing Transcript 3, p. 14). Mr. Stidham, explaining, stated that (2) and (3) actually talk about the same thing -- the guardrail had an "end piece" that allowed the guardrail to impale the Taylor vehicle. With a different style of end treatment, or if there had not been a break in the guardrail at all, this guardrail would have been safer. (Testimony of Joseph Stidham, Hearing Transcript 3, pp. 26-27). The alternatives Mr. Stidham mentioned included curving the end piece inward into the ground, or possibly using "I-metal" or "I-channel" steel that would disallow the possibility of penetrating a vehicle. (Testimony of Joseph Stidham, Hearing Transcript 3, p. 26).

8. Mr. Stidham's explanation as to the height of the guardrail being a problem bears special mentioning as well. Mr. Stidham points out that the standard height for a guardrail is 23 inches from the pavement to the middle of the beam. Although the guardrail in question here was replaced by the Commonwealth, the replacement guardrail is installed in what Mr. Stidham reasonably believes to be the same spot -- a grassy shoulder that drops *lower* than the level of the pavement, by about 10 inches. (See photographs of Claimant's Exhibits 4, 5, 6, as well as Exhibit 7, which shows the collision scene with the guardrail in the grassy shoulder). So when a vehicle drops off the side of the road, "the guardrail system [is] actually up in the level of the windshield." Mr. Stidham also testifies that photographs of the accident scene show an

undamaged section of guardrail actually going over the hood of the car. (Testimony of Joseph Stidham, Hearing Transcript 3, pp. 15, 21-22).

9. The expert for the Respondent is Quinton Smith, an engineer employed by the Cabinet at the maintenance garage in London, Kentucky. Mr. Smith has a Bachelor's of Science in Civil Engineering from the University of Kentucky, as well as a professional engineering license for the state of Kentucky. In addition, he has taken additional courses in roadside design and guardrail training, and has worked for private engineering firms before joining the Cabinet as a design engineer. His current title is "transportation engineering supervisor." (Testimony of Quinton Smith, Hearing Transcript 3, pp. 89-91).

10. Mr. Smith points out that the guardrail treatment where the ends turn down into the ground (Type 7 or "Texas twist") is no longer used, because it may launch a vehicle striking it, or else the end pieces break down. (Testimony of Quinton Smith, Hearing Transcript 3, p. 104). Mr. Smith also points out that the current standard for the height of a guardrail is 2 inches higher than what Mr. Stidham was referring to. (Testimony of Quinton Smith, Hearing Transcript 3, pp. 94-95). Mr. Smith asserts that there is no record of anyone calling the Cabinet regarding defective guardrail in this area prior to the accident, and that updates and maintenance of guardrail is done as funds become available for that purpose. (Testimony of Quinton Smith, Hearing Transcript 3, p. 100-102).

11. Mr. Smith also disputes Mr. Stidham's assertions with regard to a few other technical matters. Mr. Stidham testified that speed was not a factor in the accident, but it was more a matter of the vehicle leaving the road and striking the guardrail in the particular way it did. (Testimony of Joseph Stidham, Hearing Transcript 3, pp. 65-66). Mr. Smith, on the other hand, asserts that speed was a factor, based on Officer Lennon's report, as well as the worn tires

on the vehicle. (Testimony of Quinton Smith, Hearing Transcript 3, pp. 106, 110-111). Mr. Smith admits on cross-examination, however, that he has no training in accident reconstruction, nor has he ever reconstructed an automobile accident. His training is limited to engineering principles. (Testimony of Quinton Smith, Hearing Transcript 3, p. 116-17). On the essential issue, Mr. Smith agrees with Mr. Stidham: that the primary cause of the accident was with the driver. (Testimony of Quinton Smith, Hearing Transcript 3, p. 138).

12. Damages in this case were somewhat simplified by the fact that hospitalization and other medical expenses for both of the injured Claimants were covered by Kentucky Medicaid. (Testimony of Billy Hayes, Hearing Transcript 2, p. 13; Deposition of Hannah Griffith, p. 32). Hannah Griffith continues to have difficulties as a result of the collision. She has breathing difficulties, and cannot drive at night because of impaired vision. (Deposition of Hannah Griffith, p. 25). Her impaired vision also makes it difficult to find suitable employment. (Deposition of Hannah Griffith, pp. 27-30). However there is no expert testimony regarding damage to future employment. She has an unpaid bill of approximately \$500 from removal of a tumor that grew in one of her scars. (Deposition of Hannah Griffith, pp. 31-32). Offsetting payments from State Farm insurance include \$10,000 in PIP payments and an underinsured motorist benefit of \$25,000. Collateral offset payments by Kentucky Medicaid for Hannah Griffith amounted to at least \$19,896.87. (See Interrogatory Answer No. 6 for Hannah Griffith.) Thus total offsets are approximately \$55,000, which is well over the amount of proven damages in the record for Ms. Griffith.

13. Damages for the deceased Tana Hayes involve another calculation, however, as there is deprivation to her estate of a lifetime of working income. Billy Hayes, the administrator of the estate and Tana's father, testified and tendered a document entitled: "Tana Hayes: Destruction of

Future Earnings Potential." (Testimony of Billy Hayes, Hearing Transcript 2, p. 16; Claimant Exhibit Day 2 No. 1). This document illustrates that, as Tana was only 18 at the time of her death, she might have made \$703,308.00 over the course of her working lifetime, even if she only made minimum wage. (*Id.*) If she had gone to college, as seemed likely at the time of her death, then her income conservatively estimated at \$25,000 per year, may have resulted in a lifetime income of \$975,000.00. (*Id.*) Opposing counsel objects to entry of the document, as it had not been prepared by an expert. Other expenditures by the estate include \$7,082 in funeral expenses, but no headstone yet as of the time of the hearing. (Testimony of Billy Hayes, Hearing Transcript 2, p. 12.) The estate also made a claim to State Farm Insurance for \$25,000, of which the estate actually received approximately \$7,000. (Testimony of Billy Hayes, Hearing Transcript 2, p. 25). Kentucky Medicaid paid approximately \$17,576.89 to various medical providers, while State Farm also paid a funeral benefit amounting to \$1000.00 to the estate. (See Interrogatory Answer No. 6 for the Estate of Tana Hayes.) Total offset for Tana Hayes sums up to approximately $\$7,000 + \$17,576.89 + \$1000.00 = \$25,576.89$. This is well below what the Claimant would have made over a working lifetime, even at minimum wage.

II. Conclusions of Law

1. The Board of Claims has jurisdiction of the parties and the subject matter of this claim and is authorized to render a decision in this matter pursuant to the statutes establishing the Board of Claims, its authority and powers. (KRS 44.070 et seq.)

2. The Legislature, by virtue of KRS 44.070(1), as amended, has empowered the Board of Claims to,

[c]ompensate persons for damages sustained to either person or property as a proximate result of negligence on the part of the Commonwealth, any of its cabinets, departments, bureaus or agencies, or any of its officers, agents, or

employees while acting within the scope of their employment by the Commonwealth or any of its cabinets, departments, bureaus or agencies;

3. KRS 44.071(1), as amended, is a waiver of the Commonwealth's sovereign immunity, and is limited by KRS 44.120, which provides the following:

An award shall be made only after consideration of the facts surrounding the matter in controversy, and no award shall be made unless the board is of the opinion that the damage claimed was caused by such negligence on the part of the Commonwealth or its agents as would entitle claimant to a judgment in an action at law if the state were amenable to such action.

4. The Claimant is entitled to recover compensation for all injury or damage which is the natural and probable consequence of the Respondent's wrongful act. *Lexington-Fayette Urban County Government v. Middletown*, 555 S.W.2d 613, 618 (Ky. 1977). "To establish actionable negligence on the part of the Department of Highways, a claimant must establish: (1) a duty on the part of the Department; (2) a breach of that duty; and (3) consequent injury. The absence of any one of the three elements is fatal to the claim." *Com. Transp. Cabinet Dept. of Highways v. Shadrick*, 956 S.W.2d 898, 900 (Ky. 1997) (citations omitted).

5. The Supreme Court of Kentucky has previously indicated that the Transportation Cabinet, as the public authority with control over the highways "... has a duty to keep [the highways] in a reasonably safe condition for travel, to provide proper safeguards, and to give adequate warning of dangerous conditions in the highway." *Commonwealth Dept. of Highways v. Automobile Club Ins. Co.*, 467 S.W.2d 326, 328 (Ky. 1971). Furthermore, where the Cabinet knows or should have known of a dangerous condition and fails either to remedy the condition or warn the traveling public of the danger, it is liable for foreseeable loss. *Commonwealth Dept. of Highways v. General & Excess Ins. Co.*, 355 S.W.2d 695, 697-98 (Ky. 1962).

6. However, the Transportation Cabinet is not an insurer against accidents from defects or dangerous conditions on a public road, but its duty is merely that of a private

corporation to exercise ordinary care to prevent injury from defects in the highway. *Shrader v. Commonwealth et al.*, 218 S.W.2d 406, 408 (Ky. 1949).

7. The Kentucky Supreme Court, in *Commonwealth v. Babbitt*, 172 S.W.3d 786, 794-95 (Ky. 2005) states that "[t]he exercise of due care by highway authorities may require them to safeguard dangerous places by barriers or guardrails, but only where their absence renders the highway unsafe for travel or the road presents an extraordinary hazard." Furthermore, "[t]he due care owed to motorists by the highway authorities may require the safeguarding of a dangerous place by the construction and maintenance of suitable barriers, guard rails or fences. While the failure to erect a barrier might not cause the accident, such a failure might be a substantial factor in aggravation of the injuries and, in that event, with proof of causation and negligence, the State will be liable." *Id.* at 795.

8. Both sides made objections to the expert testimonies in this case. Claimants argued that Mr. Smith did not have the requisite expertise to comment on the likely cause of the accident, as he is not an accident reconstructionist. Respondents argued that Mr. Stidham did not have the requisite expertise to comment on the guardrail system, as he is not an engineer. Experts are those with "knowledge, skill, experience, training [and] education," *Gorman v. Hunt*, 19 S.W.3d 662 (Ky. 2000), citing KRE 702. Experts are there to "assist the trier of fact to understand or determine a fact in issue." *Mitchell v. Commonwealth*, 908 S.W.2d 100 (Ky. 1995), overruled on other grounds by *Fugate v. Commonwealth*, 993 S.W.2d 931 (Ky. 1999).

With that in mind, this Hearing Officer believes that both experts were valuable in the understanding of the facts, but Mr. Stidham was particularly helpful and convincing. It is established law in Kentucky that police officers may provide expert testimony in their areas of training and experience. *Allgeier v. Commonwealth*, 915 S.W.2d 745 (Ky. 1996). Furthermore,

accident reconstruction is a traditional area of expertise. *Id.* Mr. Stidham has extensive experience as a police officer and as a reconstruction expert. The Cabinet's objection to Mr. Stidham regarding guardrails is not well-founded. If Mr. Stidham were being asked to design a guardrail, then yes, one would prefer him to be an engineer. But speaking about the guardrail's role in preventing (or causing) accident-related injuries is within his purview. Mr. Smith agreed with Mr. Stidham that driver error was at fault here. But Mr. Stidham rightly pointed out in his testimony that the cause of the collision is quite distinct from the cause of the injuries, and the evidence indicates that, more likely than not, the guardrail suffered from a number of flaws that contributed to the catastrophic injuries suffered here. With regard to the issues of duty and breach, the duty under *Automobile Club* to keep the highways in "reasonably safe condition for travel" was violated in this case by a guardrail, built and maintained by the Respondent, that did not act as a guardrail should. Mr. Stidham bluntly pointed out its failings under cross-examination: "In this case, the way it [the guardrail] was designed, the guardrail actually went through the windshield, which it is never designed to do, and killed a lady." (Testimony of Joseph Stidham, Hearing Transcript 3, p. 49). The point is well made. *Babbitt, supra*, points out that mere **omission** of a guardrail may cause "a substantial factor in aggravation of the injuries," under which the state may be liable. Here, the guardrail's role in causation of injury is even more apparent.

The question of damages is somewhat simplified by the absence of outstanding medical bills, but complicated by the absence of expert testimony regarding earning power over the course of a working lifetime. There is no evidence regarding to what degree Hannah Griffith has been impaired by the collision that happened when she was a mere 14 year old. That she continues to suffer is not disputed, but pain and suffering are not compensable under the Board

of Claims Act. KRS 44.070(1). In addition, she has received insurance and Medicaid payments that, due to the collateral offset provision in the Board of Claims Act, completely offset any minor payments she might otherwise receive, for the tumor removed from her scar, for example. KRS 44.070(1).

Damages for Tana Hayes, on the other hand, involve the wrongful death calculation for a lifetime of work that her estate would ordinarily receive. The report prepared by the Claimant does not involve the report of an expert witness, and so the figure that incorporates the value of a college education that had yet to be achieved is not an appropriate baseline. However, this Hearing Officer will accept that the minimum wage is an appropriate place to start a calculation.

With the foregoing in mind, a recommended a breakdown of comparative fault and damages in this case as follows: Driver fault: 85%. Respondent Cabinet fault: 15%. Damages for Hannah Griffith: None / offset by collateral payments. Proven damages for the Estate of Tana Hayes: \$703,308 (working lifetime) + \$7082 (funeral) = \$710,390. Fifteen percent of that amount is \$106,558.50. Minus offsets from above, Findings of Fact para. 13 (\$25,576.89), the final total for the Respondent equals \$80,981.61.

III. Recommended Order

BASED UPON THE FOREGOING, it is hereby recommended that the Respondent, Commonwealth of Kentucky Transportation Cabinet, be held not liable for damages to Hannah Griffith, and liable for \$80,981.61 to the Estate of Tana Hayes.

IV. Notice of Appeal Rights

A. Administrative Appeal Rights:

Pursuant to 108 KAR 010, Section 3(16), any aggrieved party to this claim has a right to file Exceptions to this Recommended Order. If a party disagrees with some aspect of this

Recommended Order that could impact the potential outcome, this right may be asserted. In the event that either party decides to exercise this right, it must be in writing and submitted to the Board (with a copy to the Hearing Officer) no more than fifteen (15) calendar days from the date this Recommended Order is mailed. Specific reasons for disagreement with the Recommended Order must be provided in the filed Exceptions, along with citations to any documentation, witness statements, testimony, or any other evidence presented at the administrative hearing, if one was held. Extensions of time to file the Exceptions may be granted by the Board upon an agreed order by the parties or for good cause shown, in accordance with 108 KAR 010, Section 3(16)(e).

Please be advised that this Recommended Order is not a final decision by the full Board of Claims. A Final Order will be rendered after the aggrieved party has had an opportunity to file Exceptions. At the next regularly scheduled meeting, the Full Board will then take into account the Recommended Order, along with any Exceptions that may have been filed, when it considers and renders its final decision.

B. Appeals to Circuit Court

Pursuant to KRS 44.140, an award or judgment of the Board may be appealed by filing a petition for judicial review in the Circuit Court with venue, in accordance with KRS 44.084, within forty-five (45) days from the Final Order. Therefore, only after the full Board renders a Final Order in this matter may the aggrieved party appeal to the Circuit Court with proper appellate jurisdiction.

IT IS SO RECOMMENDED this the 26th day of November, 2013.

Respectfully submitted,



BRAXTON CRENSHAW
Hearing Officer, Board of Claims
121 Constitution Street
Lexington, Kentucky 40507
(859) 259-140

BOARD'S CERTIFICATE OF SERVICE

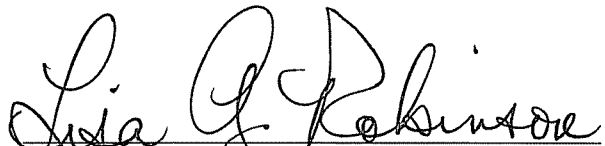
This is to certify that a true and accurate copy of the foregoing was served via first-class mail, postage prepaid, this 17 day of December, 2013, to the following:

Hon. Braxton Crenshaw
Hearing Officer
121 Constitution Street
Lexington, Kentucky 40507

Hon. P. Kevin Moore
Transportation Cabinet
200 Mero Street
Frankfort, Kentucky 40622

Hon. Paul Croley
Croley & Associates, Attorneys at Law
106 2nd Street
Lexington, Kentucky 40507

BY:



Lia Q. Robinson
CLERK, BOARD OF CLAIMS

COMMONWEALTH OF KENTUCKY
BOARD OF CLAIMS
CLAIM NOS. BC-2007-480 and BC-2007-487

ESTATE OF TANA HAYES by Billy Hayes,
Administrator; and HANNAH GRIFFITH,
by Cecil Griffith, Next Friend

CLAIMANTS

VS.

FINAL ORDER

COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS

RESPONDENT

* * * * *

The Claimants, the Estate of Tana Hayes and Hannah Griffith, filed this claim with the Board of Claims alleging negligence by the Commonwealth that caused damages on or about July 5, 2006. A three-part hearing in this matter was conducted by the Board of Claims in Whitley County between April 21 and July 26, 2013.

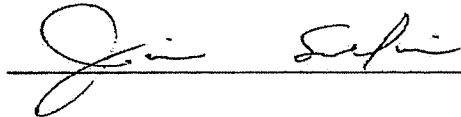
Hearing Officer Braxton Crenshaw issued a Recommended Order and the full Board of Claims, having provided all parties notice and an opportunity to file any exceptions to the recommendation, and having considered same, and having been sufficiently advised, hereby **ACCEPTS** the Recommended Order of the Hearing Officer and **ADOPTS** it as the agency's Final Order.

IT IS THEREFORE ORDERED AND ADJUDGED that the Estate of Tana Hayes' request for payment of damages is **GRANTED** for the reason(s) set forth in the Recommended Order submitted by Hearing Officer Braxton Crenshaw. The amount of \$80,981.61 will be paid directly to the Claimant, the Estate of Tana Hayes.

IT IS FURTHER ORDERED AND ADJUDGED that the Claimant Hannah Griffith's request for payment of damages is **DENIED** for the reason(s) set forth in the Recommended Order.

This is a Final Order and may be appealed pursuant to KRS 44.140(1) and KRS 44.140(2). In the event that an appeal is taken from this decision, the Board is a necessary party to the appeal. Although it generally does not file responsive pleadings in appealed cases, counsel for the Board enters an appearance into the record so that the Board may be advised of progress in appealed cases. KRS 44.140(3).

SO ORDERED this 16th day of January, 2014.



James F. Sullivan, Chair
Board of Claims

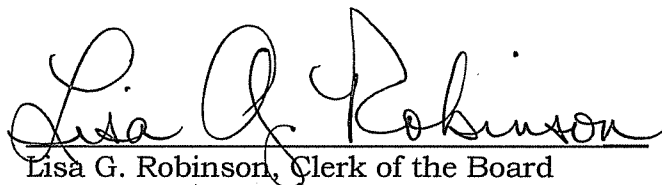
CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing Final Order was mailed first class, postage prepaid to the following on this 16 day of January, 2014:

Hon. Braxton Crenshaw
121 Constitution St.
Lexington, KY 40507

Paul Croley, Esq.
Croley & Associates
106 2nd St.
Lexington, KY 40507

P. Kevin Moore, Esq.
Transportation Cabinet
Office of Legal Services
200 Mero St.
Frankfort, KY 40622



Lisa G. Robinson, Clerk of the Board
Board of Claims

It should be noted that the check will be mailed from the Respondent. The Claimant should receive a check within thirty (30) days from the date of this Order. Pursuant to 108 KAR 1:040, Section 1, a copy of the check or the check transmittal shall be mailed to the Board by the Respondent.