

October 2020
MPT-1 File

Klein v. State of Franklin

Law Offices of Bunke & Huss
600 Center Street, Suite 210
Franklin City, Franklin 33113

MEMORANDUM

To: Examinee
From: George Bunke
Date: September 30, 2020
Re: Janet Klein matter

Janet Klein met with me last week about a potential claim she has against the State of Franklin for the actions of Randall Small as a State employee, for injuries Ms. Klein suffered in a car accident at the Franklin State Fairgrounds on May 23, 2020, the Saturday of Memorial Day weekend. As you know, governmental entities and governmental employees typically cannot be sued because of sovereign (or governmental) immunity. In Franklin, the Franklin Tort Claims Act waives sovereign immunity in certain circumstances. The Franklin Tort Claims Act also provides specific notice requirements for bringing suit against a governmental entity. If the State did not receive notice within the required time frame, Ms. Klein cannot pursue a claim against the State or Mr. Small.

I would like you to prepare an objective memorandum to me analyzing two issues:

1. Is the State of Franklin protected from liability in this case by sovereign immunity?
2. Did the State of Franklin receive sufficient notice as required by the Franklin Tort Claims Act?

You should address both issues in your memorandum regardless of your conclusion as to each one. For each issue, be sure to explain your analysis, cite relevant legal authority, and state your conclusion. Do not include a separate statement of facts, but be sure to incorporate the relevant facts, analyze the applicable legal authorities, and explain how the facts and law affect your analysis.

Because Mr. Small is a State employee, the State of Franklin is vicariously liable for any negligence committed by Mr. Small in the scope of his employment. For purposes of your memorandum, assume that Mr. Small was negligent and acting within the scope of his employment and that if the State is found to have waived its immunity, his negligence will be imputed to the State.

SENT BY CERTIFIED MAIL

August 30, 2020

Janet Klein
512 Lake Ave.
Franklin City, FR 33105

Risk Management Division
State of Franklin Office Building
448 Central Ave.
Franklin City, FR 33113

To Whom It May Concern:

I am writing to give you official “notice” that I will be suing the State of Franklin for injuries I suffered in a three-car collision at the Franklin State Fairgrounds while exiting after the Hopps Rodeo. This tragic accident resulted from the State’s negligence. My car was simultaneously hit by two other cars—one car rear-ended mine and the other hit my passenger-side rear door. Because of the accident, I suffered a serious back injury and a broken wrist. My 2017 Toyota Corolla was damaged. I had to pay the \$500 auto insurance deductible to have it repaired. I also missed three weeks of work due to my injuries. I am a physical therapist and could not provide full therapy services because of my back and broken wrist. I have not been able to engage in my usual activities—running errands, visiting with family, horseback riding, and participating in my kick-boxing classes—because of this incident. I have incurred \$57,500 in expenses for my lost income, my medical expenses, and my auto insurance deductible. I demand to be compensated for these expenses and the pain that I suffered.

The Hopps Rodeo is the most well-attended event at the annual State Fair. This year it was on the Memorial Day weekend, making it especially popular. In fact, the rodeo was sold out! At the time of the accident, the fairgrounds had only ONE exit available. All the parking spots in the fairgrounds parking lot channeled onto a single dirt road that then funneled all the cars to this ONE exit. There should have been more lanes for traffic and more exits—especially for the rodeo. The State should have known that an accident like this was going to happen. Randall Small, the parking supervisor who runs that parking lot, is a real dingbat. Small and his employees should have opened at least one other exit after the rodeo. I attend the Hopps Rodeo

every year, and the traffic after the rodeo is always total chaos. It was only a matter of time before something like this happened. Shame on you. The State is supposed to protect its citizens.

I will be hiring a lawyer soon. See you in court.

Sincerely,

A handwritten signature in black ink that reads "Janet Klein". The script is cursive and fluid, with the first letters of "Janet" and "Klein" being capitalized and prominent.

Janet Klein

cc: Randall Small, Director of Parking Facilities

STATE OF FRANKLIN TRAFFIC COLLISION REPORT

REPORT NO. 5729

CITY: Franklin City
LOCATION: Franklin State Fairgrounds, near the NashTel Arena
DATE AND TIME: May 23, 2020, 10:58 p.m.
OFFICER ID: Police Officer Chad Silversmith, Badge #45622

PARTY 1: Janet Klein, 512 Lake Ave., Franklin City, FR 33105, 2017 Toyota Corolla
Injured? Yes, Ms. Klein complains of wrist pain
Property damage? Yes, to rear bumper, rear, and passenger side of car

PARTY 2: Roger Akin, 222 Holly St., Franklin City, FR 33113, 2010 Chevy Suburban
Injured? No
Property damage? Yes, to front driver's-side bumper

PARTY 3: Sean Grant, 210 7th St., Apt. 5, Franklin City, FR 33145, 2019 MINI Cooper
Injured? No
Property damage? Yes, to front bumper and hood of car

NOTES: I arrived approximately 10 minutes after the collision. Witnesses and parties to the collision reported the same facts. All three parties had been driving toward the fairgrounds exit. Party 1 was driving on the main gravel road toward the Lomas Boulevard exit. An unknown driver's vehicle pulled in front of Party 1's vehicle as Party 1 was approximately 100 feet from the exit. Party 1 braked quickly to avoid rear-ending the unknown driver's vehicle. Party 2, who had been turning from a parking spot onto the main gravel road, then collided with the passenger-side rear door of Party 1's vehicle. Party 3 simultaneously collided with Party 1's vehicle directly from behind. Party 3 was driving on the main road toward the exit, directly behind Party 1, when the accident occurred. The unknown driver immediately left the scene. Witnesses reported that none of the parties were driving at an unreasonable speed. When I arrived, Party 1 was yelling expletives at Party 2 and Party 3 and gesticulating wildly. Party 1 then turned to me and yelled, "You need more than one exit here. Whoever runs this parking lot is an idiot. The State will pay for this!"

I certify under penalty of perjury under the laws of the State of Franklin that the foregoing is true.



Officer Chad Silversmith, Badge #45622
May 23, 2020

Law Offices of Bunke & Huss
600 Center Street, Suite 210
Franklin City, Franklin 33113

MEMORANDUM

To: George Bunke
From: Ernest Thomas, investigator
Date: September 28, 2020
Re: Janet Klein matter

Per your request, I have obtained more facts about the incident at the Franklin State Fairgrounds involving Janet Klein. I will continue my investigation, but this is the information I have obtained thus far. Please note the attached email correspondence with Randy Small, the State parking supervisor who manages the parking lots at the fairgrounds.

Parking Lots at the State Fairgrounds

I visited the fairgrounds yesterday at noon to inspect the scene of the collision. There are two parking lots at the fairgrounds. Lot A is adjacent to the area where the rides, booths, and tents are erected during the State Fair. The other parking lot, Lot B, is adjacent to the NashTel Arena, where concerts and events are held. The arena has 6,000 seats.

Lot B, where the accident occurred, is a 70,000-square-foot gravel parking lot. It accommodates 5,000 vehicles. There are two possible exits from Lot B:

—**Lomas Boulevard exit:** This is a paved exit and was the only exit open on May 23, 2020, the day of the accident.

—**Central Avenue exit:** This is also a paved exit. However, this exit is barricaded by galvanized steel barriers. While heavy and substantial, these barriers are not affixed to the ground and could be moved if desired.

There is one gravel roadway through the center of Lot B that leads to the Lomas Boulevard exit. This gravel roadway also leads, at its other end, to the Central Avenue exit, which could be used by removing the barriers. To exit the parking lot, one must drive down this roadway to the Lomas Boulevard exit.

I visited the fairgrounds again last night. The NashTel Arena was hosting a country music concert, and I wanted to see if Lot B was being operated in the same manner as it had been during

my daytime visit. Again there was only one exit available, the exit onto Lomas Boulevard. The exit onto Central Avenue was still barricaded.

State Parking Lot Employees

While I was there last night, I spoke to several State employees who work for the State's parking bureau at the fairgrounds and have worked during large events in the past. I first spoke to Edward "Ed" Cranston. Mr. Cranston reported that he was working in the parking lot on May 23, the night of the collision involving Janet Klein. He said he was nearby when the collision occurred, saw the collision, and remembers Janet Klein yelling. He reported that he was certain that only one exit was operational that night, and that it was the exit to Lomas Boulevard. He said that the exit to Central Avenue has been barricaded since he started working for the parking bureau two years ago. He went on to say that he has repeatedly told his supervisor, Randy Small, that the barricades should be moved so that the Central Avenue exit can be used.

I spoke to Emma Moore, who is also employed by the State parking bureau and who works as an attendant when there are big events at the NashTel Arena. Ms. Moore confirmed that the barrier blocking the exit to Central Avenue has been in place "for years." She said that she thinks that the accident was the result of her supervisor's (Randy Small's) negligent supervision of her team and the parking lot operations. She told me that numerous staff members have expressed safety concerns about having only one exit in Lot B and that she personally warned Mr. Small that this would cause an accident. Ms. Moore said that Mr. Small is a "terrible supervisor" and is "super lazy." She said that she has considered asking her coworkers to help her move the barricades blocking the Central Avenue exit, but that she knows she is not allowed to do so without her supervisor's permission.

State Ownership of the Property

I confirmed that NashTel Arena, the fairgrounds, and the surrounding parking lots are owned by the State of Franklin.

Attachment

Email correspondence between Ernest Thomas and Randy Small

To: Randall Small <randallsmall@parking.franklin.gov>
From: Ernest Thomas <ethomas@bunkehuss.com>
Date: September 27, 2020, 2:30 p.m.
Subject: Accident at Franklin State Fairgrounds

Dear Mr. Small,

I am an investigator with the Bunke & Huss law firm, which has been retained by Ms. Janet Klein. I am investigating a three-car collision that occurred in the Franklin State Fairgrounds parking lot after the Hopps Rodeo on May 23, 2020. The collision involved Ms. Janet Klein, Mr. Roger Akin, and Mr. Sean Grant. I would like to meet with you to discuss the incident. If a lawyer is representing you or the State in this matter, please inform them of my inquiry, pass this request along, and have them call me. Otherwise, let me know of your availability.

Sincerely yours,
Ernest Thomas

To: Ernest Thomas <ethomas@bunkehuss.com>
From: Randall Small <randallsmall@parking.franklin.gov>
Date: September 27, 2020, 4:15 p.m.
Subject: RE: Accident at Franklin State Fairgrounds

Mr. Thomas,

I received your email. I remember that accident and was there on-site when it happened. That lady Janet Klein was yelling at the police officer and threatening to sue the State. I received a copy of the State of Franklin Traffic Collision Report the week after the incident. Therefore, I am unwilling to meet with you unless I have a lawyer present. I operate a safe parking lot at the fairgrounds, and my employees do a good job. I have been the director of that parking lot for nine years. I know what I'm doing.

Randy Small
Director of Parking Facilities