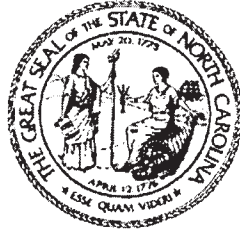


Pat McCrory, Governor
Andrew T. Heath, Chairman



Charlton L. Allen, Commissioner
Bernadine S. Ballance, Commissioner
Linda Cheatham, Commissioner
Danny L. McDonald, Commissioner
Tammy R. Nance, Commissioner

North Carolina Industrial Commission

November 10, 2014

Mr. James L. Conner II
Calhoun, Bhella & Sechrest, LLP
Attorneys at Law
4819 Emperor Blvd. Suite 400
Durham, North Carolina 27703

Re: Docket TA-24610, Cape Hatteras Motel, Inc., Vernon Davis Dawson, Jr., and Carol Dawson v. The North Carolina Department of Transportation, *et al*

Dear Mr. Conner:

This will acknowledge receipt of the above-referenced claim under the Tort Claims Act. A copy of this claim, along with a copy of this letter, is being forwarded to the offices indicated below and to the Attorney General's Office.

The Attorney General's Office will decide whether or not the Agency or Board is legally liable and whether voluntary settlement can be made. If liability is denied, the Attorney General's Office will file an answer on behalf of the Agency or Board within thirty (30) days, as required by law. Except as modified by the Tort Claims Act and the Commission's Tort Claim Rules, the Rules of Civil Procedure are applicable to Tort Claims before the Industrial Commission as in the General Court of Justice.

Upon receipt of a response from the Attorney General's Office, your case will be placed on the next available pre-trial hearing docket. At the pre-trial hearing, any Motions to dismiss will be addressed and, if applicable, a discovery schedule will be applied to your case. The claim will thereafter be placed on a hearing docket in accordance with the schedule that is determined at the pre-trial hearing.

Sincerely,

Linda D. Langdon
Docket Director

cc: North Carolina Department of Transportation
North Carolina Department of Justice (Tort Claims)

STATE OF NORTH CAROLINA

BEFORE THE NORTH CAROLINA
INDUSTRIAL COMMISSION
FILE NO. _____

DARE COUNTY

CAPE HATTERAS MOTEL, INC.,)
VERNON DAVIS DAWSON, JR., and)
CAROL DAWSON,)

Plaintiffs,)

v.)

THE NORTH CAROLINA DEPARTMENT)
OF TRANSPORTATION, EUGENE A.)
CONTI, JR., in his capacity as Secretary of)
the Department of Transportation,)
ANTHONY J. TATA, in his capacity as)
Secretary of the Department of)
Transportation, and JERRY JENNINGS,)
P.E., in his capacity as Regional Engineer for)
the Department of Transportation,)

Defendants.)

**TORT CLAIMS ACT
CLAIM AND AFFIDAVIT**

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NORTH CAROLINA
INDUSTRIAL
COMMISSION

NOW COME Plaintiffs to make this Claim and Affidavit against Defendants, pursuant *inter alia* to the Tort Claims Act, N.C.G.S. Chapter 143, Article 3, averring as follows:

PARTIES AND JURISDICTION

1. Plaintiff Cape Hatteras Motel, Inc. is a North Carolina corporation with its principal place of business in Buxton, Dare County, North Carolina.
2. Plaintiff Vernon Davis (Dave) Dawson, Jr. is a citizen and resident of Dare County, North Carolina, and is an owner and officer of Cape Hatteras Motel, Inc.
3. Plaintiff Carol Dawson is a citizen and resident of Dare County, North Carolina and is married to Dave Dawson.
4. Defendant the North Carolina Department of Transportation ("NCDOT") is a department or agency of the State of North Carolina.

5. Defendant Eugene A. Conti, Jr. is a citizen and resident of the State of North Carolina and was Secretary of NCDOT at times relevant to this claim.

6. Defendant Anthony J. Tata is a citizen and resident of the State of North Carolina and is and was Secretary of NCDOT at times relevant to this claim.

7. Defendant Jerry Jennings, P.E. is a citizen and resident of the State of North Carolina and was Division Engineer of NCDOT for the area that includes Buxton and Hatteras Island at times relevant to this claim.

8. This action is being filed within all applicable statutes of limitation and repose, and all conditions precedent have been met.

9. The Industrial Commission has jurisdiction over the subject matter of this dispute and the parties to this action.

FACTS

10. Carol Dawson's ancestors came to Hatteras Island in the seventeenth century, when they were shipwrecked there. For over 300 years, her family has lived and made its living on and around Hatteras Island.

11. For over 40 years, Dave and Carol Dawson have owned and run the Cape Hatteras Motel. They are hands-on owners, checking guests in, paying the bills, and spending long hours doing the hard work of running a coastal motel.

12. NCDOT built, owns, maintains, and operates highway N.C. 12, which runs the length of Hatteras Island.

13. For the past several years, NCDOT has (upon information and belief) contracted with, or at minimum authorized, the U.S. Army Corps of Engineers to dredge the area around

and under the Bonner Bridge, which spans Oregon Inlet. This dredging has interrupted the littoral flow of sand down the length of Hatteras Island from north to south, starving the beaches in and near Buxton of sand and causing the beaches to recede. The natural processes at work on a barrier island give and take sand, but in natural conditions the sand washed away by wave action is replaced by new sand arriving via littoral flow. The interruption of littoral flow caused by dredging can be mitigated by placing the dredged material on the downstream side of the inlet so that it can continue down the coast to renourish beaches, like the one at Buxton, to the south. The NCDOT failed to specify this method of dredging, and has refused to require this sand replacement, instead allowing the sand to be dumped in deep water where it will not flow down the coast. This is despite clear and readily available science explaining the above processes, the advice of scientists on NCDOT advisory committees, and clear and persistent requests from Plaintiffs and many others.

14. As the beaches have eroded, due to NCDOT's negligence regarding the dredging process, N.C. 12 has been threatened and damaged by the ocean. Rather than correcting the cause of the erosion and allowing the beaches to rebuild, thereby protecting both N.C. 12 and Hatteras Island property owners, NCDOT bulldozed sand on the beaches just north of Buxton into long, tall dune-dikes parallel to the ocean shore. NCDOT ended these dune-dikes just north of the Cape Hatteras Motel. Therefore, NCDOT not only failed to protect the Motel and the Town of Buxton, but it actually redirected the force and flow of water into the Motel property. The storm waters collide with the dune-dikes and flow along the dune-dikes until they find an outlet—an outlet directly into the Cape Hatteras Motel. NCDOT has redirected storm energy directly into the Motel property. Storm waters redirected by the dune-dikes have destroyed cars in the parking lot of the Motel, severely damaged the Motel itself, washed hundreds of tons of

sand into the parking lot and under the Motel (which is elevated on stilts), and forced the evacuation of the Motel, even when the rest of the island is only mildly affected. This has occurred on at least fourteen (14) days this year, including on the following dates, among others: January 4, March 7, March 18, April 20, July 3-4, August 27, October 2-3, and November 2-3, 2014. It has also occurred on many other dates stretching back over the past several years.

15. To make matters worse, NCDOT raised the roadbed of N.C. 12 where it bisects the Motel property, so that when storm waters surge across the road, they are trapped behind the dam formed by the raised roadbed, again on the Cape Hatteras Motel property. This trapped water and the sand it carries have caused additional damage.

16. Finally, NCDOT did install drains that would allegedly help the flood waters abate, but it has negligently failed to keep the drains cleared and functional, thereby causing additional damage to Plaintiffs.

FIRST CAUSE OF ACTION
(North Carolina Tort Claims Act)

17. The allegations set forth in the preceding paragraphs of this Claim and Affidavit are restated as if fully set forth.

18. The North Carolina Tort Claims Act (the Act) is set forth at N.C. Gen. Stat. § 143-291 et. seq. The Act provides that

The North Carolina Industrial Commission is hereby constituted a court for the purpose of hearing and passing upon tort claims against . . . the Board of Transportation, and all other departments, institutions and agencies of the State. . . . If the Commission finds that there was negligence on the part of an officer, employee, involuntary servant or agent of the State while acting within the scope of his office, employment, service, agency or

authority that was the proximate cause of the injury and that there was no contributory negligence on the part of the claimant or the person in whose behalf the claim is asserted, the Commission shall determine the amount of damages that the claimant is entitled to be paid, including medical and other expenses, and by appropriate order direct the payment of damages as provided in subsection (a1) of this section

N.C.G.S. §143-291(a)(2014).

19. NCDOT and its officers, employees and agents were negligent in all of the ways alleged above, and those negligent acts were the proximate cause of the damages suffered by Plaintiffs. In compliance with N.C.G.S. §143-297, Plaintiffs name Eugene Conti, Anthony Tata, and Jerry Jennings as the employees, officers, and agents who have committed the negligent acts. Plaintiffs reserve the right under the authority of *inter alia* Industrial Commission Regulation T205(7) to name other NCDOT employees, officers, and agents during or after discovery, either in addition to or instead of those named herein.

20. Plaintiffs' damages include diminution in the value of their property, lost business income, physical damage to the motel buildings, cost of sand removal following storm events, and emotional distress, and such other damages as may be proven at the trial of this matter.

21. Plaintiffs have been injured in an amount in excess of one million dollars (\$1,000,000), and therefore claim the full amount available under the Act (\$1,000,000).

PRAYER FOR RELIEF


WHEREFORE, Plaintiffs respectfully pray unto the Commission that:

1. Plaintiffs have Judgment against Defendant the North Carolina Department of Transportation in the amount of One Million Dollars (\$1,000,000);
2. All costs, including attorney's fees, be taxed against Defendant; and
3. The Commission order such other and further relief in favor of Plaintiffs as to it seems just and proper.

This the 7th day of November, 2014.

CALHOUN, BHELLA, & SECHREST, LLP

By: _____


James L. Conner II
NC State Bar No. 12365
4819 Emperor Boulevard, Suite 400
Durham, North Carolina 27703
Telephone: (919) 887-2607
jconner@cbsattorneys.com
Attorney for Plaintiffs

NORTH CAROLINA

COUNTY OF DARE

VERIFICATION

I, Vernon Davis Dawson, Jr., being duly sworn, depose and say:

That he is a Plaintiff in this action, that he has read the foregoing Tort Claims Act Claim and Affidavit, that the Tort Claims Act Claim and Affidavit is true of his own knowledge, except as to those matters and things therein stated upon information and belief and as to those, he believes them to be true.

This the 6th day of November, 2014.

Vernon Davis Dawson, Jr.
Vernon Davis Dawson, Jr.

STATE OF NORTH CAROLINA

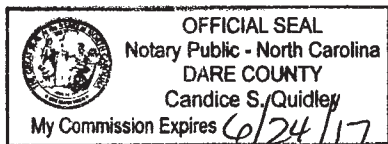
COUNTY OF DARE

I, a Notary Public of the County and State aforesaid, certify that Vernon Davis Dawson, Jr. personally appeared before me this day and signed the foregoing instrument voluntarily for the purposes expressed therein and certified under oath/affirmation as to the truth of the matters contained in the foregoing instrument on this the 6 day of November, 2014.

(SEAL)

Candice S. Quidley
Printed Name of Notary: Candice S. Quidley

Notary Public



My commission expires: June 24, 2017

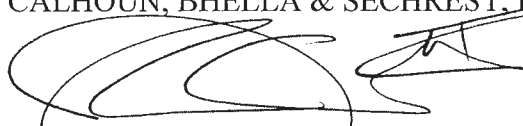
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on this the ___ day of November 2014, a copy of the foregoing **TORT CLAIMS ACT CLAIM AND AFFIDAVIT** was served on the following parties to this action by: () electronic mail () Federal Express () hand delivery (X) depositing a copy of the same in the United States Mail postage prepaid and addressed to:

Ms. Sarah Mitchell
Secretary to the Board of Transportation
North Carolina Department of Transportation
1501 Mail Service Center (MSC)
Raleigh, NC 27699-1501

CALHOUN, BHELLA & SECHREST, LLP

By:



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Attorney for Plaintiffs