

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

LAWRENCE TEMPLE, :  
 :  
 Plaintiff, :  
 :  
 v. : Civil Action No. 03-348 JJF  
 :  
 THE UNITED STATES OF AMERICA, :  
 :  
 Defendant. :

Thomas J. Roman, Esquire, and Michael D. Bednash, Esquire,  
KIMMEL, CARTER, ROMAN & PELTZ, Bear, Delaware.  
Attorneys for Plaintiff.

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DISTRICT OF DELAWARE, Wilmington, Delaware.  
Attorney for Defendant.

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**MEMORANDUM OPINION**

October 27, 2004  
Wilmington, Delaware

**Farnan, District Judge.**

Plaintiff Lawrence Temple filed this action pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b) and 2671 et seq., on April 4, 2003, against Defendant United States of America, United States Postal Service. (D.I. 1.) In his Complaint, Plaintiff claims to have suffered injuries in a motor vehicle accident that occurred on July 21, 2000, due to the negligence of an employee of the United States Postal Service. The matter was tried to the Court without a jury on June 7, 2004. The following constitutes the Court's findings of fact and conclusions of law.

**FINDINGS OF FACT**

1. On July 21, 2000, a United States Postal Service mail carrier ("Postal Employee") was traveling west on Salem Church Road in Newark, Delaware, delivering mail in her capacity as an employee of the federal government. (Tr. at 91-92.)

2. On July 21, 2000, at the location of the accident, the weather was clear and visibility was good. (Tr. at 10.) The Postal Employee was able to see oncoming traffic for some distance because the road was fairly straight. (Tr. at 108-09.)

3. At the time of the accident, a portion of Salem Church Road was closed due to construction. (Tr. at 91, 123.)

4. Because the Postal Employee was unable to continue delivering mail on Salem Church Road due to the road closure, she pulled onto the right shoulder of the road, checked the left side

mirror of her vehicle for oncoming traffic, and, seeing none, made a U-turn into the eastbound lane. (Tr. at 92-94, 96.)<sup>1</sup>

5. Shortly after beginning the U-turn into the eastbound lane, Postal Employee felt something impact the rear of her vehicle. (Tr. at 94, 110.) Mr. Temple's motorcycle striking the rear of her vehicle caused the impact. (Tr. at 9.)

6. As a result of the collision with the mail truck, Mr. Temple suffered an injury to his left wrist, an injury to his left leg, abrasions, bruises, and a permanent injury to his left knee. (Pl.'s Ex. 1 at 7, 14; Pl.'s Ex. 2 at 12-13.)

7. Knee surgery was performed on Mr. Temple's left knee at least twice before the date of the accident at issue. (Tr. at 35-36, Pl.'s Ex. 1 at 9, Def.'s Ex. 5.) Prior to the time of the accident at issue, Mr. Temple had some restrictions on his ability to stand for long periods of time. (Tr. at 73.)

8. Mr. Temple lost his security clearance due to the amount of personal debt for which he is responsible. (Tr. at 53.) Mr. Temple's unpaid medical bills, resulting from the accident at issue, contributed \$37,861.96 to Mr. Temple's personal debt. (Tr. at 18; Pl.'s Ex. 3.) Mr. Temple lost his employment as a result of losing his security clearance. (Tr. at 66).

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<sup>1</sup> Transcript of the June 7, 2004, Bench Trial (D.I. 33). Unless otherwise noted, transcript citations at the end of a numbered paragraph are for the entire numbered paragraph.

9. On July 3, 2002, Mr. Temple filed a claim pursuant to 28 U.S.C. § 2675(a) on Standard Form 95 with the United States Postal Service. On February 5, 2003, the United States Postal Service denied the claim. (D.I. 1.)

#### CONCLUSIONS OF LAW

##### **I. Whether Postal Employee Was Negligent In A Manner That Was The Proximate Cause Of The Accident In Question**

1. The Court has jurisdiction over the instant dispute pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671-80, because Plaintiff is asserting an action in tort against the United States for alleged negligent conduct by a federal employee serving within her capacity while delivering mail for the United States Postal Service. The FTCA serves as a limited waiver of the United States' sovereign immunity. See Roma v. U.S., 344 F.3d 352, 362 (3d Cir. 2003); FDIC v. Meyer, 510 U.S. 471 (1994).

2. Because the alleged negligent conduct occurred in Delaware, the Court must apply Delaware state tort law. See Toole v. United States, 588 F.2d 403, 406 (3d Cir. 1978).

3. Section 4153(b) of 21 Delaware Code states, "The driver of any vehicle shall not turn such vehicle so as to proceed in the opposite direction unless such movement can be made in safety and without interfering with other traffic." 21 Del. C. § 4153(b). Pursuant to 21 Del.C. § 4153(b), the Postal Employee

owed Mr. Temple a duty of care in making the U-turn with her vehicle.

4. The Court concludes that the Postal Employee failed to ensure that her U-turn from the right shoulder area across traffic could be made safely and without interfering with other traffic. In the Court's view, if Postal Employee had sufficiently checked for oncoming traffic before turning, the collision with Mr. Temple may not have occurred. Accordingly, the Court concludes that the Postal Employee was negligent in operating the mail truck at the time of the accident.

## **II. Whether Plaintiff Was Comparatively Negligent**

5. Delaware has a comparative negligence statute that reads:

In all actions brought to recover damages for negligence which results in death or injury to person or property, the fact that the plaintiff may have been contributorily negligent shall not bar a recovery by the plaintiff or the plaintiff's legal representative where such negligence was not greater than the negligence of the defendant or the combined negligence of all defendants against whom recovery is sought, but any damages awarded shall be diminished in proportion to the amount of negligence attributed to the plaintiff.

10 Del. C. § 8132.

6. The Court finds that the Government has presented insufficient evidence to establish that Mr. Temple was speeding or that he failed to drive with reasonable care at the time of the accident. The Government presented testimony as to road signs posted to warn drivers of the road closure. (Tr. at 98,

118-21.) The Government also presented testimony concerning the length of the skid marks on the road leading to the point of impact. (Tr. at 13-14.) However, the police officer who arrived at the accident scene and wrote the accident report testified that he was at that time without the training or equipment necessary to determine whether Mr. Temple was speeding. (Tr. at 17.) Thus, the Court concludes that the record lacks sufficient evidence to establish that Mr. Temple was driving at an unlawful speed or was in any other way comparatively negligent.

### **III. The Nature And Extent Of Plaintiff's Damages**

7. Pursuant to 28 U.S.C. § 2675(b), a claimant is barred from seeking in federal court "any sum in excess of the amount of the claim presented to the federal agency...." 28 U.S.C. § 2675(b); McNeil v. United States, 508 U.S. 106, 108 n. 2 (1993).

8. Because the Court is unclear as to the amount of the administrative claim asserted, the Court reserves decision as to the amount of damages to be awarded. The parties shall submit Mr. Temple's claim and their positions regarding that claim by letter no later than November 5, 2004. Upon receipt of the requested information, the Court will enter its final judgment.

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**ORDER**

At Wilmington this 27th day of October 2004, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that the parties shall submit Mr. Temple's claim and their positions regarding that claim by letter no later than **November 5, 2004**.

Joseph J. Farnan, Jr.  
UNITED STATES DISTRICT JUDGE