

MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2272

H.P. 1662 House of Representatives, February 16, 1988
Approved for introduction by a majority of the
Legislative Council pursuant to Joint Rule 26.

Reference to the Committee on Legal Affairs suggested and
ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative TRACY of Rome.

Cosponsored by Representative NUTTING of Leeds.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

1 **RESOLVE, Authorizing Gary Kelly, Daniel Kelly**
2 **and the Estate of Cynthia Kelly to Sue the State**
3 **for Compensation for Wrongful Death and**
4 **Other Injuries Suffered as a Result of a**
5 **Motor Vehicle Collision.**
6

7 **Gary Kelly, Daniel Kelly and the Estate of**
8 **Cynthia Kelly; authorized to sue the State.**
9 **Resolved: That, notwithstanding any law to the**
10 **contrary, Gary Kelly, Daniel Kelly and the Estate of**

1 Cynthia Kelly are authorized to bring suit against the
2 State for damages arising out of a motor vehicle
3 collision occurring on January 19, 1987, on State
4 Route 133 in the Town of Wayne, County of Kennebec,
5 State of Maine.

6 On January 19, 1987, there was an automobile
7 collision on State Route 133 in the Town of Wayne,
8 County of Kennebec, State of Maine, in which Cynthia
9 Kelly, late of Livermore Falls, was killed and in
10 which her husband, Gary Kelly, and son, Daniel Kelly,
11 were injured. At the time of the collision, the road
12 surface was covered with ice and snow, although it was
13 not snowing at that time. Gary Kelly was the driver
14 of his vehicle as it approached the intersection with
15 State Route 219 from a northerly direction. He was on
16 his way to work. The road surface had been plowed by
17 the State off-center, with the southwesterly shoulder
18 being winged back further than the northeasterly
19 shoulder. This, in effect, changed the course, or
20 what was perceived as the course, of the southbound
21 lane. As such, any southbound vehicles were
22 unknowingly using a portion of the road shoulder as
23 part of the southbound lane. In addition, at that
24 time, there existed a ridge or drop-off between the
25 southbound lane and its corresponding shoulder with an
26 average depth of .3 to .35 feet. Since the road
27 surface was snow covered at the time, the existence of
28 the off-center plowing and the ridge were unknown to
29 drivers in the southbound lane. As Gary Kelly
30 proceeded down the roadway, his vehicle hit this ridge
31 causing him to lose control of the vehicle and sending
32 it into the northbound lane, where a collision with
33 another vehicle occurred, killing his wife and
34 injuring him and his son, Daniel.

35 Gary Kelly is Cynthia Kelly's widower. They were
36 married for 16 years. He is also the father of Daniel
37 Kelly and Jamie Kelly, ages 15 and 14 respectively.
38 He alleges that the negligence of the State and its
39 employees was the proximate cause of his wife's death
40 and the personal injuries sustained by him and his son.

41 This action is to be brought in the Superior Court
42 for Kennebec County, within one year from the passage

1 of this resolve, against the State for damages, if
2 any. The context of this action shall be according to
3 the practice of actions or proceedings between parties
4 in the Superior Court. The liabilities of the parties
5 and elements of damage, if any, shall be the same as
6 liabilities and elements of damage between
7 individuals. The complaint issuing out of the
8 Superior Court under the authority of this resolve
9 shall be served on the Secretary of State by attested
10 copy by the sheriff or his deputies in any county of
11 the State. The Attorney General is authorized and
12 designated to appear, answer and defend this action.
13 The Attorney General, or his designee, is further
14 authorized to enter into a compromised settlement, if
15 agreed to by the parties, which shall be binding on
16 the State.

17 Any judgment which may be recovered in this civil
18 action shall be payable from the State Treasury on
19 final process issued by the Superior Court or, if
20 applicable, the Supreme Judicial Court, and costs may
21 be taxed for Gary Kelly, Daniel Kelly and the Estate
22 of Cynthia Kelly, if they recover in the action. The
23 recovery on behalf of all parties shall not exceed
24 \$300,000, including costs. A hearing shall be before
25 a Justice of the Superior Court, with or without a
26 jury. The justice shall be the regularly scheduled
27 justice presiding in the Kennebec County Superior
28 Court when this matter is scheduled for trial.

29

STATEMENT OF FACT

30 Cynthia Kelly died on January 19, 1987, while she
31 was a passenger in an automobile southbound on Route
32 133 near the intersection of State Route 219 in
33 Wayne. Cynthia Kelly died as a result of injuries
34 suffered in a collision with a vehicle being driven in
35 the northbound lane of State Route 133. Her vehicle,
36 which was being operated by her husband Gary Kelly,
37 slid into the northbound lane after unexpectedly
38 hitting a ridge in the road surface with a depth of .3
39 to .35 feet. This ridge was located between the
40 westerly edge of the southbound lane and the easterly
41 edge of the southwesterly shoulder. At the time in

1 question, the State had plowed the roadway off-center
2 with the southwesterly shoulder being winged back
3 further than the easterly shoulder and, in effect,
4 changing the course, or what was perceived as the
5 course, of the southbound lane to include the easterly
6 portion of the southwesterly shoulder, as well as the
7 westerly portion of the southbound lane. The
8 relocation of the travel lane, as well as the
9 existence of the ridge, were unknown to Gary Kelly
10 prior to the collision on January 19, 1987. In
11 addition to the death of Cynthia Kelly, both Gary
12 Kelly and Daniel Kelly received serious and
13 substantial personal injuries as a result of the
14 collision.

15 The report of the Kennebec County Sheriff's
16 Department indicated that this ridge or drop-off was
17 considered "to be a primary factor in the cause of the
18 accident." The Maine State Police accident
19 reconstruction report indicates that "(t)drop-off
20 would cause a vehicle to lose control when it came
21 back on the pavement and travel across the road.
22 While at the scene, this officer noticed several
23 vehicles lost partial control at low speeds while
24 trying to return to the pavement from this drop-off."

25 This drop-off was corrected by crews of the
26 Department of Transportation later that day with cold
27 patch and by the installation of barriers to prevent
28 driving over the ridge.

29 Gary Kelly is Cynthia Kelly's widower. He alleges
30 that the negligence of the State and its employees was
31 the proximate cause of his wife's death, as well as
32 the personal injuries sustained by him and his minor
33 son, Daniel. He has been left alone to raise both
34 children.

35 Mrs. Kelly was 36 years of age at the time of her
36 death. She was employed part time as a sales clerk
37 with the balance of her days being spent as a
38 homemaker raising her minor children.

39 This resolve is being introduced because of
40 passive and active negligence of the State in failing

1 to repair the ridge or drop-off in the roadway
2 compounded by misplowing the roadway, which caused
3 this collision and these injuries. The Maine Tort
4 Claims Act grants immunity to the State and its
5 employees and prohibits suit except upon permission of
6 the Legislature through resolve. In addition, whereas
7 the Maine Revised Statutes, Title 23, section 3655
8 allows a civil action against a town or county for any
9 highway defect which is the proximate cause of an
10 injury, no similar statutory provision exists to allow
11 redress for such injuries which are caused as a result
12 of a defect on a state road.

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