

APR 08 2021

RECEIVED

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

- ☐ Mr.
☐ Mrs.
☐ Ms.
☒ Miss

Temetria Tucker, Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces

Claim No. _____

Date Filed _____
(Month) (Day) (Year)

Amount of Claim \$ _____

Fund _____

COMPLAINT

Temetria Tucker, the above named Claimant, of _____

County of _____

represented by N/A
(Legal Counsel, if any, for Claim)

of _____, says:
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: N/A Amount sought: N/A

Month, day, year and place of incident or service: 03/11/2021 Hwy 1 N Forrest City, AR merging onto I-40 E

Explanation:
On the day of 03/11/2021 around 7:25-7:30 am I was travelling north on Washington Street in Forrest City, AR and when I passed McDonalds on the right, I made a right turn to merge onto I-40 East toward Memphis, Tenn and as soon as I made the right turn, I hit a deep pothole, that was unnoticeable and when I hit the pot my tire was damaged, my wheel cover was totally demolished and my tire was flattened, making my car undrivable, so I had to get it towed to my residence, but don't have comprehensive auto insurance only liability, so I had to pay the towing fee out of pocket. When the aforementioned incident occurred I immediately placed a call to the Forrest City (City Hall) @ 870-633-1315 and spoke with Mrs. Kimmyund Smith, Assistant Director and related my situation to her and provided my name and contact info for any follow-ups. Mrs. Smith later returned a call to me and advised the street area in question was a State Highway and I would need to call the number she provided if I wished to file a claim.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?

(Yes or No) _____; when? _____ (Month) (Day) (Year) to whom? _____ (Department)
and that the following action was taken thereon: _____

and that \$ _____ was paid thereon: (2) Has any third person or corporation an interest in this claim? NO; if so, state name and address

(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)
and that the nature thereof is as follows: _____

_____ and was acquired on _____, in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes

that they are true.

Temetria Tucker
(Print Claimant/Representative Name)

Temetria Tucker
(Signature of Claimant/Representative)

SWORN TO and subscribed before me at Forrest City AR
(City) (State)

on this 29th day of March 2021
(Date) (Month) (Year)

Pearl Johnson
(Notary Public)

My Commission Expires: 12 29 2030
(Month) (Day) (Year)



ARKANSAS STATE CLAIMS COMMISSION
MOTOR VEHICLE ACCIDENT REPORT FORM

SECTION I
CLAIMANT

Temetria Tucker

ADDRESS

CITY & STATE

ZIP CODE

DATE OF ACCIDENT:

03-11-2021

TIME: around 7:25-7:30 AM

MOTOR VEHICLE DAMAGED:

TYPE

Nissan

MAKE

Sentra

YEAR

2007

DRIVEN BY:

Temetria Tucker

ADDRESS

Same as above

Give a brief description of accident, showing how accident happened, exact loss and extent of damage to car.

Please refer to the accompanying form; Receipts Attache

* NO CAR ACCIDENT *

SECTION II

Has this vehicle been repaired? Yes () No () If repairs have been made, give the following information: Amount \$ N/A Have you paid for the repairs? Yes () No () NOTE: Attach a copy of repair bill Yes Damaged parts have been replaced; receipts Attache.
If repairs have not been made, list three estimates below and attach copies of each of them.

NAME

ADDRESS

AMOUNT

1. N/A \$ N/A
2. N/A
3. N/A

SECTION III

Was vehicle covered by Insurance? Yes () No () Liability Only () N/A

Comprehensive: Yes () No () What is your deductible? \$ N/A

Collision: Yes () No () What is your deductible? \$ N/A

NAME OF INSURANCE CARRIER

ADDRESS

N/A

SECTION IV

Type of State Vehicle involved _____ License No. _____

Driver _____ Property of which State Agency _____

If accident was investigated by the State Police, give name of investigating officer: N/A

If investigation was made by some other agency,

give name and title of officer making the investigation: _____

SECTION V

The undersigned states on oath that he/she is familiar with the matters and things set forth in the above statement, and that he/she verily believes that they are true.

Temetria Tucker
Signature of Claimant

Sworn to and subscribed before me at Forrest City AR
on this 29th day of March, 2021 City, State
day month year

Pearl Johnson
Notary Public

My Commission Expires 12-29-2030



BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

TEMETRIA TUCKER

CLAIMANT

V.

CLAIM NO. 211091

**ARKANSAS DEPARTMENT OF
TRANSPORTATION**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the motion filed by the Arkansas Department of Transportation (the “Respondent”) to dismiss the claim of Temetria Tucker (the “Claimant”). Based upon a review of Respondent’s motion, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. The Claims Commission has jurisdiction to hear this claim pursuant to Ark. Code Ann. § 19-10-204(a).

2. Claimant filed the instant claim, alleging that Claimant’s vehicle was damaged after hitting a pothole on a state highway.

3. Respondent filed a motion to dismiss, arguing that Claimant failed to show that Respondent had prior knowledge of a pothole yet failed to respond within a reasonable amount of time to repair it. Respondent seeks dismissal pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure.

4. Claimant did not respond to the motion.

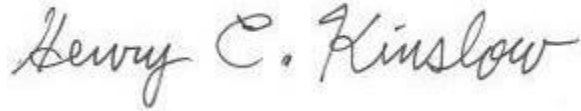
5. In reviewing this motion to dismiss, the Claims Commission must treat the facts alleged in the complaint as true and view them in a light most favorable to the Claimant. *See Hodges v. Lamora*, 337 Ark. 470, 989 S.W.2d 530 (1999). All reasonable inferences must be resolved in favor of the Claimant, and the complaint must be liberally construed. *See id.* However, the Claimant must allege facts, not mere conclusions. *Dockery v. Morgan*, 2011 Ark. 94 at *6, 380

S.W.3d 377, 382. The facts alleged in the complaint will be treated as true, but not “a plaintiff’s theories, speculation, or statutory interpretation.” *See id.* (citing *Hodges*, 337 Ark. 470, 989 S.W.2d 530 (1999)).

6. The Claims Commission agrees with Respondent that dismissal of this claim is proper. Claimant did not allege any facts regarding Respondent’s prior knowledge of a pothole or failure to repair it within a reasonable amount of time. Respondent is unable to monitor every part of the nearly 16,000 miles of state highways at all times. Respondent is also unable to monitor every section of the nearly 16,000 miles of state highways that have had a pothole at one time. As stated by Respondent in the motion to dismiss, encountering a pothole is a risk assumed by the public in general as a part of travel. In the absence of evidence that Respondent had prior knowledge of the pothole that caused Claimant’s damage and failed to repair it in a reasonable amount of time, the existence of a pothole is insufficient to establish liability.

7. As such, Respondent’s Motion to dismiss is GRANTED, and Claimant’s claim is DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: July 16, 2021

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

07-28-2021

Arkansas
State Claims Commission

AUG 13 2021

RECEIVED

Arkansas State Claims Commission
101 East Capitol Ave
Suite 410
Little Rock, Arkansas 72201-3823

TO Whom It Concerns,

I am submitting this correspondence to file a Notice of Appeal regarding the decision/ruling recently handed down to dismiss my claim without prejudice referencing claim no. 21109.

I am desiring to have the ruling overturned for the following two (2) reasons, firstly, I am not seeking an inflated dollar amount, I am asking to be reimbursed only for my out of pocket, totally \$321.00 as a result of my hitting a deep pothole on March 04th 2021; secondly and speaking to what I interpreted as being a deciding factor as to why the existing decision was reached and that being "that the Respondent had prior knowledge of a pothole and failed to respond within a reasonable amount of time", please allow me to respectfully advise or perhaps offer a friendly reminder of the

Continued...

ice/snow storm that blanketed much of Eastern Arkansas and other portions of the state that occurred the week of February 15th and the atrocious weather condition lasted for several days making the roads/highways unsafe to travel for several days. I hit the pothole on March 11th almost a month later.

Moving forward, I am offering as my point of contention to be the following: When an area suffer such a weather ice/snow storm of that magnitude, the likelihood of there being damage done to some highways and/or roadways could be heightened and one would think that Area Supervisor (of the highway department) or the designated person when viewed to be safe, would scout the area highways and/or roadways (especially the main thoroughfares such as interstates (entering and exiting), such as I-40, which is where I hit the pothole while travelling north on Washington Street in Forrest City and exiting off to the right getting ready to enter onto I-40 East (toward Memphis) to survey any damage and should there be any to promptly get any needed repairs underway.

Now, I ask if you would imagine with me for just a moment and ask yourself if the aforementioned task/duty had

been satisfied very soon thereafter, weather permitting, would I be encountering this issue at hand and I venture to say that it is my opinion, that we could agree the response would be a supportive, "NO".

So, I now ask that given the two (2) reasons that I have set forth in this, my written argument be taken into strong consideration and the judgment be rendered in my favor.

Respectfully Submitted,
Theresa Tucker

Enclosures: Copy of the most recent order (3 pages)
Photos to support my claim (5)
Invoices/Receipts (tire replacement, rim, wheel cover, towing fee)