

ARKANSAS STATE CLAIMS COMMISSION
-Claim Form-

Please note that all sections must be completed, or this form will be returned to you, which will delay the processing of your claim.

1. Claimant's Legal Counsel - ☒ (If representing yourself (Pro Se) please check this box and proceed to section 2)

(last name) (first name) (email)

(address) (city) (state) (zip) (primary phone)

Arkansas Bar Number _____ If not licensed to practice law in Arkansas, please
Contact the Claims Commission for more information.

2. Claimant

Mr. McCauley Michael

(title/last name/first name or company)

(email)

(address)

(city)

(state)

(zip)

(primary phone)

3. State Agency Involved: (must be an Arkansas state agency. The Arkansas Claims Commission has no jurisdiction over county, city, or other municipalities)

Arkansas Department of Transportation

(state agency involved)

4. Incident Date

March 18, 2022

5. Claim Type

Please provide a brief explanation of your claim. If additional space is required, please attach additional statements to this form. Driving on interstate from Little Rock, AR to Memphis, TN hit a pothole near Carlisle, Arkansas damaging ~~four~~ tires. Appears the pothole was deep. Going I-40 East before exit 183. So had to replace two tires.

- 5a. Check here if this claim involves damage to a motor vehicle. ☒

- 5b. Check here if this claim involves damage to property other than a motor vehicle. ☐

All property damage claims require a copy of your insurance declarations covering the property or motor vehicle at the time of damage.

I did not have insurance covering my property/motor vehicle at the time of damage. ☐

All property damage claims require ONE of the following (please attach):

1. Invoice(s) documenting repair costs, OR
2. Three (3) estimates for repair of the damaged property, OR
3. An explanation why repair bill(s) or estimate(s) cannot be provided.

6. Was a state vehicle involved? (If Yes, please complete the following section)

(type of state vehicle involved)

(license number)

(driver)

7. Check here if this claim involves personal injury.

All personal injury claims require a copy of your medical insurance information and relevant medical bills in place at the time of the incident.

I do not have health insurance ☐

8. Amount Sought: \$611.54

The undersigned certifies that to the best of my knowledge, information, and belief, this claim is not being presented for any improper purpose; this claim is warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law; and the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

[Signature]
Claimant

ACKNOWLEDGEMENT

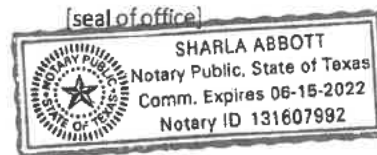
State of Texas
County of Cottin

On this the 28th day of March 20 22 before me, the undersigned notary, personally appeared Michael McCarty known to me (or satisfactorily proven) to be the person whose name is subscribed to this instrument and acknowledged that he/she executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

[Signature]
Signature of Notary Public

My Commission expires: 6-15-2022



CUSTOMER #: NN23025

692614



McLARTY NISSAN OF NORTH LITTLE ROCK

5703 Landers Road

N. Little Rock, AR 72117

Phone: (501) 945-6191 Fax: (501) 945-5308

www.McLartyNissan.com

INVOICE

MICHAEL MCCAULEY

PAGE 1

SERVICE ADVISOR: 101694 TRACEY SCHRUPP

COLOR	YEAR	MAKE/MODEL		VIN	LICENSE	MILEAGE IN / OUT		TAG
	21	NISSAN ALTIMA				13113/13113		
DEL. DATE	PROD. DATE	WARR. EXP.	PROMISED	PO NO.	RATE	PAYMENT	INV. DATE	
18MAR22 DD			17:00 18MAR22		131.00	CASH	18MAR22	

R.O. OPENED	READY	OPTIONS:
10:36 18MAR22	12:31 18MAR22	

LINE	OPCODE	TECH	TYPE	HOURS	LIST	NET	TOTAL
------	--------	------	------	-------	------	-----	-------

A BOTH DRIVERS SIDE TIRES ARE FLAT, HIT A POT HOLE P235/40/19 HANKOOK.
IN STOCK

MB2 MOUNT AND BALANCE 2 TIRES

101590 CPC

2 OETIR-03031 2354019 HANK KINERGY

254.00

40.00

40.0

2 TT State Fee - Tire

3.00

3.00

6.0

PARTS: 508.00 LABOR: 40.00 OTHER: 6.00 TOTAL LINE A:

554.0

REPLACED BOTH DRIVERS SIDE TIRES AND SAVED THE FRONT ONE AND PUT IN
BACK OF VEHICLE

B CUSTOMER DECLINED ALIGNMENT (CALL 901 713 6531)

MISC MISCELLANEOUS

101590 CPC

0.00

0.0

PARTS: 0.00 LABOR:

0.00 OTHER:

0.00

TOTAL LINE B:

0.0

NO ALIGNMENT TODAY

C EXPRESS MULTI POINT INSPECTION

ESMPI EXPRESS MULTI POINT INSPECTION

101590 ISP

(N/C

PARTS: 0.00 LABOR:

0.00 OTHER:

0.00

TOTAL LINE C:

0.0

CUSTOMER PAY SHOP CHARGE FOR REPAIR ORDER

5.0

* Need a Body Shop Estimate? *

* Visit www.mclartycollision.com and click on *

* "Get my estimate now" *

52.5

<p>WARRANTY DISCLAIMER: ALL PARTS AND ACCESSORIES ARE SOLD AND ALL REPAIRS ARE PROVIDED BY THE DEALERSHIP AS-IS. THE DEALERSHIP HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE SALE OF PARTS OR PRODUCTS OR THE REPAIR. THE ONLY WARRANTIES ON PARTS AND ACCESSORIES OR REPAIRS ARE THOSE WHICH MAY BE OFFERED BY THE MANUFACTURER OR THE ORIGINAL PARTS DISTRIBUTOR AND ONLY SUCH MANUFACTURER OR DISTRIBUTOR SHALL BE LIABLE FOR PERFORMANCE UNDER SUCH WARRANTIES. CUSTOMER SHALL NOT BE ENTITLED TO RECOVER FROM THE DEALERSHIP ANY CONSEQUENTIAL DAMAGES, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFIT OR INCOME, OR ANY OTHER INCIDENTAL DAMAGES.</p> <p>By signing below, you acknowledge that you were notified of and authorized the Dealership to perform the services/repairs itemized in this invoice and that you received (or had the opportunity to inspect) any replaced parts as requested by you. The vehicle is being returned to you in exchange for your payment of the Amount Due.</p>			*SHOP SUPPLY COSTS:		DESCRIPTION		TOTALS		
			We have added a charge equal to 15% of the total cost of labor and parts, not to exceed \$50.00, to the Repair Order for shop supplies used in connection with this repair.		LABOR AMOUNT		40.0		
					PARTS AMOUNT		508.0		
					GAS, OIL, LUBE		0.0		
					SUBLET AMOUNT		0.0		
					MISC. CHARGES *		11.0		
			ALL PARTS ARE NEW UNLESS OTHERWISE INDICATED.		TOTAL CHARGES		559.0		
					LESS INSURANCE		0.0		
					SALES TAX		52.5		
			DATE		CUSTOMER SIGNATURE		AUTHORIZED DEALERSHIP REPRESENTATIVE SIGNATURE		PLEASE PAY THIS AMOUNT

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MICHAEL MCCAULEY

CLAIMANT

V.

CLAIM NO. 221124

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

2. 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.

3. Claimant sent electronic correspondence to the Claims Commission, arguing that the pothole caused damage to two tires, that Claimant’s travel was disrupted by the damage, and that the potholes cannot be seen late at night.

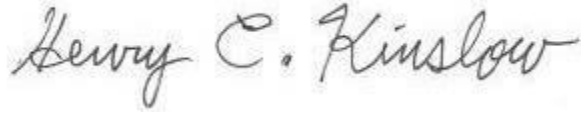
4. In reviewing this motion to dismiss, the Claims Commission must treat the facts alleged in the complaint as true and view them in a light most favorable to the Claimant. *See Hodges v. Lamora*, 337 Ark. 470, 989 S.W.2d 530 (1999). All reasonable inferences must be resolved in favor of the Claimant, 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)).

5. The Claims Commission agrees with Respondent that dismissal of this claim is proper. Claimant did not allege any facts in the complaint 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 the state highway system at all times. 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.

6. 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 14, 2022

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).

From: [Michael McCauley Jr](#)
To: [Kathryn Irby](#)
Cc: [ASCC Pleadings](#); [Sparks, Trella A.](#); [Blakley, Sharon](#)
Subject: Re: Motion or an appeal
Date: Thursday, July 14, 2022 5:07:38 PM

You don't often get email from [REDACTED] [Learn why this is important](#)

I've provided pictures, videos, and invoice for replacing tires. I want to file a an appeal being that the potholes along Arkansas Interstate caused damage to my vehicle and I'm sure others too. I just want to be reimbursed for the damage done to my vehicle.

On Thu, Jul 14, 2022, 4:57 PM Kathryn Irby <Kathryn.Irby@arkansas.gov> wrote:

Mr. McCauley, are you filing a motion for reconsideration or a notice of appeal? If you are filing a notice of appeal, then the Claims Commission will transmit the claim file to the Arkansas General Assembly. If you are filing a motion for reconsideration, then the Claims Commission will consider it once the time for ArDOT to respond has passed. To the extent that you did not provide ArDOT's counsel with a copy of what you filed, I have copied ArDOT's counsel here. Please note that you are required to provide them with a copy of anything you file (just like they are required to provide you with a copy of what is filed on ArDOT's behalf).

Thanks,

Kathryn Irby

From: Michael McCauley Jr [REDACTED]
Sent: Thursday, July 14, 2022 12:53 PM
To: ASCC Pleadings <ascoupleadings@arkansas.gov>
Subject: Motion or an appeal

You don't often get email from [REDACTED] [Learn why this is important](#)

I provided invoice, videos, and pictures of damaged done by pothole on Arkansas Interstate near Carilse Arkansas. I am seeking reimbursement for damaged towards replacing two of my tires. It appears that the potholes have not been fixed and this could cause major damage to the vehicles.