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Arkansas State Claims Commission

OCT 16 2017

BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

- Mr. Mrs. Ms. Miss

Betty J. Houser, Claimant

vs.

State of Arkansas, Respondent

RECEIVED Do Not Write in These Spaces Claim No. 180326 Date Filed October 16, 2017 Amount of Claim \$ 6,652.67 Fund ARDOT Prop Damage, Negligence

Dept of Transportation

COMPLAINT

Betty J. Houser, the above named Claimant, of 7609 Hwy 15 South Scott, Ar. 72142 501-773-5042, County of Lonoke represented by

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

State agency involved: State Highway Dept Amount sought: \$ 6,652.67 Month, day, year and place of incident or service: 6/20/17 (1st entrance ramp on 40 section 543) Explanation: (Log mile 0.456 at intersection 440)

I was involved with in an accident at the above mentioned intersection due to circumstances of the road condition. See Attached for more details.

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? No; when? ; to whom? ; 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? ; if so, state name and address 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.

Betty J. Houser (Print Claimant/Representative Name) Betty J. Houser (Signature of Claimant/Representative)



SWORN TO and subscribed before me at North Little Rock AR on this 13th day of October 2017

(Notary Public)

SF1-R7/99

My Commission Expires: August 16 2026 (Month) (Day) (Year)

Explanation: I Betty Houser, on 6/20/2017, was involved in an accident at Highway 40 Section 543 Log Mile 0.456 at intersection with 440 on the first merge of the entrance ramp where my vehicle was damaged due to fault of the state of Arkansas. A month before my accident I had called the state highway department to complain about this same location being so dangerous because it is under construction and has yield sign but no merge lane for the driver to merge into the line of freeway traffic. The driver has to possible stop on the freeway before merging. (See statement).

After my accident, I contacted the highway department to submit a claim and they referred me to Koss Construction. I then contacted Koss Construction and made a claim with them. Koss Construction denied my claim. After my claim was denied, I contacted the Koss Construction's insurance representative, Allen Payne, and he stated that the highway department is responsible for dictating what signage to place during a construction work zone.

On 9/6/2017 I spoke to Tony Evans, representative of Koss Construction, (the construction company that is working on the highway where my accident occurred). He stated that the construction for this area had begun on 1/25/2017. To get more info about this location I spoke with the Resident Engineer for Koss Construction on 9/20/2017 and he stated that the Merge configuration for this location was put into place on 5/9/2017. I also contacted the Arkansas public notifications office and asked for a list of accidents that have occurred at the location where my accident occurred from 8/1/2016 through 8/1/2017 and a list of accidents at this same location from 8/1/2015 through 8/1/2016. (See statement).



Statement:

A month before I had my accident I had contacted the highway department and made a complaint about this same area. I stated to the highway department representative that this area was very dangerous. It had a merge sign before the entrance but No merge lane for the driver to merge into freeway traffic. The driver has to come to a complete Stop if traffic is coming and then expected to leave from a complete stop and merge into freeway traffic. The definition for the word Merge is to blend gradually or to come together without abrupt. This is not a merge but a Stop and it's Unsafe for Interstate traffic. The highway dept representative stated that she has had several complaints about this location and that she would speak with Koss construction, the construction company that was doing the construction, and have them put in a merge lane. I avoided driving this area for a month after I spoke with the highway department to give them time to make a merge lane but no merge lane was ever made.

During my phone conversation with the Koss construction insurance representative, Allen Payne, he stated that the highway department is responsible for dictating to the construction company what signs to place during construction. The sign that is before this entrance says Merge Ahead . Clearly this is Not a merge according to the definition of Merge because this is not a gradually blend but rather a complete Stop because there is no merge lane. Then the Yield sign is placed right at the point where the driver has to come to a complete Stop.

After finding out through Koss construction, that the merge configuration was put in place on 5/9/2017, I requested a list, from the Arkansas public notifications office, of all accidents that have occurred in this same location from 1/1/2017 through 9/21/2017 I also requested a list of all accidents that have occurred in this location from 1/1/2016 until 12/30/2016 during a time when this area was not under construction and had a merge lane. (The list has been included for you to reference). In referencing the list of accidents that have occurred in the same location of my accident from 5/9/2017 until 9/21/2017, you can see there were 9 accidents in just 5 months. Referencing the list of accidents that have occurred in the same location the year before the configuration was made there was only 1 accident in 12 months. This comparison clearly shows that the State Highway department is at fault for this area being so unsafe and the cause for my accident and is responsible for the damages of my vehicle. If the sign placed before the merge said Stop a head instead of Merge I would have known what to expect and would not have had an accident.

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

BETTY J. HOUSER

CLAIMANT

V.

CLAIM NO. 180326

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 Betty J. Houser (the "Claimant"). Based upon a review of the pleadings, including Respondent's motion 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 states that she was involved in an accident in a construction zone due to improper signage and a lack of a merge lane. Claimant asserts that a month before her accident on June 20, 2017, she contacted Respondent to complain about the dangers of this location. Claimant states that she was told by an employee of Respondent that Respondent had received several complaints about this location. Claimant states that the employee of Respondent said she would speak with the contractor about putting in a merge lane. Claimant asserts that no merge lane was put in prior to her accident.
3. After her accident, Claimant contacted Respondent, who gave her the contact information for the contractor. The contractor denied her claim, explaining that Respondent is responsible for dictating the signage to place in a construction zone.
4. In support of her claim, Claimant attached a list of accidents that occurred at the same location.

5. Respondent filed a motion to dismiss, arguing that a third party, namely the prime contractor, would be responsible for any damage incurred by Claimant. Respondent confirmed that Koss Construction Co. was the prime contractor for that construction zone.

6. Claimant sent correspondence to Respondent responding to the motion to dismiss (which Respondent forwarded to the Claims Commission). In that correspondence, Claimant argued, *inter alia*, that the contractor is blaming Respondent, and Respondent is blaming the contractor, which leaves Claimant with a damaged vehicle.

7. In light of the facts stated by Claimant in her complaint regarding her prior notification to Respondent of the dangers in this construction zone, as well as the list of accidents in that same location and the reason why the contractor denied her claim, the Claims Commission finds that dismissal of this claim is premature.

8. As such, Respondent's motion to dismiss is DENIED, and this claim will be set for hearing.



IT IS SO ORDERED.

*Henry C. Kinslow*

ARKANSAS STATE CLAIMS COMMISSION

Dexter Booth  
Henry Kinslow, Co-Chair  
Bill Lancaster  
Sylvester Smith  
Mica Strother, Co-Chair

DATE: December 19, 2017

**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(b). 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(b)(3). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a).
- (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(b). 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).

**BEFORE THE ARKANSAS STATE CLAIMS COMMISSION**

**BETTY J. HOUSER**

**CLAIMANT**

**V.**

**CLAIM NO. 180326**

**ARKANSAS DEPARTMENT OF  
TRANSPORTATION**

**RESPONDENT**

**ORDER**

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the second amended motion to dismiss filed by the Arkansas Department of Transportation (the “Respondent”) regarding the claim of Betty J. Houser (the “Claimant”). Based upon a review of the pleadings, including Respondent’s motion, Claimant’s response, Respondent’s reply brief, 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 states that she was involved in an accident due to a dangerous entrance ramp onto Interstate 440.
3. Respondent filed a motion to dismiss, arguing that Claimant’s damage occurred in a construction zone and that the prime contractor would be responsible for Claimant’s damages.
4. The Claims Commission denied Respondent’s motion to dismiss on December 19, 2017, and instructed the parties to begin discovery.
5. The parties began discovery.
6. Claimant failed to respond to Respondent’s interrogatories and requests for production of documents within the time permitted by the Arkansas Rules of Civil Procedure.
7. Respondent then sent a good faith letter to Claimant pursuant to Rule 37 of the Arkansas Rules of Civil Procedure.

8. Claimant contacted Respondent and asked for an extension. Respondent agreed to extend the deadline to February 15, 2018.

9. On February 16, 2018, Respondent filed the instant motion to dismiss based upon Claimant's failure to respond to the interrogatories by February 15, 2018.

10. Claimant ultimately did respond to the interrogatories and requests for production on February 23, 2018. Claimant also provided Respondent with some insurance information, including declarations, on February 22, 2018.

11. The Claims Commission is unwilling to dismiss Claimant's claim at this time. However, Claimant is cautioned that her decision to proceed *pro se* in this matter does not excuse her from any deadlines or other requirements of the Arkansas Rules of Civil Procedure and Claims Commission rules and regulations. *See generally Moon v. Holloway*, 353 Ark. 520, 110 S.W.3d 250 (2003).

12. Respondent's second amended motion to dismiss is DENIED, and the parties are instructed to continue discovery.



IT IS SO ORDERED.

*Henry C. Kinslow*

ARKANSAS STATE CLAIMS COMMISSION

Dexter Booth  
Henry Kinslow, Co-Chair  
Bill Lancaster  
Sylvester Smith  
Mica Strother, Co-Chair

DATE: February 27, 2018

**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(b). 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(b)(3). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a).
- (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(b). 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).

**BEFORE THE ARKANSAS STATE CLAIMS COMMISSION**

**BETTY J. HOUSER**

**CLAIMANT**

**V.**

**CLAIM NO. 180326**

**ARKANSAS DEPARTMENT OF  
TRANSPORTATION**

**RESPONDENT**

**ORDER**

Now before the Arkansas State Claims Commission (the “Claims Commission”) are two pending motions. The first is a “motion of judgment” filed by Betty J. Houser (the “Claimant”), and the second is a motion for summary judgment filed by Arkansas Department of Transportation (the “Respondent”). The claim is currently set for hearing on July 12, 2018. Based upon a review of the motions, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. Claimant filed the instant claim on October 16, 2017, alleging that Claimant’s vehicle was damaged in an accident on Interstate 40 due to the lack of a merge lane. Claimant’s chief complaint appears to be that because there was no merge lane, a driver might have to stop at the yield sign and that there was no signage to this effect. Claimant asserted \$6,652.67 in damages.

2. Respondent filed a motion to dismiss, arguing that the accident occurred in a construction zone and that the prime contractor for that construction zone, Koss Construction Co. (“Koss Construction”), was “responsible for maintaining the roadway within the construction zone.”

3. The Claims Commission denied the motion to dismiss on December 19, 2017, and instructed the parties to begin discovery.

4. Respondent later filed a second amended motion to dismiss based upon Claimant's delay in responding to discovery requests. That motion was also denied by the Claims Commission on February 27, 2018.

5. On May 19, 2018, Claimant filed her "motion of judgment," in which she set out her summary of and argument with certain responses by Respondent to discovery requests. Claimant also asserted that in 2017, there were 14 accidents when there was no merge lane, compared with only 3 accidents between 2012 and 2016.

6. The Claims Commission will treat this motion as a motion for summary judgment pursuant to Ark. R. Civ. Proc. 56.

7. Respondent filed a response to the Claimant's motion, arguing that Claimant is not entitled to judgment as a matter of law. In addition to other exhibits, Respondent also pointed to the Driver's Handbook regarding yield signs, which states that a driver may have to stop at a yield sign.

8. On May 29, 2018, Respondent filed its motion for summary judgment, arguing, *inter alia*, that Claimant was cited in the accident, that Claimant has not exhausted her remedies against Koss Construction, and that the signage and merge area met and exceeded the requirements of the Manual on Uniform Traffic Control Devices (MUTCD).

9. Claimant did not respond to the motion for summary judgment.

10. Pursuant to Rule 56(c)(2), summary judgment is appropriate when there are no genuine issues as to any material fact, and the moving party is entitled to judgment as a matter of law. *See Hisaw v. State Farm Mutual Auto Insurance Co.*, 353 Ark. 668, 122 S.W.3d 1 (2003). Summary judgment motions are subject to a shifting burden, in that once the moving party has made a *prima facie* showing of entitlement to summary judgment, "the burden then shifts to the nonmoving party to show that material questions of fact remain." *Flentje v. First National Bank*



of Wynne, 340 Ark. 563, 569, 11 S.W.3d 531, 536 (2000). Summary judgment is useful “when there is no real issue of fact to be decided.” *Hughes Western World, Inc. v. Westmoore Manufacturing Co.*, 269 Ark. 300, 301, 601 S.W.2d 826, 826 (1980).

#### **Claimant’s Motion for Summary Judgment**

11. The Claims Commission finds that Claimant did not make a *prima facie* showing in its motion that it was entitled to judgment as a matter of law because Claimant has not set forth why Respondent is liable for the accident. The fact that there were accidents in the construction zone where Claimant’s accident occurred does not demonstrate liability on the part of Respondent.

12. Moreover, even if Claimant had made a *prima facie* showing in its motion, Respondent demonstrated that there were genuine issues of material fact precluding summary judgment.

13. As such, Claimant’s motion is DENIED.

#### **Respondent’s Motion for Summary Judgment**

14. Respondent made a *prima facie* showing in its motion that it is entitled to summary judgment, in that this claim properly lies against Koss Construction instead of Respondent and that Claimant has failed to establish that Respondent was negligent.

15. By failing to respond to the motion for summary judgment, Claimant failed to demonstrate that there are any genuine issues of material fact remaining.

16. In reviewing the motion, the Claims Commission finds that Respondent is entitled to judgment as a matter of law because Claimant has not fully exhausted her remedies against Koss Construction. The Claims Commission is unpersuaded by Claimant’s position that Respondent should reimburse Claimant and then seek damages from Koss Construction.

17. Moreover, the Claims Commission finds the evidence that the signage complied with the Manual on Uniform Traffic Control Devices (MUTCD) significant. The MUTCD is

published by the Federal Highway Administration to define the standards for traffic control devices. There is no evidence that the lack of signage instructing drivers that they may need to stop at the yield sign was negligence. It is undisputed that the sign said "Caution Traffic Merge" prior to the yield sign. It is undisputed that Claimant was aware of the lack of merge lane based on previous experience driving where the accident occurred. The Claims Commission is unpersuaded that Claimant's interrogatory response that she "assumed the highway department had made it safe since my phone conversation with them" establishes a genuine issue of material fact. The Claims Commission finds that the driver's handbook confirms that a driver should always be prepared to stop at a yield sign. The Claims Commission also finds that common sense points to the conclusion that where a yield sign places drivers are on notice that they may need to stop and wait until the roadway is clear before proceeding.

18. The Claims Commission hereby GRANTS Respondent's motion for summary judgment and DENIES and DISMISSES Claimant's claim.

19. This claim will be removed from the July 12, 2018, hearing docket.

IT IS SO ORDERED.

*Henry C. Kinslow*

ARKANSAS STATE CLAIMS COMMISSION

Dexter Booth  
Henry Kinslow, Co-Chair  
Bill Lancaster  
Sylvester Smith  
Mica Strother, Co-Chair

DATE: June 22, 2018

**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(b). 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(b)(3). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a).
- (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(b). 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).



**BEFORE THE ARKANSAS STATE CLAIMS COMMISSION**

**BETTY J. HOUSER**

**CLAIMANT**

**V.**

**CLAIM NO. 180326**

**ARKANSAS DEPARTMENT OF  
TRANSPORTATION**

**RESPONDENT**

**ORDER**

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the motion filed by Betty J. Houser (the “Claimant”) for reconsideration of the Claims Commission’s June 22, 2018, order denying and dismissing Claimant’s claim. Based upon a review of the motion and response filed by the Arkansas Department of Transportation, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. Claimant filed the instant claim on October 16, 2017, alleging that Claimant’s vehicle was damaged in an accident on Interstate 40 due to the lack of a merge lane. Claimant’s chief complaint appears to be that because there was no merge lane, a driver might have to stop at the yield sign and that there was no signage to this effect. Claimant asserted \$6,652.67 in damages.
2. Respondent filed two motions to dismiss, both of which were denied by the Claims Commission.
3. On May 19, 2018, Claimant filed her “motion of judgment,” in which she set out her summary of and argument with certain responses by Respondent to discovery requests. Claimant also asserted that in 2017, there were 14 accidents when there was no merge lane, compared with only 3 accidents between 2012 and 2016. The Claims Commission treated this as a motion for summary judgment pursuant to Ark. R. Civ. Proc. 56 and denied that motion in its June 22, 2018, order.

4. On May 29, 2018, Respondent filed its motion for summary judgment, arguing, *inter alia*, that Claimant was cited in the accident, that Claimant has not exhausted her remedies against Koss Construction, and that the signage and merge area met and exceeded the requirements of the Manual on Uniform Traffic Control Devices (MUTCD). Claimant did not respond to the motion for summary judgment, and it was granted by the Claims Commission also in its June 22, 2018, order.

5. Claimant then filed the instant motion for reconsideration, arguing that she should be held to a different standard than an attorney; that she did exhaust her remedies against the construction contractor; that she was not cited in the accident; and that she was prepared to stop at the yield sign. Claimant also argued that the increased number of accidents in the area is due to the removal of the merge lane and that Respondent is liable for permitting the contractor to remove the merge lane.

6. Respondent filed a response, arguing that *pro se* litigants are held to the same standards as attorneys under Arkansas law; that Claimant is mistaken that she has exhausted her remedies against the construction contractor because she did not file suit against the contractor; and that rear-ending a vehicle fifty feet before a yield sign (after passing a “Caution Traffic Merge” sign) does constitute failing to stop at a yield sign.

7. In analyzing a motion for reconsideration, Rule 7.1 of the Claims Commission Rules and Regulations states that motions for reconsideration “will only be entertained if they set forth new or additional evidence which was not [previously] available . . . .”

8. The Claims Commission finds that the motion does not set forth new or additional evidence not previously available. The Claims Commission agrees with Respondent that Claimant is held to the same standard as an attorney under Arkansas law. *Elliott v. State*, 342 Ark. 237, 27 S.W.3d 432 (2000). The Claims Commission agrees with Respondent that Claimant presented no

evidence of having exhausted her remedies against the construction contractor by filing a lawsuit against the construction contractor. The fact that Claimant pays taxes to the State of Arkansas does not absolve Claimant of this exhaustion requirement. As for the accident itself, whether Claimant failed to stop at the yield sign or failed to carefully watch the cars in front of her while approaching the yield sign, the Claims Commission found it significant that the signage complied with the Manual on Uniform Traffic Control Devices as published by the Federal Highway Administration. Additionally, on page 6 of the crash report prepared by the Arkansas State Police, the trooper noted that Claimant was operating her vehicle in an “[i]nattentive, careless, negligent, or erratic” manner.

9. Claimant’s motion for reconsideration is DENIED, and the June 22, 2018, Claims Commission order remains in effect.



IT IS SO ORDERED.

*Henry C. Kinslow*

ARKANSAS STATE CLAIMS COMMISSION

Dexter Booth  
Henry Kinslow, Co-Chair  
Bill Lancaster  
Sylvester Smith  
Mica Strother, Co-Chair

DATE: September 21, 2018

**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(b). 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(b)(3). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a).
- (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(b). 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).

BEFORE THE STATE CLAIMS COMMISSION  
OF THE STATE OF ARKANSAS

BETTY J HOUSER

CLAIM NO. 180326

State Claims Commission  
OCT 5 2018

CLAIMANT

V.

ARKANSAS DEPARTMENT  
OF TRANSPORTATION

RECEIVED

RESPONDENT

Comes now the Claimant to file a Notice of Appeal with the Claims Commission.

1. On September 21, 2018 the Claims Commission denied Claimant's motion for reconsideration stating that the motion presents no new or additional evidence.
2. New and additional evidence is presented with this Notice of appeal (see attached crash report from the Ar. Public Notifications office). This is a new crash report with the crashes that occurred in the same crash location as in Claimants crash and previous crash reports with most recent dates of January 1, 2018 through September 7, 2018. The crash report shows only 1 crash in a 9 month period. You now have a before, during, and after crash report showing that the crashes greatly increase only during the time that the merge lane was removed. In Fact, the crashes immediately started occurring right after the State Hwy Department allowed the merge lane to be removed and immediately stopped occurring right after the merge lane was put back in place. This is clearly evidence that supports my claim that this area was made unsafe by having no merge lane and can not continue to be ignored by the State Claims Commission
3. The Claims Commission agrees with Respondent that the Claimant presented no evidence of having exhausted her remedies against the construction contractor by filing a lawsuit against the construction contractor.
4. Ar. Code 19-10-302 states that the claimant shall exhaust all remedies against insurers, including claimant's insurer. The code does not say that Claimant must file a lawsuit. The claimant did exhaust all remedies by first making a claim with her auto insurance, second, making a claim with Koss constructions insurance, and third by communicating with the construction company's insurance representative. The claimant only had liability insurance with her auto insurance so no money was paid for damages. This information was requested by the Respondent and presented to the Respondent. The Claimants claim with Koss constructions insurance was denied. When the Claimant spoke with the representative from the constructions insurance she was told that the Ar State Hwy Department was responsible for the claim and not them. At that point the Claimant had exhausted all her remedies with all insurers under Ar.Code 19-10-302.
5. The Claims Commission uses the notes that the state trooper noted on the accident report.
6. The officer that made the notes on the accident report did not see the accident and was not at the scene of the accident. She was told by the state police to drive down the road to the nearest safe area to meet the state trooper. As far as these



notes, they are hear say and should not be used as evidence. It appears that these notes are the only negative reports the Respondent can dig up on the Claimant as being that she was not sited for the accident, she has no traffic violations for the past 10 years, and her Auto insurance agent of 20 years stated, in a letter to whom it concerns, that the only accident the Claimant has ever had was the accident that occurred in 2017.

7. The Respondent filed a response that Claimant rear ending a vehicle fifty feet before the yield sign does constitute failing to stop at a yield sign.
8. Ar. Code 27-51-503 (c) (2) states that if a driver is involved in a collision with a pedestrian in a crosswalk or a vehicle in the intersection after driving past the yield sign without stopping, the collision shall be deemed prima facie evidence of his or her failure to yield right of way. The accident occurred 50 feet before the yield sign. The accident was not her fault as matter of law.
9. The State Hwy Department argues the fact that they are at fault for the claimants accident and shifts the blame to Koss Construction.
10. The State Hwy Department was made aware of the dangers of having no merge lane by the Claimant when she made a complaint with them (refer to claimants phone record in previous documentations). This complaint was clearly ignored by the Hwy Department and this area left unsafe latter resulting in the Claimants accident. It is the responsibility of the State Hwy Department to insure public safety at all times.

If the state hired a contractor to work on the claims commissions office building and lets say the contractor removed 2 or 3 steps from a stair case, would any of you continue to allow the contractor to leave the steps removed or would you expect the State to do something about it?

I pray that the claims commission, being a state agency themselves, is not bias and makes a decision in favor of the Claimant.

Thank you

SUBMITTED BY THE CLAIMANT  
BETTY JO HOUSER

By: Betty Jo Houser 10-4-18  
Betty Jo Houser  
7669 Hwy 15 South  
Scott AR. 72142  
(501) 773-5092