

JAN 14 2019 D.02

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

RECEIVED

BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

- Mr. Mrs. Ms. Miss

Charles McRaven & Linda McRaven, Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces. Claim No., Date Filed, Amount of Claim \$, Fund

COMPLAINT

Charles McRaven & Linda McRaven, the above named Claimant, of [redacted] (Name) [redacted] (Street or R.F.D. & No.) [redacted] (City) [redacted] (State) [redacted] (Zip Code) [redacted] (Daytime Phone No.) presented by Scott P. Richardson (Legal Counsel, if any, for Claim) of 1020 W. 4th, Ste. 410, Little Rock, AR 72201 (501)235-8336, (501)588-2104 (Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.) says:

State agency involved: Arkansas Department of Transportation Amount sought: Month, day, year and place of incident or service: July 9, 2017, Palestine Rest Stop off Interstate 40 Explanation: SEE ATTACHED

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? (Department)

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.

Scott Richardson (Print Claimant/Representative Name)

[Signature] (Signature of Claimant/Representative)

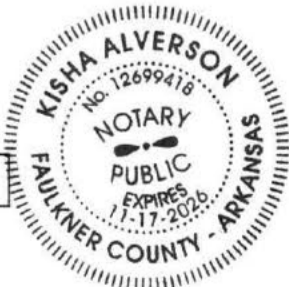
SWORN TO and subscribed before me at Little Rock, AR (City) (State)

on this 10th day of January, 2019 (Date) (Month) (Year)

[Signature] (Notary Public)

My Commission Expires: 11.17.2026 (Month) (Day) (Year)

(SEAL)



SF1- R7/99

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

Arkansas
State Claims Commission
JAN 14 2019
RECEIVED

CHARLES McRAVEN &
LINDA McRAVEN

CLAIMANTS

VS.

NO. _____

ARKANSAS DEPARTMENT OF TRANSPORTATION

RESPONDENT

COMPLAINT

Plaintiffs Charles McRaven and Linda McRaven, by and through their attorney, Scott Richardson, McDaniel, Richardson, & Calhoun PLLC, state for their Complaint against Respondent:

I. RESIDENCY & PARTIES

1. At the time of the incident, Plaintiffs Charles McRaven and Linda McRaven were citizens and residents of Free Union, Albemarle County, Virginia.

2. At all times relevant to this Complaint, Defendant Arkansas Department of Transportation ("ArDOT") is an agency of the State of Arkansas.

II. JURISDICTION

3. The Claims Commission has jurisdiction pursuant to Ark. Const. Art. VII sec. 11, which provides that circuit courts shall have jurisdiction in all civil cases; and pursuant to Ark. Code Ann. sec. 19-10-204(a), which provides that the Claims Commission shall have exclusive jurisdiction of all actions the State and its several agencies.

III. BASIC PREMISE

4. This is a negligence case arising from an injury suffered at a rest stop along U.S. Interstate 40 maintained and operated by the State of Arkansas through its Arkansas Highway and Transportation Department. The injury occurred on July 9, 2017, at about 9:00 p.m., at a rest stop between Palestine and Forrest City, Arkansas at mile marker 235.

IV. FACTS

5. On July 9, 2017, Plaintiff Charles McRaven was travelling through Arkansas with his daughter [REDACTED] Mr. McRaven, who was born and

raised in Arkansas, was 82 years old at the time and was one of the leading authorities in the nation in construction and preservation of log, stone, and post and beam structures.

6. Mr. McRaven has authored five books on historic American building techniques and their place in history. Before the incident that is the subject of this lawsuit, he regularly travelled the nation, including multiple trips to Arkansas, to teach others the skills he has learned in over sixty-plus years of work in log, stone, blacksmithing and post and beam construction and restoration.

7. On July 9, 2017, Mr. McRaven was travelling in Arkansas on business and family matters.

8. He had just completed an intense series of workshops and lectures demonstrating to a number of people construction and restoration skills.

9. The State of Arkansas through AHTD maintains a system of interstate highways in order to facilitate tourism, to increase interstate commerce, to advance development of business in Arkansas, and generally to promote economic development within the State.

10. AHTD maintains rest areas on the highways for the comfort and convenience of the travelers on Arkansas's roads, to encourage use of Arkansas's road system, and to promote economic development within the State.

11. Mr. McRaven was using the rest area on Interstate 40 on his trip in and around the State and for the purpose for which the property was held open to the public.

12. Having constructed the rest area and having been charged with maintaining the system of Arkansas highways, including rest areas, AHTD owed a duty to the travelling public (including Mr. McRaven) to exercise reasonable care in maintaining the rest area.

13. The General Assembly has assigned to the AHTD and the Arkansas State Highway Commission the duty to investigate the condition of the State's highways including the condition of rest areas located on or near Arkansas's highways.

14. The AHTD negligently maintained the rest area at which Mr. McRaven was injured.

15. During his stop, Mr. McRaven entered the men's room in the rest area that the AHTD held out as safe for him to use.

16. A water pipe in the men's room in the rest area was broken and was spilling water over all of the floor in men's room at the rest area.

17. No warning signs had been posted; no AHTD personnel were on site; nor had AHTD personnel provided any warning to users of the rest area or to Mr. McRaven that water was covering the floor of the rest area.

18. The water covering the floor of the men's room in the rest area created a dangerous condition.

19. When Mr. McRaven entered the restroom he slipped on the wet floor.

20. The fall broke Mr. McRaven's hip in multiple places and caused other severe injuries to his shoulder and ribs. He also hit his head on the floor causing him serious headaches for days after the fall.

21. Mr. McRaven immediately experienced intense physical pain from his injuries.

22. There were four witnesses to the leaking pipe and water being on the floor. Because of the extent of his injuries the witnesses had to carry Mr. McRaven out of the restroom.

23. Mr. McRaven was transported from the scene by ambulance to the Forrest City Medical Center for treatment of his severe injuries. While there, he was diagnosed as having two fractures of the neck of his femur.

24. Because of the severity of his injuries, the Forrest City Medical Center was unable to treat Mr. McRaven's injuries. Instead they provided him pain medicine and had him transported to Baptist Health Center in North Little Rock ("Baptist Hospital").

25. Mr. McRaven arrived at Baptist Hospital on July 10, 2017 after midnight. While at Baptist Hospital he underwent surgery to repair the neck of his femur. Doctors inserted a trochanteric nail. A trochanteric nail is essentially a

titanium rod that is inserted in the femur. It is fixed in place with a screw diagonal across the top of the rod into the ball joint of the hip and a screw lower on the rod.

26. Mr. McRaven remained in the medical unit at Baptist Hospital through July 12, 2017. At that point he had limited mobility and could only move about his room with the help of a walker and hospital personnel.

27. He was transferred to Baptist Rehabilitation Institute ("BRI") on another floor of Baptist Hospital for work on his mobility, strength, endurance, and to manage the pain of his broken hip. During his stay his pain interfered with his ability to sleep and perform daily living tasks. Mr. McRaven made some improvement in his ability to move around, but it was limited. He was discharged from BRI on July 22, 2017, to return home in a wheel chair to Virginia after almost two weeks of intensive physical therapy in Arkansas because of his injuries.

28. On July 27, 2017, Mr. McRaven began follow up care with his family doctor, Sentara Martha Jefferson Hospital Orthopedic Department, and with the University of Virginia Health Systems in-home physical therapy program. The University and the doctors documented Mr. McRaven's continued struggles with mobility caused by his broken hip that he suffered in the fall at the Arkansas rest stop.

29. Since then, Mr. McRaven has continued treatment with various doctors to try to manage his pain and increase his mobility so that he can return to the level of activity that he had before the fall. However, his progress has been limited. He continues to suffer with significant pain and reduced mobility. He is unable to engage in the construction and renovation that he did before his fall. He is also limited in the amount of time he can sit still, which, in turn, limits his ability to travel by auto, train, or airplane for any length of time for the lectures, workshops and seminars he provided before his hip was broken.

V. CAUSE OF ACTION - NEGLIGENCE

30. ArDOT held the rest area and its restroom open for the general public to use as they travelled through Arkansas.

31. ArDOT owed a duty of ordinary care to maintain the rest room in reasonably safe condition.

32. ArDOT breached this duty by failing to maintain the rest room and failing to warn the public when the restroom was rendered unsafe.

33. Respondent ArDOT was negligent in the following particulars:

- a. Failing to maintain the rest area so that it was safe for the persons invited onto the premises;
- b. Failing to maintain the plumbing in the rest area or to repair damaged water pipes in the rest area;
- c. Failing to warn invitees using the rest area of the dangerous condition created by the broken water pipes in the men's room of the rest area; and
- d. Otherwise failing to exercise ordinary care under the circumstances.

VI. PROXIMATE CAUSATION

34. ArDOT's negligence proximately caused the incident described herein and the injuries and damages sustained by Claimant.

VII. INJURIES AND COMPENSATORY DAMAGES

35. Claimants sustained injuries as a result of the incident described above.

36. Claimants are entitled to the following damages:

- a. The nature, extent, duration, and permanency of his injuries;
- b. The full extent of the injuries he sustained;
- c. The expense of his medical care, treatment and services received, including transportation, board and lodging expenses and those expenses that are reasonably certain to be required in the future;
- d. The pain, suffering, and mental anguish experienced in the past and reasonably certain to be experienced in the future;
- e. The value of any earnings, profits, or salary lost in the past and that are reasonably certain to be lost in the future;
- f. The visible results of his injuries;
- g. Loss of consortium, companionship, and marital assistance; and,

h. Any property damages sustained.

37. The injuries and damages described herein have been suffered in the past and will be continuing in the future.

VIII. DEMAND & PRAYER FOR RELIEF

38. Claimants demand judgment against the ArDOT for a sum sufficient to fully compensate them for their damages. Claimants request an award of \$3,750,000.

39. Claimants demand judgment against the ArDOT for pre-judgment interest and post-judgment interest at the maximum rate allowed by law; for reasonable expenses; costs; and for all other proper relief to which they may be entitled.

Respectfully submitted,

By: 

Scott P. Richardson #2001208
McDaniel, Richardson, & Calhoun PLLC
1020 West 4th St., Suite 410
Little Rock, AR 72201
o 501-235-8336
fax 501-588-2104
scott@mrcfirm.com

Attorneys for Plaintiff

**BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS**

**CHARLES MCRAVEN and
LINDA MCRAVN**

CLAIMANTS

vs.

NO. 190727

ARKANSAS DEPARTMENT OF TRANSPORTATION

RESPONDENT

MOTION FOR APPROVAL OF SETTLEMENT

Claimants Charles and Linda McRaven by and through their attorneys, state for their *Motion for Approval of Settlement Agreement*:

1. This case was a contested matter by which Claimant suffered serious injuries including a broken hip in a fall at a rest stop owned and operated by the Arkansas Department of Transportation.

2. Claimant Charles McRaven entered the bathroom of the rest stop and slipped to the floor. The fall was caused by a water leak from a sink in the bathroom that allowed the floor to be covered in water. Respondant denied any claim of negligence or fault in the cause of the fall.

3. The parties have reached an agreed resolution to this matter whereby Respondent has agreed to pay to Claimants \$140,000. Attached as Exhibit A is the settlement agreement executed by both parties.

4. Accordingly, Claimants request approval of this settlement and that it be presented to the Arkansas legislature for appropriation during the 94th General Assembly of the Arkansas Legislature.

5. The undersigned has discussed this motion with counsel for Respondant who has no objection to the relief requested herein.

WHEREFORE, Claimants request that the Claims Commission approve the attached settlement agreement and transmit same to the legislature for appropriation in the 94th General Assembly, and that they be granted any and all other just and proper relief to which they may be entitled.

Respectfully submitted,

By: /s/ Scott P. Richardson
Scott P. Richardson #2001208
McDaniel Wolff, PLLC
1307 West 4th St.
Little Rock, AR 72201
o 501-954-8000
fax 866-419-1601
scott@mwbfirm.com

Attorney for Claimants

CERTIFICATE OF SERVICE

I, Scott P. Richardson, hereby certify that a copy of the foregoing has, on January 13, 2023 been served, unless otherwise indicated, on all counsel of record via electronic mail.

/s/ Scott P. Richardson
Scott P. Richardson

SETTLEMENT, RELEASE, PRO RATA DISCHARGE AND INDEMNITY AGREEMENT

We, Charles and Linda McRaven, also hereafter referred to as "the undersigned," for and in consideration of the payment of the sum of One Hundred Forty Thousand & 00/100 Dollars (\$140,000.00), the receipt and sufficiency of which are hereby acknowledged, do hereby compromise, settle with, release, acquit and forever discharge the Arkansas Department of Transportation, Arkansas State Highway Commission, their predecessors, sub-agencies, successors, agents, servants, officers, employees, partners, insurers, and assigns and any other person, firm, corporation, or association in privity with it (hereinafter sometimes collectively referred to as "those herein released"), or any of them, of and from any and all liability, actions, claims, demands, and causes of action whatsoever which the undersigned may now have or may have in the future arising out of an accident or incident occurring on or about July 9, 2017, at the Palestine Rest Stop off Interstate 40 in Arkansas, including all injuries, damages, and consequences whatsoever known and unknown, and regardless of whether the extent of the damages or the existence of the claim is now known or may not be determined until sometime in the future.

For the same consideration and as part of this settlement, it is understood and agreed that any lawsuit presently pending in the Arkansas State Claims Commission and styled *Charles McRaven and Linda McRaven v. Arkansas Department of Transportation*, Claims Commission No. 190727, against those herein released, solely or among others, shall be dismissed with prejudice as to any claims of the undersigned asserted in that action against those herein released. It is understood that tender of payment by warrant will be made payable to the undersigned in the amount of One Hundred Forty Thousand & 00/100 Dollars (\$140,000.00), which has been agreed to by the undersigned, and this settlement, in accordance with Arkansas law, is contingent upon approval from the Arkansas State Claims Commission and the Claims Review/Litigation Reports Oversight Subcommittee of the Arkansas Legislative Council Committee of the Arkansas General Assembly.

For the same consideration and as part of this compromise, the undersigned agrees to indemnify, protect and hold harmless those herein released of and from any and all claims, judgments, costs, expenses and losses (including attorney's fees) arising out of any subsequent actions, claims, or demands by reason of a claim by the undersigned or derivative of the undersigned, arising out of the hereinabove described incident. For the same consideration and as part of this compromise settlement, the undersigned further agrees to indemnify and hold harmless those herein released of and from any claims, judgments, costs, expenses and losses (including attorney's fees) by reason of any lien or subrogation rights or assigned claim asserted or claimed by any third parties on account of benefits or services provided to or for the undersigned as a result of the alleged incident described above.

It is the express intention of the undersigned to reserve any rights, claims, or causes of action which the undersigned may have against any person other than those herein released but to release fully and completely those herein released. Therefore, in consideration of the above payment, the undersigned agree to a reduction of the damages recoverable against all other tortfeasors to the extent of the pro rata share of the liability of those herein released, and further agree to indemnify, protect and hold harmless those herein released from all judgments, claims, losses or expenses arising out of or by reason of any action, claim or demand by any person on account of the injuries sustained by the undersigned as a result of the above described incident or any liability or alleged liability of those herein released. It is specifically intended that those herein released are and shall be released, indemnified and held harmless with respect to any liability or alleged liability under Act 315 of the Acts of Arkansas for 1941, as amended, being the Uniform


Contribution Among Tortfeasors Act. This instrument does not release the undersigned from any claims by those herein released for contribution or indemnity.

It is understood and agreed that this is a compromise settlement of doubtful and disputed claims; that the payment made shall never be construed as an admission of liability on the part of any of those herein released, by each of whom liability is expressly denied; that this payment is received in full, final and complete settlement and satisfaction of all claims against those herein released arising or to arise out of the incident described above, including any claims for contribution by other alleged tortfeasors; that the undersigned hereby declares that no representations about the nature and extent of damages nor any representations regarding the nature and extent of legal liability or financial responsibility of any of those herein released have induced the undersigned to make this release and agreement; that this release contains the entire agreement between the parties and the terms herein are contractual in nature and not merely recitals.

EXECUTED on this the 12 day of January, 2023.

Claimants:


CHARLES MCRAVEN


LINDA MCRAVEN

APPROVED:

Scott P. Richardson
McDaniel & Wolff, PLLC
Attorneys for Plaintiffs
1020 W. 4th St., Suite 410
Little Rock AR 72201
Ph: 501-235-8336

By: 
Scott P. Richardson AR BIN 2001208

Respondent:

Rita S. Looney
RITA S. LOONEY

CHIEF COUNSEL, ARKANSAS DEPARTMENT OF TRANSPORTATION

APPROVED:

Amanda J. Andrews, Staff Attorney
Arkansas Department of Transportation
P.O. Box 2261
Little Rock, AR 72203-2261
Office: (501) 569-2278
Fax: (501) 569-2164

By: *Amanda J. Andrews*
Amanda J. Andrews (Ark. Bar No. 2005205)

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

**CHARLES MCRAVEN AND
LINDA MCRAVEN**

CLAIMANT

V.

CLAIM NO. 190727

**ARKANSAS DEPARTMENT OF
TRANSPORTATION**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is a Settlement, Release, Pro Rata Discharge and Indemnity agreement (the “Settlement Agreement”) signed by Charles McRaven and Linda McRaven (collectively referred to herein as the “Claimant”), as well as the chief counsel and staff attorney for the Arkansas Department of Transportation (the “Respondent”). Also pending is a motion to approve the Settlement Agreement. Based upon a review of the pleadings, the Settlement Agreement, and the motion to approve the Settlement Agreement, the Claims Commission hereby GRANTS the motion to approve the Settlement Agreement, APPROVES the Settlement Agreement, and REFERS the total award of \$140,000.00 to the General Assembly for review and placement on an appropriations bill pursuant to Ark. Code Ann. § 19-10-215(b).

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair

DATE: January 20, 2023

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).