

Arkansas State Claims Commission
AUG 05 2014

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

RECEIVED

- Mr.
- Mrs.
- Ms.
- Miss

HARVEY SHINAULT Claimant

vs.

State of Arkansas, Respondent
Highway Dept.

Do Not Write in These Spaces		
Claim No.	15-0102-CC	
Date Filed	August 5, 2014	
	(Month) (Day) (Year)	
Amount of Claim \$	50,000.00	
Fund	AHTD	

Personal Injury, Pain & Suffering, Mental Anguish, Loss of Wages, Negligence, Loss of Property

COMPLAINT

HARVEY SHINAULT the above named Claimant, of PO BOX 729 LEPANTO
(Name) (Street or R.F.D. & No.) (City)

ARKANSAS 72354 (901) 233-3590 County of POWSETT represented by TAYLOR KING & ASSOCIATES
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)

of 320 MAIN STREET AKADELPHIA AR 71923 (870) 246-0505 (870) 246-0529, says:
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPT. Amount sought \$50,000

Month, day, year and place of incident or service: OCTOBER 8th, 2012 on SH 135 in POWSETT COUNTY

Explanation: OPERATOR MOTT WAS TRAVELING SOUTH ON SH 135 APPROXIMATELY THREE MILES SOUTH OF LEPANTO, AR. KESTIE MOTT WAS DRIVING A ONE TON HWY DEPT TRUCK, LICENSE # 7990, PROPERTY OF THE ARKANSAS STATE HIGHWAY AND TRANSPORTATION DEPT. OPERATOR HARVEY SHINAULT WAS ALSO TRAVELING SOUTH ON SH 135 APPROACHING MOTT'S VEHICLE FROM BEHIND. AT APPROXIMATELY 4:30 PM, MOTT ATTEMPTED TO MAKE AN IMPROPER LEFT TURN WHERE A SET OF GRAIN BINS SET SHINAULT, WHO HAD APPROACHED MOTT, CHANGED LANES TO PASS. MOTT ATTEMPTED TO TURN LEFT AS SHINAULT ATTEMPTED TO PASS HER AND IMPACT OCCURRED ON THE EAST SHOULDER OF SH 135 AFTER IMPACT, SHINAULT'S VEHICLE CONTINUED TO TRAVEL OFF THE EAST SIDE OF THE ROADWAY INTO THE YARD AT 8710 SH 135. SHINAULT'S VEHICLE CONTINUED IN A SOUTHEASTERLY DIRECTION STRIKING AND PASSING BETWEEN TWO LARGE TREES AT 8710 SH 135 AFTER IMPACT, WITH THE TREES SHINAULT'S VEHICLE CONTINUED ROLLING FOR APPROXIMATELY 110 FEET BEFORE COMING TO REST IN A BEAN FIELD. OFFICER TONY L. AUSTIN, WITH THE ARKANSAS STATE POLICE, TROOP C, INVESTIGATED THE ACCIDENT

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? N/A to whom? N/A
(Yes or No) (Month) (Day) (Year) (Department)

and that the following action was taken thereon: N/A

and that \$ N/A was paid thereon: (2) Has any third person or corporation an interest in this claim? YES if so, state name and address

MEDICARE / MSPRC PO Box 138832 OKLAHOMA CITY OK 73113
(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows: POSSIBLE SUBROGATION LIT
and was acquired on BETWEEN 10/8/2012 - 10/30/2012 in the following manner:

PAYMENTS MADE ON MEDICAL BILLS ACCRUED DURING THAT TIME PERIOD

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.

BRET THOMPSON (Print Claimant/Representative Name) [Signature] (Signature of Claimant/Representative)

KIMBERLY HOLIMAN SWORN TO and subscribed before me at North Little Rock AR
PULASKI COUNTY (City) (State)

NOTARY PUBLIC - ARKANSAS on this 30 day of JULY 2014
Commission Expires October 05, 2019 (Date) (Month) (Year)

Commission No. 12373470 [Signature] (Notary Public)

My Commission Expires: 10 05 2019
(Month) (Day) (Year)

ARKANSAS STATE CLAIMS COMMISSION
MOTOR VEHICLE ACCIDENT REPORT FORM

SECTION I

CLAIMANT HARVEY SHINAULT ADDRESS PO BOX 729
CITY & STATE LEPANTO, ARKANSAS ZIP CODE 72354

DATE OF ACCIDENT: 10/8/2012 TIME: 4:30 PM

MOTOR VEHICLE DAMAGED: TYPE DIESEL TRACTOR TRUCK MAKE INTERNATIONAL YEAR 2005

DRIVEN BY: HARVEY SHINAULT ADDRESS PO BOX 729 LEPANTO, AR 72354

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

OPERATOR MUTT WAS TRAVELING SOUTH ON SH 135 APPROXIMATELY THREE MILES SOUTH OF LEPANTO, AR. OPERATOR SHINAULT WAS TRAVELING SOUTH ON SH 135, APPROACHING MUTT FROM BEHIND. SHINAULT CHANGED LANES TO PASS WHEN MUTT MADE AN IMPROPER LEFT TURN INTO SHINAULT. SHINAULT SUFFERED PERSONAL INJURIES AND HIS VEHICLE WAS TOTALED. *****

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.

If repairs have not been made, list three estimates below and attach copies of each of them.

NAME	ADDRESS	AMOUNT
1. <u>VEHICLE TOTALED</u>	<u>SWORN STATEMENT OF PROOF OF LOSS ATTACHED \$ 21,000</u>	
2. _____	_____	_____
3. _____	_____	_____

SECTION III

Was vehicle covered by Insurance? Yes () No () Liability Only ()
Comprehensive: Yes () No () What is your deductible? \$ 500
Collision: Yes () No () What is your deductible? \$ 500

NAME OF INSURANCE CARRIER GREAT WEST CASUALTY COMPANY ADDRESS 624 SW FLAHS DRIVE SUITE 240, ARLINGTON, TX 76011

SECTION IV

Type of State Vehicle involved ENLTON HWY DEPT. TRUCK License No. 7990

Driver KEITH MUTT Property of which State Agency AR. STATE HWY. AND TRANSPORTATION DEPT

If accident was investigated by the State Police, give name of investigating officer: TONY L. AUSTIN If investigation was made by some other agency, give name and title of officer making the investigation: N/A

N/A

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.

KIMBERLY HOLIMAN
PULASKI COUNTY

NOTARY PUBLIC - ARKANSAS

My Commission Expires October 05, 2019
(Notary Seal) Commission No. 12373479

[Signature]
Signature of Claimant

Sworn to and subscribed before me at North Little Rock AR City, State
on this 30 day of JULY, 2014 year

My Commission Expires 10-05-2019

[Signature]
Notary Public

Arkansas
State Claims Commission
AUG 05 2014

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ARKANSAS STATE CLAIMS COMMISSION
PROPERTY DAMAGE/PERSONAL INJURY INCIDENT REPORT FORM

SECTION I

CLAIMANT HARVEY SHINAULT ADDRESS Po Box 729
 CITY & STATE LEPANTO, AR ZIP CODE 72354

DATE OF INCIDENT: 10/8/2012 TIME 4:30 PM

Give a brief description of incident, showing how incident happened, exact loss and extent of damage to property and/or injury to person:

OPERATOR MOTT WAS TRAVELING SOUTH ON SH 135 APPROXIMATELY THREE MILES SOUTH OF
LEPANTO, AR. OPERATOR SHINAULT WAS TRAVELING SOUTH ON SH 135, APPROACHING MOTT FROM BEHIND.
SHINAULT CHANGED LANES TO PASS WHEN MOTT MADE AN IMPROPER LEFT TURN INTO SHINAULT.
SHINAULT SUFFERED PERSONAL INJURIES AND HIS VEHICLE WAS TOTALLED.
 (If personal injury claim only, move on to Section IV)

SECTION II

Has this property 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.

If repairs have not been made, list three estimates below and **attach copies** of each of them.

NAME	ADDRESS	AMOUNT
1. <u>VEHICLE TOTALLED</u>	<u>SWORN STATEMENT OF PROOF OF LOSS ATTACHED</u>	<u>\$ 21,000</u>
2. _____	_____	\$ _____
3. _____	_____	\$ _____

Arkansas
 State Claims Commission
 AUG 05 2014
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SECTION III

Was property covered by insurance? Yes (✓) No ()
 If yes, what is the deductible? \$ 500.00

NAME OF INSURANCE CARRIER GREAT WEST CASUALTY COMPANY ADDRESS 624 SIX FLAGS DRIVE SUITE 240, ARLINGTON, TX 76011

SECTION IV

Is injured covered by medical insurance? Yes (✓) No () If yes, is medical insurance:
 If yes, what is the deductible? \$ NONE
 A. Job-based Yes () No (✓)
 B. Uninsured Motorist Yes () No (✓)
 C. Private Pay Yes () No (✓)

NAME OF INSURANCE CARRIER MEDICARE ADDRESS PO BOX 138832 OKLAHOMA CITY, OK 73113

SECTION V

If incident was investigated by the police or by some other agency, give name and title of officer/person making the investigation: OFFICER TONY L. AUSTIN

SECTION VI

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.

KIMBERLY HOLIMAN
 PULASKI COUNTY
 (Notary Public) PUBLIC - ARKANSAS
 My Commission Expires October 05, 2019
 Commission No. 12373470

Sworn to and subscribed before me at North Little Rock, AR
 City & State

[Signature]
 Signature of Claimant

My Commission Expires 10-05-2019

[Signature]
 Signature of Notary Public

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

HARVEY SHINAULT

CLAIMANT

V.

CLAIM NO. 15-0102-CC

ARKANSAS DEPARTMENT OF
TRANSPORTATION

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the motion filed by Arkansas Department of Transportation (the “Respondent”) for summary judgment as to the claim of Harvey Shinault (the “Claimant”) against Respondent. Also before the Claims Commission is Claimant’s supplement to motion *in limine*. At the hearing held September 14, 2018, on both motions, Claimant was represented by JP Phillips. David Dawson appeared on Respondent’s behalf.

Based upon a review of the motions, the argument of the parties, and the law of Arkansas, the Claims Commission hereby unanimously finds as follows:

1. The Claims Commission has jurisdiction over this claim pursuant to Ark. Code Ann. § 19-10-204.
2. This claim is based upon an October 8, 2012, vehicle accident between Respondent’s employee, Kristi Mott (“Mott”) and Claimant. After the accident, Mott filed suit against Claimant in Poinsett County Circuit Court (the “Mott lawsuit”). Claimant filed the instant claim against Respondent as Mott’s employer. The instant claim was stayed pending resolution of the Mott Lawsuit.
3. The Mott Lawsuit was ultimately resolved by a Settlement Agreement and Release (the “Settlement Agreement”) between the parties.

Claimant's Supplement to Motion *in Limine*

4. Claimant filed a supplement to motion *in limine*, arguing, *inter alia*, that Respondent should be prohibited from introducing evidence regarding the Settlement Agreement.

5. Respondent denied that such evidence is inadmissible because the collateral source rule does not apply at the Claims Commission and because the evidence is offered for another purpose, namely to determine whether Claimant had any contributory negligence.

6. The Claims Commission agrees with Respondent that it can introduce evidence of settlement negotiations because the Claims Commission is not bound by the Arkansas Rules of Evidence. Ark. Code Ann. § 19-10-210(b)(1). Additionally, pursuant to Ark. Code Ann. § 19-10-302, the Claims Commission must consider evidence of payments received from other sources.

Respondent's Motion for Summary Judgment

7. Respondent filed a motion for summary judgment, arguing that it is entitled to judgment as a matter of law based upon the case of *Russell v. Nekoosa Papers, Inc.*, 261 Ark. 79-B, 547 S.W.2d 409 (Ark. 1977).

8. The Claims Commission believes that a thorough discussion of the *Russell* case is instructive to the claim at bar.

9. In *Russell*, two men were killed in a car accident involving employees of Nekoosa Papers, Inc. ("Nekoosa"). A lawsuit was filed by administrators for the deceased men's estates against Nekoosa's employees. That lawsuit was resolved by a settlement agreement between the parties, in which the employees were released from any liability. The administrators specifically reserved the right in the settlement agreement to bring a claim against any other party with potential liability.

10. Later, the administrators sued Nekoosa based on *respondeat superior*. The trial court granted Nekoosa's motion for summary judgment in the second lawsuit based upon *res*

judicata, holding that the employees' negligence was imputed to Nekoosa as their employer and that the dismissal of the first lawsuit with prejudice meant that there was no finding of negligence against the employees. The administrators appealed to the Arkansas Supreme Court, disagreeing that the settlement agreement between the administrators and the Nekoosa employees could bar a second lawsuit against the Nekoosa when the issues of negligence and agency were never litigated in the first lawsuit.

11. The Arkansas Supreme Court upheld the trial court's decision, finding that in the first lawsuit, the issue was whether the Nekoosa employees were negligent. The dismissal of that lawsuit with prejudice "was as effective as if it were concluded adversely to . . . [the administrators] by litigation at trial." The Arkansas Supreme Court held that Nekoosa's liability was "derivative from the same negligent acts of its . . . employees" and that the settlement and dismissal of the first lawsuit was "conclusive of the issue of negligence of the . . . employees."

12. In response to the motion for summary judgment, Claimant attempted to draw a distinction between the fact that in *Russell*, the administrators were the plaintiffs in both lawsuits, whereas here, Claimant was the defendant in the Mott Lawsuit and is the plaintiff/claimant in the instant claim. Claimant also argued that the elements of *res judicata* have not been met because Respondent could not be made a party to the Mott Lawsuit under Ark. Code Ann. § 19-10-204. Last, Claimant focused on the language of the Settlement Agreement, which did not release any claim that the parties "have asserted or may assert before the Arkansas State Claims Commission."

13. In analyzing this motion for summary judgment, the Claims Commission examined the Settlement Agreement.

14. The Settlement Agreement is between Mott and her spouse, who are collectively named as "Parties of the First Part," and the following "Parties of the Second Part:"

Liberty First Risk Retention Group Insurance Company, a Utah domestic for-profit corporation, and its affiliates, subsidiaries, any of its other corporations, business entities, its agents, representatives, successors, assigns, employees, independent administrators, and its insurers; the Rehabilitator, the Deputy Rehabilitator, their agents, representatives, employees, officers and directors;

CDS Transport, Inc., and its affiliates, subsidiaries, business entities, its agents, representatives, successors, assigns, employees, insureds, independent contractors, members of the Board of Trustees, directors, officers, administrators and employees; and

All individuals or entities that were or could have been charged with any liability, including but not limited to, Harvey Shinault.

15. Claimant released Mott and her spouse with the following language:

Except for the performance of the obligations set forth herein, Harvey Shinault, in consideration of the promises and releases set forth herein, and other consideration, receipt of which is hereby acknowledged, hereby releases the Parties of the First Part, in their individual capacities, of and from any and past, present, or future claims, actions, causes of action, demands, right, damages, expenses, attorneys' fees, loss of services, and any compensation or claim of any nature whatsoever, whether based on tort, wrongful death, contract, statute, indemnity, contribution, common law, agreements to insure, lien, or any other theory which now exists or which may hereafter accrue, on account of, or in any way growing out of any and all known or unknown consequences arising from the incident that occurred on or about October 8, 2012 . . . and/or arising out of all facts and matters complained of or which could have been complained of.

16. The Settlement Agreement also provided that it should not be construed as "releasing or otherwise relinquishing any claim the Parties of the Second Part have asserted or may assert before the Arkansas State Claims Commission."

17. Section 3 of the Settlement Agreement, which is titled "No Admission of Liability," states that the Settlement Agreement "is a compromise of disputed claims and . . . is not an admission of liability by any party hereto."

18. The Settlement Agreement is thirteen pages long. Only ten pages have been produced to the Claims Commission. The last page is the signature page showing where Mott and her spouse signed the Settlement Agreement. The copy of the Settlement Agreement provided to

the Claims Commission does not show who signed the Settlement Agreement on behalf of the Parties of the Second Part. After the hearing, the Claims Commission asked both parties if they had a complete copy or if they could obtain a complete copy. The parties confirmed that neither has a complete copy.

19. Specifically, the Claims Commission was interested to confirm whether Claimant signed the Settlement Agreement. If Claimant was not a signatory to the Settlement Agreement (which seems unlikely given the portion of the Settlement Agreement in which Claimant specifically released Mott and her spouse), that might be a factor to distinguish *Russell* from the present case. However, the complete agreement was not available for the Claims Commission to review.

20. The Claims Commission is unpersuaded by Claimant's argument that the elements of *res judicata* have not been met. While Claimant was the defendant in the Mott Lawsuit, Claimant could have filed a counterclaim against Mott if he believed Mott to have been negligent in the accident. Or Claimant could have fully litigated the Mott Lawsuit in order to determine the percentages of fault assigned to each party. These could have been litigated but were not. Instead, the parties elected to settle and dismiss the matter without a finding of liability.

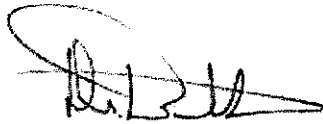
21. Similarly, the Claims Commission is unpersuaded by Claimant's argument that Claimant's status as a defendant in the Mott Lawsuit distinguishes the holding in *Russell*. Just like Claimant could have filed a counterclaim against Mott (which would have made Claimant the counterplaintiff for purposes of the counterclaim), Claimant could have filed suit against Mott if Claimant believed Mott's actions in the accident to be negligent. But Claimant did none of these, instead choosing to settle and to release Mott from liability.

22. Under *Russell*, the effect of the Settlement Agreement and the resulting dismissal of the Mott Lawsuit is that the instant claim against Respondent as Mott's employer is barred.

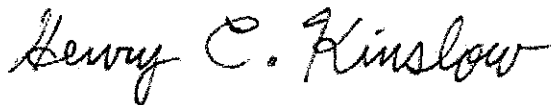
23. While, at first blush, it might appear troubling in both *Russell* and the instant claim that the parties tried to reserve the right to pursue claims against other responsible parties (Nekoosa and Respondent – the employers) in the settlement agreements. However, under the doctrine of *respondeat superior*, an employer can only be held liable where an employee has been held liable. *See generally, Regions Bank & Trust, N.A. v. Stone County Skilled Nursing Facility, Inc.*, 73 Ark. App. 17, 38 S.W.3d 916 (2001); *McMullen v. Healthcare Staffing Associates, Inc.*, 2012 Ark. App. 617, 424 S.W.3d 404 (2012); *Costner v. Adams*, 82 Ark. App. 148, 121 S.W.3d 164 (2003). Where there is no finding of liability against an employee, there can be no finding of liability against the employer under *respondeat superior*.

24. As such, under *Russell*, the Claims Commission finds that Respondent is entitled to judgment as a matter of law. Respondent's motion for summary judgment is GRANTED, and Claimant's claim is DENIED and DISMISSED. Claimant's remaining arguments in its motion *in limine* are hereby rendered moot.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Dexter Booth



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow, Chair



ARKANSAS STATE CLAIMS COMMISSION
Bill Lancaster

DATE: October 19, 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

HARVEY SHINAULT

CLAIMANT

V.

CLAIM NO. 15-0102-CC

**ARKANSAS DEPARTMENT OF
TRANSPORTATION**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the motion filed by Harvey Shinault (the “Claimant”) for reconsideration of the Claims Commission’s October 19, 2018, order denying and dismissing Claimant’s claim against the Arkansas Department of Transportation. Based upon a review of Claimant’s motion, the argument of the parties, and the law of Arkansas, the Claims Commission hereby unanimously finds as follows:

1. The Claims Commission has jurisdiction over this claim pursuant to Ark. Code Ann. § 19-10-204.

2. This claim is based upon an October 8, 2012, vehicle accident between Respondent’s employee, Kristi Mott (“Mott”) and Claimant. After the accident, Mott filed suit against Claimant in Poinsett County Circuit Court (the “Mott lawsuit”). Claimant filed the instant claim against Respondent as Mott’s employer. The instant claim was stayed pending resolution of the Mott Lawsuit. The Mott Lawsuit was ultimately resolved by a Settlement Agreement and Release (the “Settlement Agreement”) between the parties.

3. Respondent filed a motion for summary judgment, arguing that it is entitled to judgment as a matter of law based upon the case of *Russell v. Nekoosa Papers, Inc.*, 261 Ark. 79-B, 547 S.W.2d 409 (Ark. 1977). A hearing was held on September 14, 2018, at which the parties argued the motion for summary judgment. On October 19, 2018, the Claims Commission granted Respondent’s motion for summary judgment and denied and dismissed Claimant’s claim.

4. Claimant then filed the instant motion, arguing that the public interest exception to the *res judicata* doctrine laid out in *Mississippi County v. City of Blytheville*, 2018 Ark. 40, 538 S.W.3d 822 (February 22, 2018), should apply. Claimant also took issue with the Claims Commission's statement in the order stating that Claimant could have filed a counterclaim against Mott in the Mott Lawsuit, arguing that the Claims Commission was exposing state agencies to liability in state courts.

5. Respondent filed a response to Claimant's motion, arguing that because the Claims Commission has no authority to waive sovereign immunity, Claimant's public interest argument fails. Respondent also took issue with the Claims Commission's statement that Claimant could have filed a counterclaim against Mott, asserting that Claimant did file a counterclaim against Mott, which was dismissed by the Poinsett County Circuit Court pursuant to Ark. Code Ann. § 19-10-305. However, Respondent pointed to the another statement in the Claims Commission's order that Claimant could have fully litigated the Mott Lawsuit to determine the percentages of fault assigned to each party, arguing that this statement was grounds for granting of the summary judgment motion pursuant to the doctrine of *res judicata*. Respondent also argued that Claimant's motion for reconsideration should be denied pursuant to Claims Commission Rule 7.1 because Claimant did not set forth new or additional evidence not previously available.

6. Claimant filed a reply brief, reiterating that the Claims Commission's statements regarding Claimant's counterclaim in the Mott Lawsuit are contrary to Arkansas law.

7. It should be noted that the Claims Commission was not provided a copy of the pleadings or trial transcript from the Mott Lawsuit.

8. The Claims Commission agrees with the parties that its statements regarding Claimant filing a counterclaim against Mott could be confusing.

9. The Claims Commission affirmatively states that, as asserted by Respondent, the Claims Commission has no authority to waive sovereign immunity on behalf of the State of Arkansas or to subject any state agency to state court jurisdiction. This order, read in conjunction with the October 19, 2018, should provide the clarity requested by the parties.

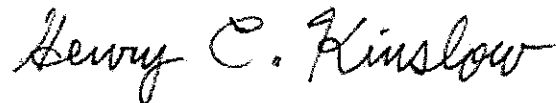
10. However, given that the Claims Commission is effectively striking the language in question from its October 19, 2018, order, the Claims Commission agrees with Respondent that Claimant's public interest argument fails.

11. The fact remains that Claimant could have fully litigated the Mott Lawsuit in order to determine the percentages of fault assigned to each party, but, instead, Claimant elected to settle and to dismiss the matter without a finding of liability. Under *Russell*, the effect of the Settlement Agreement and the resulting dismissal of the Mott Lawsuit is that the instant claim against Respondent as Mott's employer is barred. The Claims Commission finds that it would be inappropriate to deviate from the Arkansas Supreme Court's ruling in *Russell* in the absence of distinguishing factors and that Respondent remains entitled to judgment as a matter of law pursuant to *Russell*.

12. The Claims Commission notes that it requested additional information from the parties in order to confirm whether there was a distinguishing factor. Specifically, the Claims Commission requested that the parties provide the Claims Commission with a complete copy of the Settlement Agreement in order to confirm whether Claimant himself signed the Settlement Agreement. As stated in the Claims Commission's October 19, 2018, order, if Claimant was not a signatory to the Settlement Agreement, that fact might distinguish the instant claim from *Russell*. However, to date, a complete copy of the Settlement Agreement has not been provided to the Claims Commission.

13. As such, the Claims Commission DENIES Claimant's motion for reconsideration. The Claims Commission's October 19, 2018, order remains in effect, although the Claims Commission finds that the October 19, 2018, order should be read in conjunction with the instant order as the issue of Claimant's counterclaim against Mott.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

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

DATE: January 18, 2019

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
OF THE STATE OF ARKANSAS**

HARVEY SHINAULT

CLAIMANT

V.

CLAIM NO. 15-0102-CC

**ARKANSAS STATE HIGHWAY AND
TRANSPORTATION DEPARTMENT**

RESPONDENT

NOTICE OF APPEAL

Comes now the Claimant, Harvey Shinault, by and through his attorneys, Taylor King & Associates, P.A., for his Notice of Appeal and Designation of Record, does state as follows:

1. Respondent Arkansas State Highway and Transportation department filed a Motion for Summary Judgment in this matter on May, 15, 2018, and Claimant filed a Response to said Motion on June, 4, 2018.
2. The Commission heard arguments from counsel on September 14, 2018 and the Commission entered an Order granting the Motion for Summary Judgment on October 19, 2018.
3. Claimant timely filed a Motion for Reconsideration on the matter, pursuant to A.C.A. § 19-10-211 on November 8, 2018, and the Commission entered an Order denying the Claimant's Motion for Reconsideration on January 19, 2019.
4. Plaintiff hereby gives notice of the appeal to the Arkansas General Assembly, and relevant sub-committees, pursuant to A.C.A. § 19-10-211(3), from the previously referenced Orders granting Respondent's Motion for Summary Judgment and denying his Motion for Reconsideration.

5. Plaintiff designates the following records on appeal:

- a. Complaint, filed 8/30/2014;
- b. Answer and Motion to Hold in Abeyance of Respondent, filed 9/15/2014;
- c. Claims Commission Order granting Motion to Hold in Abeyance; filed September 11, 2014;
- d. Entry of Appearance filed January 18, 2018;
- e. Motion for Summary Judgment, filed by Respondent, filed on May 15, 2018, and all exhibits attached;
- f. Brief in Support of Motion for Motion for Summary Judgment, filed May 15, 2018 and all exhibits attached;
- g. Response to Motion for Summary Judgment, filed June 4, 2018, and all exhibits attached;
- h. Brief in Support of Response Motion to Dismiss, filed June 4, 2018, and all exhibits attached;
- i. Reply to Response for Motion for Summary Judgment, filed June 6, 2018;
- j. Order Granting Motion for Summary Judgment, filed October 19, 2018.
- k. Motion for Reconsideration, filed November 8, 2018.
- l. Response to Motion for Reconsideration, filed November 15, 2018.
- m. Reply to Response for Motion for Reconsideration, filed November 21, 2018.
- n. Order denying Motion for Reconsideration, filed January 18, 2019.
- o. Notice of Appeal;

6. The Arkansas Claims Commission does not use a court reporter, thus a transcript of the hearing on Respondent's Motion for Summary Judgment is not available, and the

requirements of A.C.A. § 16-13-510(c) cannot be met in this instance. However, the Claimant does request a copy of the audio recording of said hearing to be included in this appeal, and designates it as part of the official record, pursuant to Ark. R. App. P. Civ. Rule 6(d). Said audio has not yet been obtained by the Claimant, but will be provided by the Claims Commission.

7. The Claimant states that this Appeal is meritorious and not for purposes of delay.

8. Pending matters before the Court include the Claimant's Motions in Limine, filed January 29, 2018, and as well as the merits of the Original Complaint, which have not yet been litigated before the Commission.

9. Pursuant to Arkansas Rule of Appellate Procedure 3(g), because Plaintiff/Appellant is not designating the entire record on appeal, Plaintiff/Appellant is providing the following concise statement of the points on appeal:

The Respondent, Arkansas State Highway Transportation Department, moved for Summary Judgment on the grounds of Res Judicata, claiming a release signed by the Claimant in an outside Circuit Court case precluded further litigation. The Release in question specifically preserved the right of the Plaintiff to pursue his claim with the Claims Commission, in plain language, and was clearly intended by all parties to only resolve the Circuit Court matter, this was not disputed. The Circuit Court matter was filed by Respondent's own employee, Kristie Mott. The Claimant was forced to defend said lawsuit, per his own insurance agreement, but was strictly prohibited from bringing a counter-claim or his own lawsuit on the matter, due to the restrictions of A.C.A. § 19-10-204, which grants exclusive jurisdiction to the Claims Commission for all matters concerning state-owned vehicles. The Claimant was only allowed to defend against Mott's accusations, and never granted the right to pursue his own claims in Circuit Court.


The specific doctrine relied upon by the Respondent, Res Judicata, contains five elements: (1) the first suit resulted in a judgment on the merits; (2) the first suit was based upon proper jurisdiction; (3) the first suit was fully contested in good faith; (4) both suits involve the same claim or a cause of action that was litigated or could have been litigated but was not; (5) both suits involve the same parties or their privies. It is obvious from the elements of Res Judicata that the Summary Judgment was not appropriate, as the Respondent could not prove that the Claimant's matter was contested in good faith at the Circuit Court level, that the suit was based upon proper jurisdiction, or that the suit was or could have been litigated at the Circuit Court level. This is because the Claims Commission's own rules and Arkansas Law, prevented the Claimant from ever asserting his claim in Circuit Court, per A.C.A. § 19-10-204, which as previously noted grants exclusive jurisdiction over such claims to the Commission. Any action taken, or not taken, by the Claimant in Circuit Court is irreverent to the pending matter, because the Circuit Court did not have jurisdiction, and

therefore could not, and did not, litigate the matter or hand down a judgment on the merits. The Respondent's own Motion to Hold in Abeyance proves as much, as the Commission stayed the claim until their employee's litigation at the Circuit Court level was complete, and then began the litigation for the Claimant's own claim. The original Order of the Claims Commission was based upon the theory that Harvey Shinault could, or did, litigate his own claims in Circuit Court, and upon the Claimant's Motion for Reconsideration, an Amended Order was handed down correcting their original Order, which confirmed the Commission's decision was based on an erroneous understanding of the facts, the law, or both.

The Claimant, Harvey Shinault, seeks to have the both Claims Commission Orders overturned, and the case remanded back to the Commission for the completion of his litigation. The Public Policy of the state should either allow for the Claimant to plead his case with the Claims Commission, or allow him to plead his case in Circuit Court, in this instance the State has prohibited both by Commission Order. There is no dispute that Harvey Shinault could not, and did not, litigate his own claims in Circuit Court, he only defended those asserted against him. The precedent set by the Commission's current Orders would allow the State to avoid any and all motor vehicle litigation by instructing their employees to merely assert a claim in any Circuit Court, which is detrimental to both Harvey Shinault and the public at large.

Respectfully submitted,

By:


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CERTIFICATE OF SERVICE

I, Jordan "JP" Phillips, hereby certify that a copy of the above and foregoing document has been served by placing a copy in the United States Mail with sufficient postage for first class delivery and/or by electronic transmission via email to the parties listed below on this the 30 day of January 2019:

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