

Arkansas
State Claims Commission

MAR 02 2017

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

Stephen A. Matt, Claimant

vs.

State of Arkansas, Respondent

AR. State Highway & Transportation Department
COMPLAINT

Do Not Write in These Spaces	
Claim No.	<u>17-0570-CC</u>
Date Filed	<u>March 02, 2017</u> (Month) (Day) (Year)
Amount of Claim \$	<u>1,000,000.00</u>
Fund	<u>AHTD</u>

Property Damage & Personal Inju

Stephen A. Matt, the above named Claimant, of _____, (Name) (Street or R.F.D. & No.) (City)

_____ County of _____ represented by Rainwater, Holt & Sexton, P.A. (State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)

of P.O. Box 17250 Little Rock Arkansas 72222 501-868-2500 501-868-2505, says: (Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: Arkansas State Highway and Transportation Department Amount sought: \$1,000,000.00

Month, day, year and place of incident or service: July 22, 2014 at approximately 2:35 p.m.

Explanation: **I. STATEMENT OF FACTS**

On July 22, 2014 at approximately 2:35 pm, Stephen Matt was traveling southbound on State Highway 221 South in Carrol County, Arkansas. Mr. Matt was driving a 2009 Yamaha XVS motorcycle. Mr. Matt was observing all applicable traffic laws, rules, and regulations. At the same time, Stephen Duran, an employee of the Arkansas State Highway and Transportation Department, was operating a tractor and mower along State Highway 221 South in Carrol County, Arkansas. As Mr. Matt came over the crest of a hill, the tractor was operating in the roadway blocking his lane of travel.

Mr. Matt suffered personal injuries as a result of the incident.

(CONTINUED ON PAGE 2)

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? Not Applicable; to whom? Not Applicable (Yes or No) (Month) (Day) (Year) (Department)

_____ and that the following action was taken thereon: Not Applicable

and that \$ Not applicable was paid thereon: (2) Has any third person or corporation an interest in this claim? No; if so, state name and address

Not Applicable (Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows: Not Applicable; and was required on Not applicable, 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 verify believes that they are true.

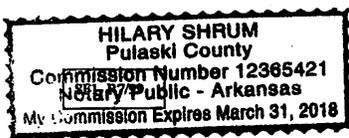
Geoff Thompson, AR Bar No. 2002093
(Print Claimant/Representative Name)

[Signature]
(Signature of Claimant/Representative)

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

(SEAL)

on this 27th day of February, 2017 (Date) (Month) (Year)



Hilary Shrump (Notary Public)
My Commission Expires: March 31 2018 (Month) (Day) (Year)

Explanation of Complaint, Continued
Page 2 of 2

II. LIABILITY

It is incontrovertible that the damages in this case were ultimately caused by the negligence of Mr. Duran. Mr. Duran was negligent in the following particulars:

1. Driving in such a careless manner as to evidence a failure to keep a proper lookout for other traffic, in violation of Ark. Code Ann. § 27-51-104(a);
2. Otherwise failing to exercise ordinary care under the circumstances;
3. Failing to properly notify and warn drivers of a known hazard; and
4. Failing to exercise traffic control procedures to safely allow motor vehicles to pass.

The negligent acts listed herein are the sole and proximate cause of the injuries sustained to Mr. Matt.

III. ADDITIONAL INFORMATION:

1. Itemized statement or bills for medical, hospital, or other expenses of those performing the services, with notations as to whether or not the same have been paid, the date of payment, and the signature of the person receiving payment appended thereto:

- a) See Exhibit A: Index of Medical Expenses with supporting itemized statements.
2. Property Damages:
 - a) The 2009 Yamaha XVS motorcycle driven by Mr. Matt was deemed a total loss and payment was made by Progressive Group of Insurance Companies. See Exhibit B: Settlement Summary.
3. Mr. Matt also suffered lost wages as a result of the accident.

IV. DAMAGES:

Mr. Matt had to undergo medical treatment for extensive injuries including, but not limited to, multiple rib fractures, facial lacerations, sternal fracture, skull fractures, subdural hematomas, retinal damage, and post-concussion syndrome. He was transported by ambulance from the accident to an emergency room. He then was transported by a medical helicopter to undergo further tests, scans, and treatment. When he was released from the hospital, he continues to see specialists including, but not limited to, an optometrist, an audiologist, a neurologist, and a mental healthcare professional. Mr. Matt will need to have ongoing medical treatment as a result of this incident.

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

STEPHEN A. MATT

CLAIMANT

V.

CLAIM NO. 17-0570-CC

**ARKANSAS DEPARTMENT OF
TRANSPORTATION**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the claim of Stephen A. Matt (the “Claimant”) against the Arkansas Department of Transportation (the “Respondent”). At the hearing held on March 12, 2020, Claimant was represented by Jeff Priebe. Steven Abed appeared on behalf of Respondent.

Background and Procedural History

1. Claimant filed his claim on or about March 1, 2017, seeking \$1,000,000.00 in damages related to Claimant’s July 22, 2014, motorcycle accident. Claimant alleged that the accident occurred due to the negligence of Respondent’s mowing crew.

2. Respondent filed an answer denying liability. Respondent affirmatively stated that Claimant’s injuries or damages were caused by Claimant’s fault or negligence.

3. At the beginning of the hearing, the parties stipulated to all exhibits except Claimant’s Ex. 15, 16, 17, and 18. As such, the stipulated exhibits were admitted.

Opening Statements

4. Both parties presented opening statements. The parties clarified that there is no dispute about whether Claimant was injured or the amount of his medical bills.

5. Claimant presented two videos, one showing the hills approaching the accident scene and the other showing the blind spot where the accident occurred. Claimant stated that Respondent “took a chance” by having a mower in the roadway in a blind spot. Claimant also

stated that while there is some dispute about the signage, the “mowers ahead” sign did not warn drivers that mowing tractors might be in the roadway. Claimant noted that the approximately \$93,000.00 of medical bills accounted for all write-offs.

6. Respondent stated that Claimant was familiar with these roads, having lived in Carroll County for seventeen years and having previously worked as a law enforcement officer in the area. Respondent noted that Claimant was not wearing a helmet when the accident occurred. While the accident occurred on Claimant’s way home, Respondent stated that Claimant had driven through the work zone and seen the mowers on his way to town for a quick errand and was, thus, on notice that the mowers were working. Respondent also stated that Claimant grabbed his front brake instead of the rear brake, which is why he came off of the motorcycle. Respondent pointed out that Claimant never hit the mower and that Claimant’s expert will testify that Claimant was going 47-55 miles per hour prior to the accident.

7. Upon a question from a commissioner, Respondent confirmed that the speed limit was 55 miles per hour on the roadway, although back up the road, there was a 25 mile per hour advisory limit around a curve.

Testimony of Claimant’s witness Kelly Matt

8. Kelly Matt testified that she and Claimant have been married for 20 years.

9. Mrs. Matt testified that the captain of the sheriff’s office came to get her from work to notify her about the accident and to take her to the scene. When she arrived, Claimant was laying in the middle of the road with blood coming out of his head. Claimant was taken by ambulance to Berryville Hospital, then flown by helicopter to Washington Regional because of the severity of his injuries. Claimant’s injuries included head and facial fractures, busted eye vessels, broken ribs, and a punctured lung. Claimant was in intensive care for five days and in a regular hospital room for ten days.

10. Mrs. Matt testified that she could tell Claimant had a brain injury and that his pain was nine or ten out of ten. While Claimant was in intensive care, the state trooper called and insisted on talking with him, although Claimant seemed “out of it.”

11. Mrs. Matt testified that when Claimant was able to go home, she had to be his caregiver. She described him as “not good mentally” and said that he was depressed and scared. He was in a lot of pain from the fractured ribs and punctured lung.

12. Mrs. Matt testified that Claimant’s personality changed after the accident. Prior to the accident, Mrs. Matt and Claimant would fish, hunt, ski, and kayak together. They also loved to ride motorcycles.

13. Mrs. Matt testified that Claimant did not usually wear his helmet when riding his motorcycle on a short trip to town.

14. Mrs. Matt testified that Claimant’s job was boat testing for G3 Boats. Prior to that job, he was a game warden and a law enforcement officer. Since the accident, Claimant cannot work at G3 Boats because of his dizzy spells.

15. Mrs. Matt testified that Claimant receives Social Security disability because he cannot do his job. Claimant had to take early retirement from law enforcement, which equated to less money.

16. Claimant cannot ride a motorcycle except short trips to town. His daily pain level is a six out of ten. Claimant’s “fuse” is short when he is hurting. It is hard for her to watch him sad and hurting. He takes five or six medications each day.

17. Mrs. Matt testified that Claimant needs mental health counseling, but they cannot afford it. Church has been a source of comfort for them since the accident.

18. Mrs. Matt testified that she is familiar with Highway 221 because she drives it every day. She knows that there is a blind spot.

19. Mrs. Matt testified that Claimant did not have health insurance at the time of the accident. She confirmed that the outstanding medical expenses are approximately \$93,000.00 and that they need financial help because of his future medical needs.

20. On cross-examination, Mrs. Matt testified that Claimant's early retirement was from his work at Game and Fish, as well as his law enforcement career. She does not know if Claimant applied for a "Medicaid spend down." Claimant does have Medicare, which he got after he began receiving Social Security disability.

21. Mrs. Matt testified that she knows Stephen Duran and his wife through church. She is aware that the Durans moved to Finland. She wears a helmet every time she rides a motorcycle because she is "learning." She knows that Respondent routinely mows during the summer.

22. Mrs. Matt reviewed Respondent's Exhibit No. 1, which was a photograph of one of Respondent's signs posted at the start of the mowing zone. She does not recall seeing the sign on her way to the accident scene.

23. Mrs. Matt reviewed Respondent's Exhibit No. 2, which is a copy of Claimant's statement taken and transcribed by a state trooper by telephone while Claimant was in the hospital.

24. Mrs. Matt reviewed Respondent's Exhibit No. 3, which is a copy of Claimant's Facebook conversation with Sgt. Chad Hipps of the Arkansas State Police. She confirmed that the exhibit showed the complete conversation.

25. On redirect, Mrs. Matt testified that the mowers were in the roadway when she arrived at the accident scene. With regard to the Facebook conversation, she said that this conversation was reflective of Claimant's mental changes since the accident.

Testimony of Claimant's witness Stephen Matt

26. Claimant testified that when he saw the mower in the roadway, he applied his rear brake "hard," saw that it would not be enough, then applied the front brake.

27. Claimant testified that he was not wearing his helmet that day.

28. On cross-examination, Claimant testified that he receives two retirement checks each month totally approximately \$1,000.00. One of the checks is from LOPFI, and the other is from APERS. He also receives Social Security benefits in the approximate amount of \$1,500.00 each month.

29. Claimant testified that he has lived in Carroll County for seventeen years and is familiar with Highway 221, including the blind spots. He admitted that he had a duty to maintain control of his vehicle, if possible, and to stay at the proper speed. He admitted that motorcycle riders have to have good balance and to be especially aware of what is around them.

30. Claimant testified that he knows Respondent mows during the summer with two or more mowers. He recalls seeing one sign on his way to town, as well as the mowers.

31. Claimant reviewed Respondent's Exhibit No. 1 and does not recall seeing this sign.

32. Claimant reviewed Respondent's Exhibit No. 4, which included pictures of mowing tractors. He agreed that the pictures showed reflectors on the mowers. He stated, however, that he only saw the mower from the side as it was in the roadway.

33. Claimant testified that his speed when he saw the mower in the roadway was approximately 45 miles per hour. He agreed that the crest of the hill to the accident site was approximately 300 feet. He did not feel that he could stop the motorcycle in 300 feet.

34. Claimant testified that it was impossible for him to maintain control of his motorcycle. He did not think that he "locked up" the front brake. He admitted that it was possible that he panicked when he saw the mower in the roadway.

35. Claimant reviewed Respondent's Exhibit Nos. 2 and 3 and testified that he had worked with Sgt. Hipps but was not Facebook friends with him. He stated that Trooper Ricketts led him to believe that he could change any part of his telephone statement. He believes that

Trooper Ricketts should have taken a statement from the mower driver. He believes that more pictures of the accident scene should have been taken. He also believes that Sgt. Hipps should have reviewed the statement better before signing off on it. As for the statement, Claimant disagrees with the portion involving a white truck because there was no white truck. Claimant also disagrees with the portion stating that the mower was on the west side.

36. On redirect, Claimant testified that he is not receiving retirement benefits from Eureka Springs. He began receiving APERS benefits at a reduced early rate (60%) because he needed the money. The Social Security disability benefits are solely because of the accident.

37. Claimant testified that he did not see any reflectors on the top or back of the mower because he only saw the side of the mower as it was in the roadway.

38. Claimant testified that all vehicles must yield to vehicles already in the roadway. The mower should have yielded to oncoming traffic.

39. Claimant testified that there were no driveways on that stretch of road, so there was no reason for Claimant to anticipate that someone would be pulling out onto the roadway.

40. Claimant testified that he did not see any flaggers or trucks with flashers. He had never seen a mower blocking a roadway before.

Testimony of Claimant's witness William Howard "Rocky" Ford

41. Mr. Ford testified that he created the side elevation profile of the dip in the road creating the blind spot and the hill approaching the accident site by surveying and using drones, then putting the information into a CAD program.

42. Mr. Ford noted that the question is when someone can recognize danger, otherwise known as the "perception/reaction time."

43. When Claimant saw the top of the tractor from 300 feet away, he had to decide what to do (Go in front of the tractor? Go behind the tractor? What if the tractor stopped?). Based

upon the placement of the skid marks in the road, which were 140 feet prior to the accident site, Claimant spent 160 feet deciding what to do. Mr. Ford estimated that Claimant's speed was between 48-57 miles per hour, which was within the speed limit.

44. Mr. Ford concluded that Claimant was alert and attentive because of his reaction time.

45. Even if Claimant had seen the tractor before cresting the hill, Mr. Ford noted that Claimant would have seen the tractor on the shoulder of the road, not in the roadway.

46. Mr. Ford was critical of the tractor driver because if he had waited five to ten seconds, he could have made sure that no one was in the dip in the road prior to the hill. Mr. Ford noted that the use of flaggers or a truck would have been reasonable, as would have the tractor driver's decision to go further down the road to turn around.

47. On cross-examination, Mr. Ford confirmed that drivers have a duty to keep a proper lookout and to maintain a reasonable speed under the circumstances.

48. Mr. Ford stated that he is familiar with the Manual on Uniform Traffic Control Devices (MUTCD) and that the sign posted by Respondent (which states "MOWERS WORKING AHEAD") complies with the MUTCD.

49. Mr. Ford testified that he does not think Claimant locked up his front brake because there would be marks in the road, and there was no physical evidence to that effect.

Testimony of Claimant's witness Ralph Scott

50. Respondent stipulated to Ralph Scott's qualifications.

51. Mr. Scott testified that he took Claimant's earnings at the time of injury (based upon his tax return) and calculated his future wage loss to a present value. Mr. Scott valued the present value of Claimant's annual earning capacity to be \$46,228.53.

52. Subtracting Claimant's disability benefits, Mr. Scott testified that Claimant's past lost wages total \$175,081.22.

53. Mr. Scott testified that Claimant's future lost earning capacity was between \$144,981.55 and \$182,395.90, depending on whether Claimant would have worked until age 67.

54. Mr. Scott testified that his calculations are conservative numbers.

55. Mr. Scott testified that his calculations account for inflation and the present value of future earnings.

56. On cross-examination, Mr. Scott testified that he did not factor in retirement benefits because those amounts were owed to him anyways. Mr. Scott also stated that federal and state taxes were not calculated.

57. Respondent then moved for a directed verdict. This motion was denied by the commissioners from the bench.

Testimony of Respondent's witness Cpl. Jeffrey Ricketts

58. Cpl. Ricketts testified that he has worked for the Arkansas State Police for fifteen years and has worked hundreds of accidents.

59. Cpl. Ricketts testified that he was sent by dispatch to the wreck on Highway 221 South at 2:38 p.m. Upon arriving at 3:20 p.m., he noticed the mowers first. Claimant and his motorcycle had already been moved.

60. Cpl. Ricketts reviewed Respondent's Exhibits Nos. 5-7, which include a picture of the skid marks on the roadway (Ex. 5), a picture of a gouge in the road (Ex. 6), and a diagram of the accident scene (Ex. 7).

61. Cpl. Ricketts stated that the accident report states that the speed limit was 45 miles per hour but agrees that, as a state highway, the speed limit is probably 55 miles per hour.

62. Cpl. Ricketts reviewed Respondent's Exhibit No. 2 and confirmed that on July 25, 2014, he called Claimant and took a statement over the telephone. Cpl. Ricketts testified that it is not unusual to get a statement via telephone. Cpl. Ricketts confirmed that this was the only statement taken in connection with the accident. Cpl. Ricketts was "not for sure" why other statements were not taken. He testified that he spoke to Bob at the scene, who did not see anything.

63. When asked why he only took three photographs of the accident scene, Cpl. Ricketts stated that it was "lucky you got these three." With an accident with injuries, Cpl. Ricketts determined three photographs to be sufficient.

64. On cross-examination, Cpl. Ricketts clarified that he spoke to Bob Kelly, Respondent's supervisor for that mowing area, at the scene. Cpl. Ricketts confirmed that he did not talk to the tractor driver and was "not for sure" why he did not do so.

65. Cpl. Ricketts testified that he thinks Claimant was in the hospital when he called him to take his statement.

66. Cpl. Ricketts testified that he did not provide Claimant's statement to Claimant after submitting it.

67. Cpl. Ricketts does not know whether the mowers ahead sign was there the whole time, but Bob Kelly said that it had been.

68. On redirect, when asked if he had any reason to believe that Respondent would falsify a report, Cpl. Ricketts testified, "I hope not."

Testimony of Respondent's witness Chester Carroll Lawrence

69. Mr. Lawrence testified that he retired from Respondent in 2018 after almost 26 years of employment. He stated that he worked in the Berryville office. By the end of his employment, he worked as a road crew supervisor.

70. Mr. Lawrence testified that he remembers the accident. He was the crew leader at the time. As crew leader, he testified that his job duties included setting the roadwork up and keeping the tractors mowing.

71. Mr. Lawrence testified that there were five or six guys in a crew, each on a tractor. The crew would start between 7:30 and 8:00 a.m. by checking the tractors and setting signs up every mile (two signs in each direction). Mr. Lawrence stated that he was in a pickup, not on a tractor.

72. Mr. Lawrence reviewed Respondent's Exhibit No. 1 and confirmed that this sign was placed before the accident occurred.

73. Mr. Lawrence testified that Mr. Duran was operating the sickle mower and had mowed the area before.

74. Mr. Lawrence recalls seeing Claimant when he went by on his way to town "flooring" his way up the hill.

75. Mr. Lawrence testified that the roadway signs exceed the MUTCD requirements because he placed signs every mile instead of every two miles.

76. Mr. Lawrence testified that he learned about the accident when Mr. Duran called him. Mr. Lawrence stated that he grabbed Bobby Kelly and went to the scene. Claimant was laying in the roadway. Mr. Lawrence stated that they did not move him.

77. Mr. Lawrence testified that the motorcycle was eventually towed and that he helped them move the motorcycle.

78. Mr. Lawrence testified that a sickle bar is ten to twelve feet long.

79. On cross-examination, Mr. Lawrence conceded that he cannot be sure it was Claimant who floored it up the hill prior to the accident.

80. When Mr. Lawrence arrived at the accident scene, Mr. Duran's tractor was on the opposite side of the road. Mr. Duran did not tell him that he was blocking the highway.

81. Mr. Lawrence agreed that it would be better to go down the road to turn around in a flat spot.

82. Mr. Lawrence agreed that the MUTCD sets up minimum standards with the goal of safely moving people through work areas.

83. Mr. Lawrence agreed that if tractors are continuously in the road, flaggers should be used. He confirmed that he had flags in his truck.

84. Mr. Lawrence detailed the placement of the orange flags and amber safety lights on the tractors.

85. On redirect, Mr. Lawrence reviewed Respondent's Exhibit No. 8 and testified that the procedures complied with the MUTCD Section 6G.06.

86. On re-cross, Mr. Lawrence testified that to turn the sickle mower around, the driver would have to raise the sickle then turn.

Deposition Testimony of Stephen Duran

87. The Claims Commission reviewed the transcript of the deposition of the tractor driver, Mr. Duran, who no longer lives in the United States and was unavailable to attend the hearing. As to the elevation of the roadway leading up to the accident site, Mr. Duran testified as follows:

Q. Is it fair to say that the initial – you go around the corner. And then it is a fairly steep dip?

A. There is.

Q. And then it rises back up?

A. Yes.

Q. And then another dip, is that fair?

A. Let me think about it. Yes.

See Duran Deposition Transcript at p. 44-45. In describing his actions prior to the accident, Mr.

Duran testified as follows:

- A. . . . I have to face the highway. This is a very tight area.
...
Q. So it's fair to say – all right – that your tractor is facing into the road?
A. Absolutely.
Q. Okay. All right. And so did you ever get into the road?
A. I had to get into the road to leave.
Q. Explain that.
A. To leave and go farther in the direction towards town to continue my job.
Q. Okay. So you had to cross to go back to go –
A. Yes.
Q. -- to head north?
A. Yes. This would be the line in the center of the road. Yes.
Q. Okay. So at the point that you see – when do you first see Mr. Matt? You didn't know it at the time.
A. Okay. I was right here. I have to raise my sickle before I can move. So I raised my sickle. It comes up to the position where I can clear this steel object.
Q. Okay.
A. The marker that I've showed you. I'm right next to the edge of the road. There's only inches. There's inches between me and the road at that point.
Q. Okay.
A. Okay. I have to look up the highway to the left. And I have to look up the highway to the right, because I'm in a position where I have to enter the highway.
Q. Okay.
A. I looked to the left up the hill. There's no traffic. And I looked to the right and there is no traffic. And I may have done this several times, because I'm very cautious at my job, because I do not want to get hit, and I don't want to get killed. So I came to that point. And I looked to the left like anyone would, and I started my tractor in motion.
Q. Uh-hum.
A. And I'm looking to the left. And I'm moving. But because there always the possibility that someone could come from this way I looked back to the right. And my tractor is moving. And I'm in full motion. At this time my tractor is moving, because I have to move to get out of there. When I looked to the right, that split second I heard a noise to my left.
Q. Okay.
A. And then I looked, and he was tumbling.
Q. Okay.
A. I could do nothing. My tractor was already in motion. I had already made the decision that the road was clear . . .

See id. at p. 59–61. As to the location of his tractor prior to the accident, Mr. Duran testified that he was in the lowest point of the dip as he was moving. *See id.* at p. 63–64. Mr. Duran testified that the accident “occurred while I was in motion crossing the road.” *See id.* at p. 65. When asked if it was “a safe place to cross in the dip,” Mr. Duran testified:

A. There – on my tractor, working for the state highway department, I am very seldom safe physically. This is a very dangerous job.

Q. Uh-hum.

A. I am constantly – and this is a dangerous place. I would admit this is a dangerous place. But I work in dangerous places all the time on my job.

Q. Okay.

A. And I’m in many dangerous places that are just as dangerous as this one. That’s part of my job. That’s what I do. I work under dangerous conditions.

See id. at p. 67–68. After the accident, Mr. Duran was directed to watch traffic from the top of the hill because “there were vehicles stationary in the road in a blind area.” *See id.* at 77–78 (emphasis added).

Findings of Fact and Conclusions of Law

Based upon a review of the pleadings, testimony, and the law of Arkansas, the Claims Commission hereby finds as follows:

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

89. The Claims Commission found the witnesses to be credible.

90. The Claims Commission finds that the fact that Claimant saw tractors mowing on his way to town did not put him on notice that a tractor might be blocking the road in a blind spot at a later point in his journey.

91. Based on the testimony of Mr. Ford, the Claims Commission finds that Claimant was traveling between 48–57 miles per hour and that the speed limit was 55 miles per hour.

92. Based on the testimony of Claimant and Mr. Duran, the Claims Commission finds that Mr. Duran's tractor was in the roadway when Claimant came over the rise.

93. Based upon the testimony of Mr. Duran, the Claims Commission finds that Mr. Duran's tractor was in the roadway in the lowest point of the dip in the road.

94. Based on the testimony of Mr. Ford, the Claims Commission finds that Claimant would not have seen the tractor in the roadway until he crested the top of the hill.

95. Based upon the testimony of Claimant and Mr. Ford, the Claims Commission finds that Claimant was faced with an impossible situation when he crested the hill and saw the tractor in the roadway. Without knowing whether the tractor was crossing the highway or turning around (and whether the tractor would continue to move or would stop once the driver saw Claimant), the Claims Commission finds that Claimant's decision to "lay down" his motorcycle was not unreasonable.

96. The Claims Commission finds that, in the absence of flaggers or other safety measures, the actions of Respondent's employee in entering the roadway in that blind spot were negligent.

97. The Claims Commission finds that Claimant suffered severe, painful injuries in the resulting accident.

98. Based upon the testimony of Claimant and Mrs. Matt, the Claims Commission finds that Claimant has multiple impairments as a result of the accident that have left him unable to work.

99. Based upon the testimony of Claimant and Mrs. Matt, the Claims Commission finds that Claimant continues to suffer pain as a result of his injuries.

100. However, pursuant to Ark. Code Ann. § 16-64-122, the Claims Commission must consider the fault of Claimant, as well. Based on the testimony of Claimant, the Claims

Commission finds that Claimant was not wearing a helmet at the time of the accident. Had Claimant been wearing a helmet, the injuries may have been less severe. Additionally, the Claims Commission takes notes of the fact that Claimant was familiar with this road.

101. As such, the Claims Commission assigns fault as follows:

- (a) Claimant: 30%
- (b) Respondent: 70%

102. As for damages, the Claims Commission finds that Claimant incurred medical bills in the amount of \$93,913.52, past lost wages in the amount of \$175,081.22, and pain and suffering in the amount of \$187,827.04 (which is equal to twice the amount of Claimant's medical bills). The Claims Commission declines to award future lost earning capacity damages based on the speculative nature of the testimony regarding these damages.

103. As such, the Claims Commission finds that Claimant is entitled to \$456,821.78 in damages, of which Respondent is liable for 70% of that amount, or \$319,775.25. This award will be referred to the General Assembly for review and placement on an appropriations bill pursuant to Ark. Code Ann. § 19-10-215(b).

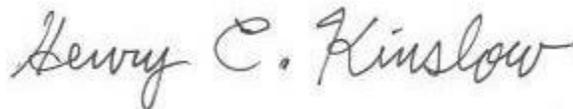
IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Dexter Booth



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow, Chair

DATE: May 13, 2020

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).

ARKANSAS STATE CLAIMS COMMISSION

(501) 682-1619
FAX (501) 682-2823



KATHRYN IRBY
DIRECTOR

101 EAST CAPITOL AVENUE
SUITE 410
LITTLE ROCK, ARKANSAS
72201-3823

MEMORANDUM

DATE: July 29, 2020

TO: Suba Desikan (via email)
Bureau of Legislative Research

FROM: Kathryn Irby

RE: Claim referred to the Claims Review Subcommittee pursuant to Ark. Code
Ann. § 19-10-215(b)

Stephen A. Matt v. Arkansas Department of Transportation
Claim No. 17-0570-CC

This memorandum is sent to transmit a claim to the Claims Review Subcommittee pursuant to Ark. Code Ann. § 19-10-215(b).

cc: Mr. Jeff Priebe, *counsel for Claimant* (w/o encl.) (via email)
Mr. Steve Abed, *counsel for Respondent* (w/o encl.) (via email)
Ms. Gina Seaton, Bureau of Legislative Research (w/ encl.) (via email)