

MAY 09 2013

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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

MAY 09 2013

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I.1

- Mr. Mrs. Ms. Miss

Wheeler Printing, Inc. Claimant
By: Kelly Bales, President

State of Arkansas, Respondent
Highway Dept.

Do Not Write in These Spaces
Claim No. 13-0792-CC
Date Filed May 9, 2013
Amount of Claim \$ 160,000.00
Fund AHTD

COMPLAINT Property Damage, Loss of Property, Refund of Expenses, Negligence, Loss of Profits

Wheeler Printing, Inc. 108 Printers Place
By: Kelly Bales, the above named Claimant, of Hot Springs of Profits
President (Name) (Street or R.F.D. & No.) (City)
Arkansas 71913 501-624-5333 County of Garland represented by Don M. Schnipper
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claimant)

of 123 Market St., Hot Springs, AR 71901 501-624-1252 501-624-6553, says:
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: Transportation Commission Amount sought: \$160,000.00

Month, day, year and place of incident or service: September 14 thru 16, 2012

Explanation: See narrative 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?
Yes when? March 2012 to whom? Charles Dirden, Staff attorney for Highway Dept.
(Yes or No) (Month) (Day) (Year) (Department)

and that the following action was taken thereon: suggested the filing of this claim

and that \$ -0- was paid thereon: (2) Has any third person or corporation an interest in this claim? if so, state name and address

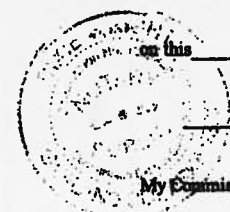
and that the nature thereof is as follows: and was acquired on in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verify believes that they are true.

Kelly Bales, President (Print Claimant/Representative Name)
Kelly Bales, President (Signature of Claimant/Representative)

SWORN TO and subscribed before me at

(SEAL) on this 3 day of May 2013
(Date) (Month) (Year)



Drive Wright (Notary Public)

BF1-R799

My Commission Expires: March 1 2022
(Month) (Day) (Year)

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

**SECTION I**

CLAIMANT Wheeler Printing, Inc. ADDRESS 108 Printers Place  
Hot Springs CITY & STATE Arkansas ZIP CODE 71913

DATE OF INCIDENT: Sept. 14 thru 16 192012 TIME \_\_\_\_\_

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

See narrative and 3 copies of documentation of loss attached

(If personal injury claim only, move on to Section IV)

**SECTION II**

Has this property been repaired? Partially ~~Yes (X) No ( )~~ If repairs have been made, give the following information: Amount: \$ 65,000.00 + Have you paid for the repairs? Some ~~Yes (X) 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>See repair bills in attached packet</u>		<u>\$60,027.14</u>
2. _____		\$ _____
3. _____		\$ _____

ARKANSAS STATE  
CLAIMS COMMISSION  
MAY 09 2013

**SECTION III**

Was property covered by insurance? Yes (X) No ( )  
If yes, what is the deductible? \$50,000.00

CLAIM DENIED (see attached letter)

NAME OF INSURANCE CARRIER Travelers ADDRESS P. O. Box 7775, Kalispell, MT 59904

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**SECTION IV**

Is injured covered by medical insurance? Yes ( ) No (X) If yes, is medical insurance:  
If yes, what is the deductible? \$ \_\_\_\_\_  
A. Job-based Yes ( ) No ( )  
B. Uninsured Motorist Yes ( ) No ( )  
C. Private Pay Yes ( ) No ( )

NAME OF INSURANCE CARRIER N/A ADDRESS \_\_\_\_\_

**SECTION V**

If incident was investigated by the police or by some other agency, give name and title of officer/person making the investigation: Hot Springs Police Department, Arkansas State Highway and Transportation Department, Travelers Insurance Company

**SECTION VI**

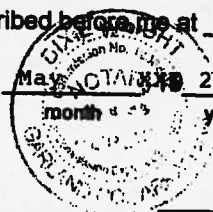
The undersigned states on oath that he/she is familiar with the matters and things set forth in the above statement, and that he/she verily believes that they are true.

[Signature]  
Signature of Claimant

(Notary Seal)

Sworn to and subscribed before me at Hot Springs, Arkansas  
City & State

on this 3 day of May 2013  
day month year



My Commission Expires 3-1-2012

[Signature]  
Signature of Notary Public

September 14-16, 2012 a flood occurred at Wheeler, Inc. - Printing due to the Higdon Ferry widening project. This project is being done through the Arkansas State Highway Department with Redstone Construction as the contractor. The excavation changed the landscape thus the runoff. Since 1973, when Wheeler Printing moved to 108 Printers Place, the building has never flooded from runoff water from Higdon Ferry. Wheeler Printing was flooded two weeks prior, on August 31, 2012 from the same runoff direction. The damage that occurred in August did not cause major damage therefore there was no claim as such. However, Tim Baber, ASHTD and Mike Hyde, Redstone Construction, were made aware of the water issue on September 3, 2012. I asked what would be done so this would not occur again. I asked about a french drain as I pointed and explained how the water had flowed from the top of the hill in a direct line into Wheeler. I was shown the existing drain which is across the street from Wheeler Printing and far from the flow of water and told that was the plan for water runoff. I voiced concern that the existing drain would not be effective in deterring water flowing from the top of the hill. I explained that I did not agree and asked that they consider other options. On September 12, 2012, I advised both ASHTD and Redstone that there was major rain forecast for the weekend. Tracy Simpson, a Wheeler Printing employee, also brought this to the attention of both the ASHTD and Mike Hyde prior to 9/14. Tracy was told and relayed to me that Redstone would be digging a trench down east side of Wheeler Printing, to divert the flow of water into Stokes Creek and that berms and sandbags would be put in place, as well. When Wheeler closed at 4 p.m. on 9/14, there was no ditch, nor were there any sandbags. The rain began sometime around 5:00 p.m. and continued throughout the weekend. Water and mud were rushing past The Big Chill and straight into Wheeler Printing. There is video to support this, as there are pictures and witnesses. KARK Channel 4 out of Little Rock obtained video for an expose' on the damages and the Sentinel Record published front page photos of the flood situation.

Wheeler Printing is in a flood zone because of Stokes Creek which runs behind the building, thus must carry flood insurance per Hot Springs Bank and Trust company, the lien holder. This flood occurred not from the back of the building, which is in the flood plane, but because of the construction from the East, Southesast.



The Standard Fire Insurance Company  
 Flood Insurance Processing Center  
 P.O. Box 7775, Kalispell, MT 59904  
 Phone: (800) 505-0193 Fax: (888) 288-5892

March 04, 2013

First Arkansas Insurance Of Ho  
 Po Box 22270  
 Hot Springs, AR 71903-2270

*Call*

RE: Insured : Wheeler, Inc.  
 Property Add: 108 Printers Pl  
 Hot Springs, AR 719136205  
 Policy # : 60100483692011  
 Date of Loss: 09/14/2012  
 Reference No: 60100483692011

Dear Insured:

You have requested payment for business interruption expenses incurred while the insured building is being repaired or is unable to be occupied on the above referenced flood claim. We are denying any claim for business interruption expenses, pursuant to the Standard Flood Insurance Policy:

V. Exclusions

- A. We only provide coverage for direct physical loss by or from flood which means that we do not pay you for:
  1. Loss of revenue or profits;
  2. Loss of access to the insured property or described location;
  3. Loss of use of the insured property or described location;
  4. Loss from interruption of business or production;
  5. Any additional living expenses incurred while the insured building is being repaired or is unable to be occupied for any reason;
  6. The cost of complying with any ordinance or law requiring or regulating the construction, demolition, remodeling, renovation, or repair of property, including removal of any resulting debris. This exclusion does not apply to any eligible activities that we describe in Coverage D- Increased Cost of Compliance; or
  7. Any other economic loss.

Sincerely,  
 Flood Claims Department

cc: Wheeler, Inc.

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WOOD, SMITH, SCHNIPPER, CLAY & VINES  
ATTORNEYS AT LAW

SCOTT WOOD (1880-1952)  
JAMES W. CHESNUTT (1916-1988)  
RAY S. SMITH, JR. (1924-2007)

May 3, 2013

SMITH BUILDING  
123 MARKET STREET  
HOT SPRINGS, ARKANSAS  
71901  
TELEPHONE: 501/624-1252  
TELEFAX: 501/624-6553

DON M. SCHNIPPER, P.A.  
PHILIP M. CLAY, P.A.  
JOHN T. VINES, P.A.

Arkansas State Claims Commission  
ATTENTION: MR. NORMAN L. HODGES, JR.  
Director  
101 East Capitol Avenue – Suite 410  
Main Street Mall  
Little Rock, AR 72201

ARKANSAS STATE  
CLAIMS COMMISSION

MAY 09 2013

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Re: Wheeler Printing, Inc./Arkansas State Highway  
and Transportation Department

Dear Mr. Hodges:

This firm has the pleasure of representing Wheeler Printing, Inc. and its President, Kelly Bales, in connection with a flooding incident which occurred at my client's Hot Springs plant on September 14-16, 2012.

This incident occurred in connection with the Highway Department project involving Higdon Ferry Road. It is our contention the cause of the flooding (other than the rain) was the improper design of drainage for this particular area (Printer's Place) and failure to install proper drainage for what was obviously going to be a tremendous amount of water from Higdon Ferry Road. Interestingly enough, the Highway Department has recently taken an easement from my client to install a large drain that would have obviously helped had it existed in September 2012. A complete narrative of the incident by the President of the company is a part of our claim folio, which we are filing together with the Complaint. In accordance with the Commission's instructions, we are filing three copies of the entire claim.

I will look forward to hearing from you or your office after the claim has been filed concerning dates for hearing and any other needed documentation.

Thank you for your prompt attention to this matter.

Yours very truly,

WOOD, SMITH, SCHNIPPER, CLAY & VINES

By: 

Don M. Schnipper

DMS/dw

Cc: Wheeler Printing, Inc.  
ATTENTION: KELLY BALES

Arkansas State Highway and Transportation Dept.  
ATTENTION: SHARON D. BLAKELY

WOOD, SMITH, SCHNIPPER, CLAY & VINES  
ATTORNEYS AT LAW

SMITH BUILDING  
123 MARKET STREET  
HOT SPRINGS, ARKANSAS  
71901

501 / 624-1252  
FAX 501 / 624-6553

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

**WHEELER PRINTING, INC.**

**CLAIMANT**

**V.**

**CLAIM NO. 13-0792-CC**

**ARKANSAS STATE HIGHWAY AND  
TRANSPORTATION DEPARTMENT**

**RESPONDENT**

**ANSWER**

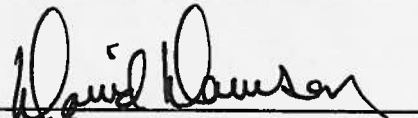
Comes the Respondent and for its Answer to the Complaint herein states:

1. The Respondent does not dispute the allegations in the complaint with regard to the change in water run off during the stage of construction that existed on September 14-16, 2012, but Respondent may dispute all or part of the damages claimed.
2. Any remaining allegations in the complaint are denied.
3. The Respondent requests that this matter be scheduled for a hearing to determine the nature and extent of the Claimant's allowable damages, if any.

**WHEREFORE**, Respondent prays that this matter be heard before the Claims Commission to determine the nature and extent of Claimant's allowable damages, if any.

**ARKANSAS STATE HIGHWAY AND  
TRANSPORTATION DEPARTMENT**

By: \_\_\_\_\_

  
David Dawson  
Staff Attorney  
AHTD, Legal Division  
Arkansas Bar No. 93087  
P. O. Box 2261  
Little Rock, AR 72203-2261  
(501) 569-2277

**ARKANSAS STATE  
CLAIMS COMMISSION**

**JUN 05 2013**

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In Re: **WHEELER, INC.**  
Claim No. 13-0792-CC

Arkansas  
State Claims Commission  
OCT 16 2013

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**FULL AND COMPLETE SETTLEMENT AND RELEASE**

**KNOW ALL MEN BY THESE PRESENTS** that the undersigned, being of lawful age, and having lawful authority, for and in consideration of the sum of Eighty Six Thousand One Hundred Fifty Nine and 39/100 Dollars (\$86,159.39), to the undersigned upon approval by the Claims Commission and Arkansas General Assembly, and other good and valuable considerations, receipt whereof is hereby acknowledged, do hereby for themselves and executors, administrators, successors, and assigns, release, acquit and forever discharge:

The Arkansas State Highway and Transportation Department (AHTD), The Arkansas State Highway Commission and Commissioners, their administrators, employees, agents, assigns, heirs, servants, and all other persons, firms or corporations liable, or who may be claimed to be liable, from any and all claims, demands, damages, actions, causes of actions or suits of any kind or nature whatsoever, including, but not limited to, any claim for bad faith, personal injury, wrongful death, injury to property, for any and all damages, known or unknown, which may have resulted or may result or develop in the future from the occurrence which is the subject of the dispute in the claim filed before the Arkansas State Claims Commission - Claim No. 13-0792-CC

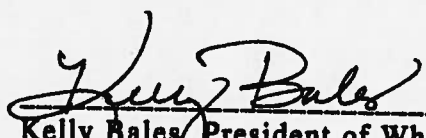
The undersigned hereby accepts AHTD's unconditional promise not to dispute liability for said claim filed by the undersigned before the Arkansas State Claims Commission as full and complete consideration as described above. This settlement, in accordance with Arkansas State Law, requires approval from the Arkansas State Claims



Commission and the Arkansas General Assembly. It is understood that, upon approval, tender of payment by warrant made payable to the undersigned Corporation in the amount of Eighty Six Thousand One Hundred Fifty Nine and 39/100 Dollars (\$86,159.39) has been agreed to by the undersigned. The undersigned hereby accepts the aforementioned sum as full, sufficient, final consideration, and final payment with respect to the above-mentioned claim before the Arkansas State Claims Commission for all claims past, present, and future.

The undersigned, hereby declares the terms of this settlement have been completely read, are fully understood, and are voluntarily accepted for the purpose of making a full and final compromise, adjustment, and settlement of any and all claims, disputed or otherwise, for the express purpose of dismissing and precluding forever any and all claims, including further or additional claims arising out of the aforesaid matter.


EXECUTED THIS 14<sup>th</sup> DAY October, 2013.

  
\_\_\_\_\_  
Kelly Bales, President of Wheeler, Inc.

\_\_\_\_\_  
Federal Identification Number

SUBSCRIBED AND SWORN to before me this 14<sup>th</sup> day of October, 2013.

MY COMMISSION EXPIRES  
3-1-2022



  
\_\_\_\_\_  
Dixie Wright  
NOTARY PUBLIC

STATE CLAIMS COMMISSION DOCKET  
OPINION

Amount of Claim \$ 160,000.00

Claim No. 13-0792-CC

Wheeler Printing, Inc. Claimant  
vs.

Attorneys  
Don Schnipper, Attorney Claimant

AR Highway & Transportation Dept. Respondent  
State of Arkansas

David Dawson, Attorney Respondent

Date Filed April 25, 2013

Type of Claim Property Damage, Loss of  
Expenses, Negligence, and Loss of  
Profits

FINDING OF FACTS

This claim was filed for Property damage, loss of expenses, negligence and loss of profits in the amount of \$160,000.00 against the Arkansas Highway and Transportation Department.

Present at a hearing November 15, 2013, was the Claimant, represented by Don Schnipper, Attorney, and the Respondent, represented by David Dawson, Attorney.

A "Negotiated Settlement Agreement" by the claim parties was presented to the Claims Commission in an oral presentation by the parties, along with the Respondent's recommendation of payment in the amount of \$86,159.39.

The Claims Commission hereby unanimously allowed this claim in the amount of \$86,159.39 and will include the claim in a claims bill to be submitted to the 89th General Assembly, Arkansas State Legislature 2014 Session, for subsequent approval and payment.

IT IS SO ORDERED.

(See Back of Opinion Form)

CONCLUSION

Upon consideration of all the facts, as stated above, the Claims Commission hereby unanimously allowed this claim in the amount of \$86,159.39 and will include the claim in a claims bill to be submitted to the 89<sup>th</sup> General Assembly, Arkansas State Legislature 2014 Session, for subsequent approval and payment.

Date of Hearing November 15, 2013

Date of Disposition November 15, 2013

Palmer Chairman  
Huane Commissioner  
Jim Beber Commissioner

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