

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

OCT 10 2019

- ☐ Mr.
☐ Mrs.
☐ Ms.
☐ Miss

Daphane P. Lathrop, Claimant

vs.

State of Arkansas, Respondent

RECEIVED

Do Not Write in These Spaces

Claim No. _____

Date Filed _____
(Month) (Day) (Year)

Amount of Claim \$ _____

Fund _____

COMPLAINT

Daphane P. Lathrop, the above named Claimant, of _____

(Street or R.F.D. & No.) (City)

(State) (Zip Code) (Daytime Phone No.) County of _____ represented by _____
(Legal Counsel, if any, for Claim)of _____, says:
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: _____

Amount sought: _____

Month, day, year and place of incident or service: July 10, 2019 north of Haynes, AR

Explanation: I was driving north on Hwy 1 to Forrest City, right outside Marianna it started to rain really hard. It was raining the whole time to Haynes. I slowed down even more than the speed limit. Just as I passed through Haynes and started to continue on to Forrest City I tried to stay on the paved area above the ruts of water, the car started to slide. I headed for the right middle area, I tried to straighten the car and it spun to the right and hit the grass and kept going to the ditch and turned on its side. The police report states it traveled 230 feet. The car seemed as if it was on ice, nothing seemed to help.

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? _____
(Yes or No) (Month) (Day) (Year) (Department)

and that the following action was taken thereon: _____

and that \$ _____ was paid thereon: (2) Has any third person or corporation an interest in this claim? 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.

x Daphane P. Lathrop
(Print Claimant/Representative Name)Daphane P. Lathrop
(Signature of Claimant/Representative)SWORN TO and subscribed before me at Marianna AR
(City) (State)on this 7th day of October 2019
(Date) (Month) (Year)Millie Ann Hill
(Notary Public)

SF1-R7/99

My Commission Expires: 12 27 2019
(Month) (Day) (Year)

ARKANSAS STATE CLAIMS COMMISSION
MOTOR VEHICLE ACCIDENT REPORT FORM

State Claims Commission

SECTION I
CLAIMANT

Daphane P. Lathrop

OCAD 2019
ADDRESS

CITY & STATE

RECEIVED
ZIP CODE

DATE OF ACCIDENT: July 10, 2019

TIME: 1:50pm

MOTOR VEHICLE DAMAGED: TYPE Infiniti MAKE Jx35 YEAR 2013

DRIVEN BY: Daphane P. Lathrop ADDRESS

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

I was headed North to Forrest City and started to hydroplane and slide into the ditch. The right front and the entire right side of the car is damaged, along with the right rear bumper.

SECTION II

Has this vehicle been repaired? Yes () No (☒) If repairs have been made, give the following information: Amount \$ 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>Geico</u>	<u>One Geico Center, Macon, GA 31295</u>	<u>\$ 21,307.82</u>
2. <u>Dub Taylor's Sons Body Shop</u>	<u>1210 West Broadway, Forrest City, AR 72335</u>	<u>\$15,928.63</u>
3. <u>I am not able to get a 3rd estimate. I don't have a body shop in my city and I am not able to drive the car to a shop for estimate and no one will come out to do the estimate, have to bring it in.</u>		

SECTION III

Was vehicle covered by Insurance? Yes (☒) No () Liability Only ()

Comprehensive: Yes (☒) No ()

What is your deductible? \$ 1000.00

Collision: Yes (☒) No ()

What is your deductible? \$ 1000.00

NAME OF INSURANCE CARRIER

ADDRESS

Geico

One Geico Center, Macon, GA 31296-0001

SECTION IV

Type of State Vehicle Involved

N/A

License No.

Driver _____ Property of which State Agency _____

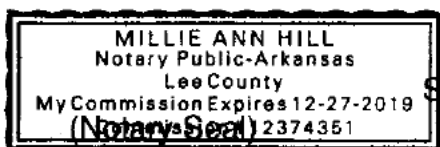
If accident was investigated by the State Police, give name of investigating officer: _____ If investigation was made by some other agency,

give name and title of officer making the investigation: _____

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.

Daphane Lathrop
Signature of Claimant



Sworn to and subscribed before me at Marionna AR
City, State

on this 7th day of October, 2019
day month year

My Commission Expires 12/27/2019

Millie Ann Hill
Notary Public

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

Arkansas
State Claims Commission

SECTION I

CLAIMANT

Daphane Lathrop

ADDRESS

CITY & STATE

ZIP CODE

DATE OF INCIDENT:

TIME

RECEIVED

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

The attached vehicle information has been provided. Myself and my son were taken to the emergency room for injuries during the accident.

(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: \$ 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 | 31295 AMOUNT |
|--|-------------------------------------|--------------|
| 1. Geico | One Geico Center, Macon, GA | \$21307.82 |
| 2. Dub Taylor & Sons Body Shop | 1210 West Broadway, Forest City, AL | \$15,928.63 |
| 3. Not able to get a 3rd estimate. I don't have a shop in my city and it is not drivable to a shop. No shop will come to me for an estimate. | | |

SECTION III

Was property covered by insurance? Yes (✓) No ()
If yes, what is the deductible? \$ 1000.00

NAME OF INSURANCE CARRIER

ADDRESS

Geico

One Geico Center, Macon, GA 31295

SECTION IV

Is injured covered by medical insurance? Yes (✓) No ()

If yes, what is the deductible? \$ 1000.00

NAME OF INSURANCE CARRIER

ADDRESS

Geico

One Geico Center, Macon, GA 31296 - 0001

SECTION V

If incident was investigated by the police or by some other agency, give name and title of officer/person making the investigation: No

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 of Claimant

Sworn to and subscribed before me at

Marianna Arkansas

on this 8th day of Oct 2019

City & State

My Commission Expires

12/27/2019

Signature of Notary Public



BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

DAPHANE P. LATHROP

CLAIMANT

V.

CLAIM NO. 200356

**ARKANSAS DEPARTMENT OF
TRANSPORTATION**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the motion filed by the Arkansas Department of Transportation (the “Respondent”) to dismiss the claim of Daphane P. Lathrop (the “Claimant”). Based upon a review of the pleadings, including Respondent’s motion, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. Claimant filed the instant claim, alleging that Claimant’s vehicle was damaged when it slid on the “ruts of water” in the roadway on Highway 1 during a rainstorm. Claimant also alleged personal injuries.

2. Respondent filed a motion to dismiss, arguing that Claimant’s damage was not caused by negligence of Respondent or its employees. Respondent also argued that Claimant failed to state a claim upon which relief can be granted. Respondent affirmatively pled that Claimant was the proximate cause of her damages.

3. Claimant responded to the motion to dismiss, arguing that the injuries she and her son sustained were “due to the insufficient attention given to the road.” Claimant stated that the “ruts and ridges in the road filled with water which caused my vehicle to hydroplane, and as of [this] date, this issue still has not been repaired.”

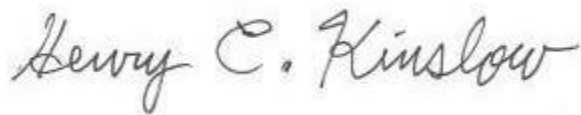
4. In reviewing this motion to dismiss, the Claims Commission must treat the facts alleged in the complaint as true and view them in a light most favorable to the Claimant. *See Hodges v. Lamora*, 337 Ark. 470, 989 S.W.2d 530 (1999). All reasonable inferences must be

resolved in favor of the Claimant, and the complaint must be liberally construed. *See id.* However, the Claimant must allege facts, not mere conclusions. *Dockery v. Morgan*, 2011 Ark. 94 at *6, 380 S.W.3d 377, 382. The facts alleged in the complaint will be treated as true, but not “a plaintiff’s theories, speculation, or statutory interpretation.” *See id.* (citing *Hodges*, 337 Ark. 470, 989 S.W.2d 530 (1999)).

5. The Claims Commission finds that dismissal is premature.

6. Respondent’s motion to dismiss is DENIED, and the parties are instructed to begin discovery.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird
Dexter Booth
Henry Kinslow, Co-Chair
Paul Morris, Co-Chair
Sylvester Smith

DATE: January 9, 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).

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

DAPHANE P. LATHROP

CLAIMANT

V.

CLAIM NO. 200356

**ARKANSAS DEPARTMENT OF
TRANSPORTATION**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the claim filed by Daphane P. Lathrop (the “Claimant”) against the Arkansas Department of Transportation (herein referred to as “ArDOT” or the “Respondent”). At the hearing held on June 17, 2021, Claimant proceeded *pro se*. Steven Abed appeared on behalf of Respondent. Based upon a review of the pleadings, argument of the parties, and the law of the State of Arkansas, the Claims Commission hereby finds as follows:

1. Claimant filed her claim on October 10, 2019, seeking an unspecified amount of damages related to injuries suffered and property damage incurred by Claimant as the result of a hydroplaning accident.
2. Respondent filed an answer denying liability.
3. Respondent also filed a motion to dismiss, which was denied by the Claims Commission on January 9, 2020. As part of that order, the parties were instructed to conduct discovery.
4. A hearing was set for June 17, 2021.

Hearing Testimony

5. By way of opening and testimony, Claimant stated that there were three accidents in the same area as her accident, one of which involved a death. Claimant talked to the ArDOT supervisor in Wynne, who was unaware of these accidents. The supervisor said that any time an

accident occurs, he is supposed to be notified, but he was not notified. These accidents occurred in 2013 on the same stretch of highway and within five miles of Claimant's accident.

6. By way of opening, Respondent stated that Claimant had a \$1000 deductible and less than \$10,000 in medical bills, all of which should have been covered by Claimant's Geico med pay coverage.

7. Claimant testified further regarding a July 16, 2020, accident that was incorrectly stated in Respondent's discovery responses as being Respondent's only report of an accident over the last two years. Claimant also disagreed with Respondent's description of the driver in that accident as "sleepy."

8. On cross-examination, Claimant testified that she has had her driver's license for at least 40 years. On the day of the accident, the stretch of highway started off dry before a downpour started. The police report stated that Claimant was in the left lane. The ruts in the road fill quickly with rain. There was standing water more than ¼ inch in several places. Claimant signed the police report and stated in the driver statement that she hit a puddle. The wreck was at 1:55 p.m. It was daylight. The police report indicates 101 for road surface condition (wet) and 105 for weather condition (rain), but there is no indication that roadway conditions were a factor in the accident. The speed limit was 65 miles per hour. Claimant was going 40–45 miles per hour. Another woman wrote information for Claimant. Claimant was headed to Forrest City to take her son to a job interview at 2:00 p.m. Prior to the accident, Claimant had told her son to call McDonald's to let them know he would be late for the interview because of the rain. The police report for the Bradley accident, which was three miles from Claimant's accident, states that there were vehicle defects, including defective steering. The police report for the February 2020 accident was in St. Francis County, two miles north of this accident. The police report for the August 2020

accident involving a death states that there was insufficient tread on the vehicle's tires and that the driver was under the influence of drugs and going too fast.

9. Trooper Jake Price testified that he has been with Arkansas State Police for approximately four years. He did not find that ruts played a role in the accident. He arrived at 2:06 p.m. He did not work any other hydroplane accident on Highway 1 that day.

10. On cross-examination, Trooper Price stated that he usually talks to everyone at the scene unless someone has already been transported to the hospital.

11. Matt Emberton, district maintenance engineer for District 1, testified that his district covers this stretch of road. There were no prior complaints. He determined that the ruts were $\frac{1}{4}$ of an inch. ArDOT is only notified of an accident if there is property damage to ArDOT signs, etc.

Findings of Fact and Conclusions of Law

12. The Claims Commission finds that the witnesses were credible.

13. The Claims Commission finds that Claimant's claim is based upon negligence.

14. The elements of a negligence claim are duty, breach of duty, and damages proximately caused by the breach. *Chambers v. Stern*, 347 Ark. 395, 406, 64 S.W.3d 737, 744 (2002).

15. The Claims Commission finds Claimant's testimony and evidence to be insufficient to establish liability on the part of Respondent, especially in light of the contributing factors in the other accidents referenced by Claimant.

16. As such, the Claims Commission unanimously DENIES and DISMISSES Claimant's claim.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Dexter Booth



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow, Chair

DATE: July 13, 2021

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).

From: [Daphane Lathrop](#)
To: [Kathryn Irby](#)
Subject: Re: ORDER: Lathrop v. ArDOT, Claim No. 200356
Date: Thursday, July 15, 2021 3:59:57 AM

Good morning, Yes I want to appeal the decision.

Sent from my iPhone

On Jul 14, 2021, at 7:16 AM, Kathryn Irby <Kathryn.Irby@arkansas.gov> wrote:

Ms. Lathrop, if you would like to appeal, you just need to let me know. Email is fine. I will then transmit a copy of the claim file to the Arkansas General Assembly, and this claim would be put on an agenda for the Claims Review Subcommittee at some point in the future (the subcommittee typically only meets a few times each year).

Thanks,
Kathryn Irby

From: [REDACTED]
Sent: Tuesday, July 13, 2021 7:55 PM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: Abed, Steven <Steven.Abed@ardot.gov>; Blakley, Sharon <Sharon.Blakley@ardot.gov>
Subject: Re: ORDER: Lathrop v. ArDOT, Claim No. 200356

Please let me know the process for appeal.
Thank you,
Daphane Lathrop

Sent from my iPhone

On Jul 13, 2021, at 1:30 PM, Kathryn Irby <Kathryn.Irby@arkansas.gov> wrote:

Ms. Lathrop and Mr. Abed, please see the order entered in the above-referenced claim.

Thanks,
Kathryn Irby

Kathryn Irby

Arkansas State Claims Commission

101 East Capitol Avenue, Suite 410

Little Rock, Arkansas 72201

(501) 682-2822

<Lathrop (hearing) -- 200356 -- orderpdf.pdf>