

Please Read Instructions on Reverse Side of Yellow copy

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Arkansas
State Claims Commission

JAN 13 2016

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

RECEIVED

- ☐ Mr.
☐ Mrs.
☐ Ms.
☐ Miss

Regions Bank Trust Department, as Special

Claimant

vs.

Administrator of the estate of Jinglei Yi, deceased

State of Arkansas, Respondent AR Dept. of Emergency Management

Regions Bank Trust Department, as
Special Administrator of the Estate

COMPLAINT

of Jinglei Yi, deceased

the above named Claimant, of

400 W. Capitol Ave. 7th Floor Little Rock

AR 72201 (501) 371-6719

County of Pulaski

represented by Carter C. Stein, MHA, R. W. W. P. A.

of 711 W. 3rd St. Little Rock

(City)

(State)

(Zip Code)

AR 72201 (501) 396-5409 (501) 374-5118

says:

State agency involved: Arkansas Department of Emergency Management

Amount sought: Amount to be determined by jury.

Month, day, year and place of incident or service: January 14, 2013; Capitol Hill Blvd. & Rushmore Ave. Little Rock, AR

Explanation: This is an indemnification claim. Please see the attached typewritten explanation.

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

(Yes or No)

when?

(Month)

(Day)

(Year)

to whom?

(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? Yes

City of Little Rock, 500 W. Markham St. Little Rock

(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows: City of Little Rock was called upon to assist State and ADEM

in provision of 911 services and was acquired on January 14, 2013, in the following manner:

City of Little Rock has been sued for their actions performed for State and ADEM.

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.

Erin Behring, Regions Bank Trust Department

(Print Claimant/Representative Name)

Carter C. Stein for Regions

(Signature of Claimant/Representative)

SWORN TO and subscribed before me at

Little Rock

(City)

AR

(State)

on this

13th

day of

January

2016

(Date)

(Month)

(Year)

Julie A. Jella

(Notary Public)

My Commission Expires:

12

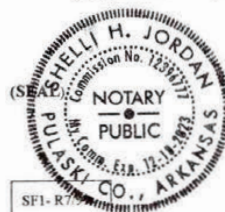
18

2023

(Month)

(Day)

(Year)



SF1-R/12

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

SECTION 1

CLAIMANT Regions Bank Trust Department, as Special Administrator of the estate of Jingli Yi, deceased ADDRESS 400 W. Capitol Ave., Ste. 700
CITY & STATE Little Rock, AR ZIP CODE 72201

DATE OF INCIDENT: January 14, 2013 TIME 7:55 a.m.

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

Jingli Yi suffered a drowning event in a submerged vehicle due to a delayed 911 response by the City of Little Rock. She was treated at the scene and at Baptist Hospital prior to her death that same day. She had rental

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

expenses of over \$16,000.00

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	AMOUNT
1. _____	_____	\$ _____
2. _____	_____	\$ _____
3. _____	_____	\$ _____

SECTION III

Was property covered by insurance? Yes () No ()

If yes, what is the deductible? \$ _____

NAME OF INSURANCE CARRIER ADDRESS

SECTION IV

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

If yes, what is the deductible? \$ None

If yes, is medical insurance:

- A. Job-based Yes (x) No ()
B. Uninsured Motorist Yes () No (x)
C. Private Pay Yes (x) No ()

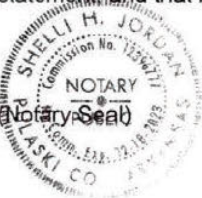
NAME OF INSURANCE CARRIER ADDRESS

SECTION V

If incident was investigated by the police or by some other agency, give name and title of officer/person making the investigation: Scott DeHaven, Stephanie Brithia, and Wayne Brinkley all of the Little Rock Police Department

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 Little Rock AR

on this 12th day of Jan, 19 2014
day month year

My Commission Expires 12-18-2023

Signature of Notary Public

**BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas**

**REGIONS BANK TRUST DEPARTMENT,
as Special Administrator of the Estate of
JINGLEI YI, deceased**

CLAIMANT

vs.

STATE OF ARKANSAS

RESPONDENT

Explanation (Continued from COMPLAINT form):

1. On the morning of January 14, 2013, Jinglei Yi and her then five year old son Le Yang were in a 2006 Ford Expedition headed east on Capitol Hill Boulevard.
2. Jinglei stopped at the stop sign at the intersection of Capitol Hill Boulevard and Pennsylvania Avenue/Rushmore Avenue.
3. As Jinglei proceeded through the intersection, she hit a patch of ice and lost control of her vehicle. Jinglei's vehicle continued east approximately 256 feet before going over the southbound curb line, leaving the roadway, striking a small tree, going down a hill, and entering a retaining pond on the south side of Capitol Hill Boulevard.
4. Jinglei used her cell phone to call Arkansas's 911 system at 7:55:25 a.m.
5. Jinglei's 911 call was answered by the Pulaski County Sheriff's 911 Communications Center. Jinglei told the female Pulaski County 911 call taker her vehicle had fallen in the water. She stated she was in the car with her child. The Pulaski County call taker asked Jinglei if she slid off into the pond and said "I see where you're at."
6. The Pulaski County call taker told Jinglei she was getting her to the correct agency to get its fire department to help Jinglei and Le. The Pulaski County call taker transferred Jinglei's 911 call to the Little Rock Police Department Communications Center because Jinglei and Yi were within the city limits.

7. The Pulaski County call taker, with Jinglei on the line, called Little Rock 911 at 7:56:03 a.m.

8. Candace Middleton, a Little Rock employee, answered the call.

9. The female Pulaski County 911 operator told Middleton that Jinglei and Le were in a pond just east of Rushmore Avenue on the south side of the road. The Pulaski County call taker told Jinglei she was letting her speak with Little Rock 911.

10. Jinglei told Middleton "I'm falling in a pond and I feel the water in my car right now." Jinglei told Middleton her location, confirmed Le was in the car with her, and spelled her name.

11. In response to Jinglei's 911 call about a vehicle sinking in a pond, Middleton failed to enter the call for police and fire dispatch.

12. Middleton did call MEMS to have an ambulance go to the scene.

13. MEMS personnel arrived at the scene at 8:20:18 a.m. but police and fire department personnel were not there.

14. MEMS personnel called MEMS dispatch to check status of police and fire units.

15. MEMS dispatch called Pulaski County Sheriff's 911 Communications Center to check status of police and fire units.

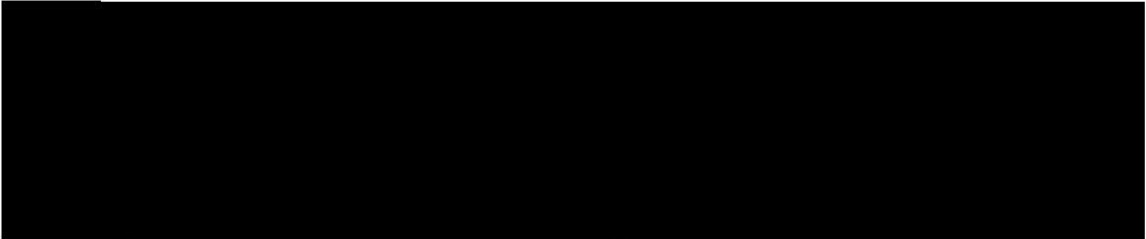
16. Pulaski County Sheriff's 911 Communications Center advised MEMS dispatch that the call in question was a Little Rock call.

17. MEMS dispatch called Little Rock 911 at 8:21 a.m. about the status of police and fire units. At this time it was discovered that the call had not been entered.

18. The call was entered by Little Rock 911 at 8:23:02 a.m.

19. Little Rock water rescue units arrived at 8:40:34 a.m.

20. Jinglei Yi was extricated from the submerged vehicle at 8:48 a.m.



23. Jinglei Yi's injuries and death were proximately caused by the negligence of the City of Little Rock and its employees who were acting on behalf of the State of Arkansas and the Arkansas Department of Emergency Management.

24. The City of Little Rock "shall be immune from liability and from suit for damages except to the extent that [it] may be covered by liability insurance." Ark. Code Ann. § 21-9-301(a).

25. However, an exception to the City of Little Rock's immunity exists when it is sued for actions it undertakes for the State of Arkansas. Ark. Code. Ann. § 21-9-304.

26. "When any city of the first class . . . and its employees are called upon to assist the state and its employees and, as a result, are sued for their actions performed under the supervision of a state official or employee, the Attorney General shall defend the city of the first class . . . and its employees." Ark. Code Ann. § 21-9-304(a).

27. Here, the City of Little Rock has been called upon by the State of Arkansas and the Arkansas Department of Emergency Management to operate a public service answering point in connection with the statewide 911 system. Ark. Code Ann. § 21-9-304(a); *See also* Ark. Code Ann. § 12-10-302.

28. Further, the actions of the City of Little Rock in hiring, training, supervising, and retaining Middleton, maintaining its computer aided dispatch system, adequately staffing its Communications Center, Middleton's response to Jinglei's 911 call, and the police and fire department's response were performed under the supervision of David Maxwell, the head of the

Arkansas Department of Emergency Management who was appointed by the Governor of Arkansas as the State 911 Coordinator, and in furtherance of the State of Arkansas's desire to operate a statewide 911 system. Ark. Code Ann. § 21-9-304(a).

29. “***Should*** a judgment be rendered against the city of the first class . . . or its employees, the ***state shall pay*** actual, but not punitive, damages adjudged by a state or federal court, or entered by the court as a result of a compromise settlement approved and recommended by the Attorney General, based on an act or omission by the officer or employee while acting without malice and in good faith within the course and scope of his or her employment and in performance of his or her official duties.” Ark. Code Ann. § 21-9-304(a) (emphasis added).

30. Accordingly, ***if*** a judgment is rendered for Regions Bank Trust Department, as special administrator of the estate of Jinglei Yi, deceased, against the City of Little Rock or its employees, then the ***state shall pay*** actual damages awarded by the jury.

31. The case against the City of Little Rock and MEMS is presently pending in Arkansas circuit court in a case styled as *Regions Bank Trust Department, as Special Administrator of the estate of Jinglei Yi, deceased v. City of Little Rock, Arkansas, et al.*, Pulaski County Circuit Court, 16th Division, Case No. 60CV-15-4103.

32. Regions Bank is filing this indemnification claim now before the Arkansas State Claims Commission, prior to the running of the three year statute of limitations for negligence claims in Arkansas, so that if a judgment is rendered in its favor against the City of Little Rock and/or its employees it may then be able to present its indemnification claim to the Arkansas State Claims Commission for payment.

33. Additional pleadings and filings from the above referenced case, as well as other supporting documentation, will be provided to the Arkansas State Claims Commission.

Respectfully Submitted,

McMATH WOODS P.A.
711 West Third Street
Little Rock, AR 72201

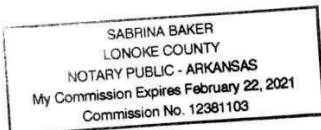
By: 


Carter C. Stein, AR Bar #2004049

Email: carter@mcmathlaw.com

*Attorney for Regions Bank Trust Department,
as special administrator of
the estate of Jinglei Yi, deceased*

Sworn to and subscribed before me at Little Rock, AR
on this 13th day of January, 2016.




Notary Public

My commission expires: Feb. 22, 2021

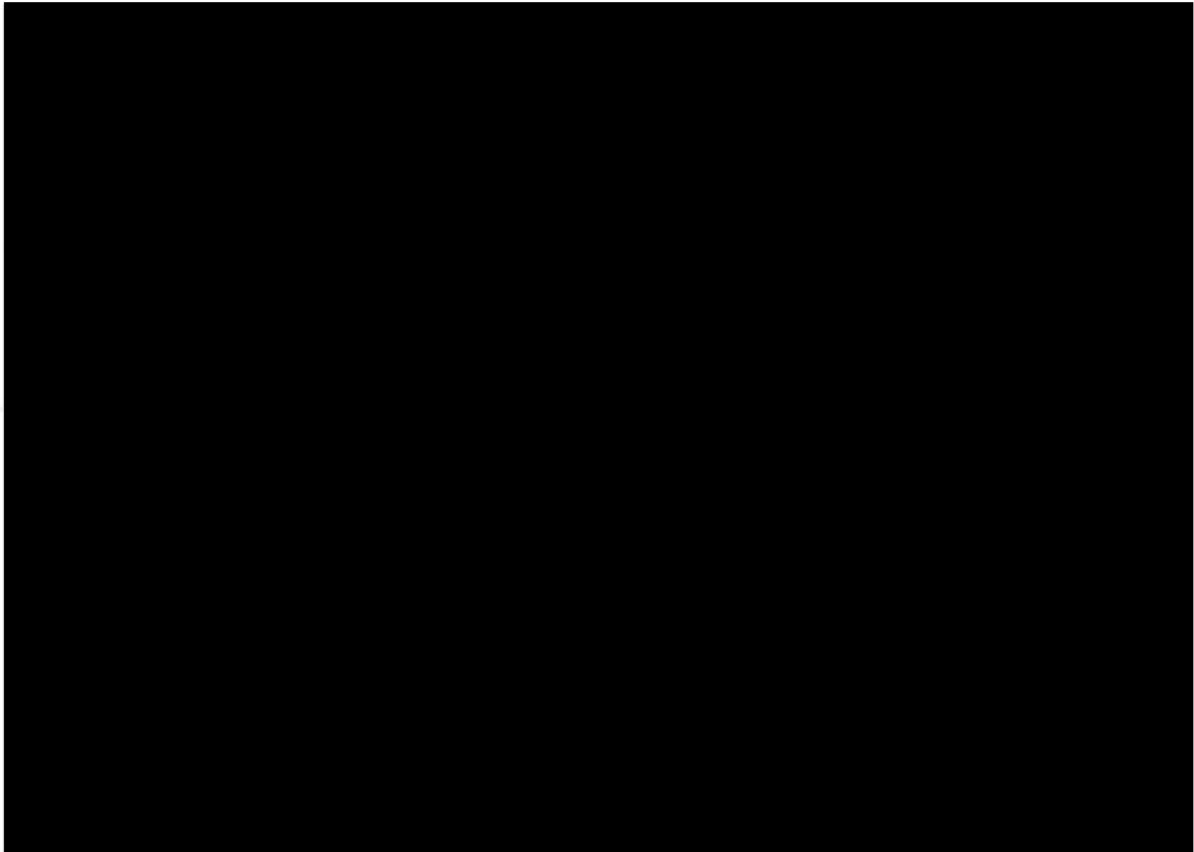
IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

IN THE MATTER OF THE ESTATE OF
JINGLEI YI, DECEASED

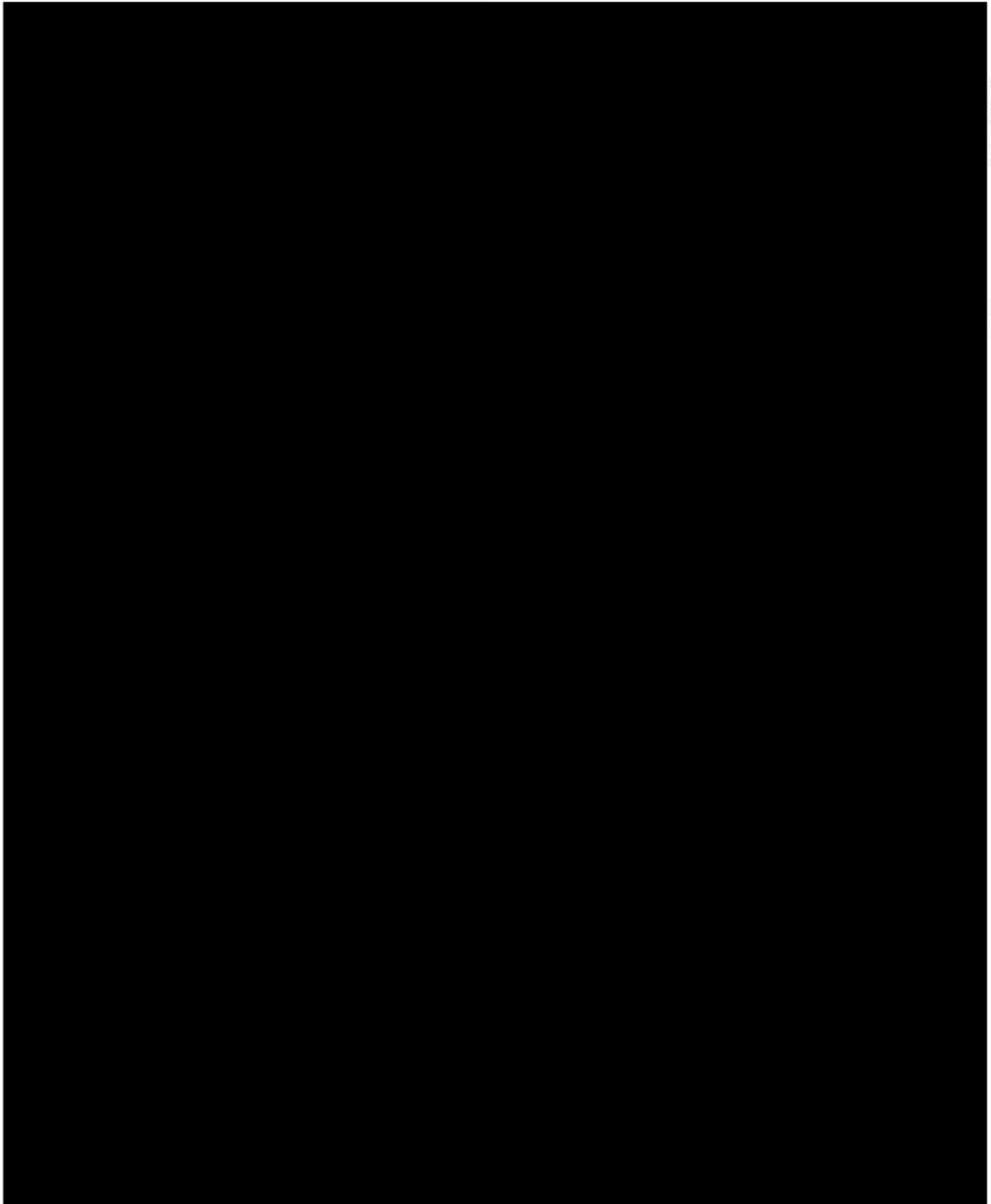
NO. _____

PETITION FOR APPOINTMENT OF SPECIAL ADMINISTRATOR

Dayong Yang, by and through his attorneys, McMath Woods P.A., petitions that letters of Special Administration for Jinglei Yi's estate be issued. Special Administration is sought to allow for the investigation and, if warranted, prosecution of a wrongful death claim relative to Jinglei Yi's death, which occurred on January 14, 2013. The facts, so far as they are known or reasonably can be ascertained by Dayong Yang, are:








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Prepared By:



Carter C. Stein, AR Bar No. 04049

McMath Woods P.A.

711 West Third Street

Little Rock, AR 72201

Telephone: (501) 396-5400

Facsimile: (501) 374-5118

carter@mcmathlaw.com

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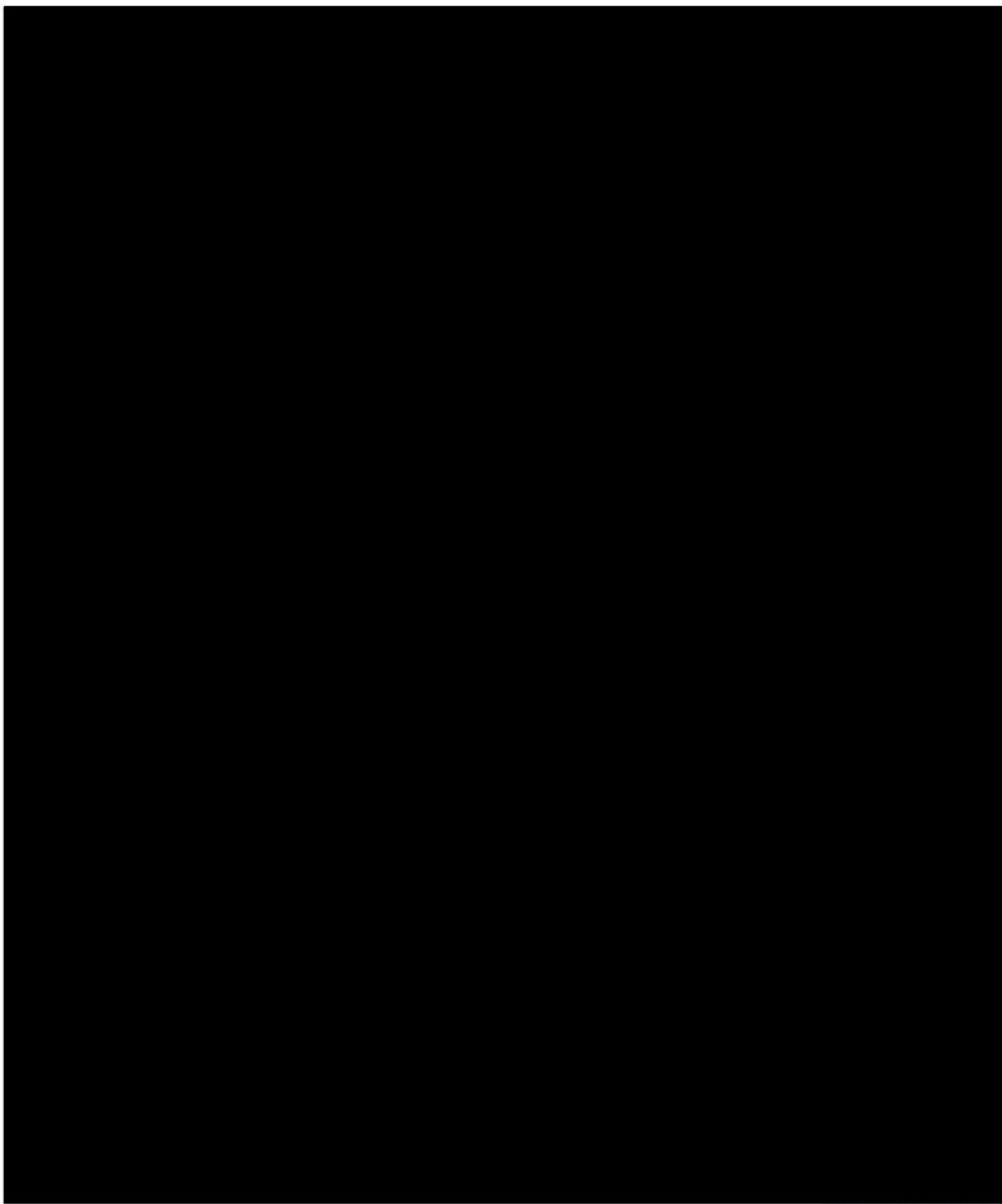
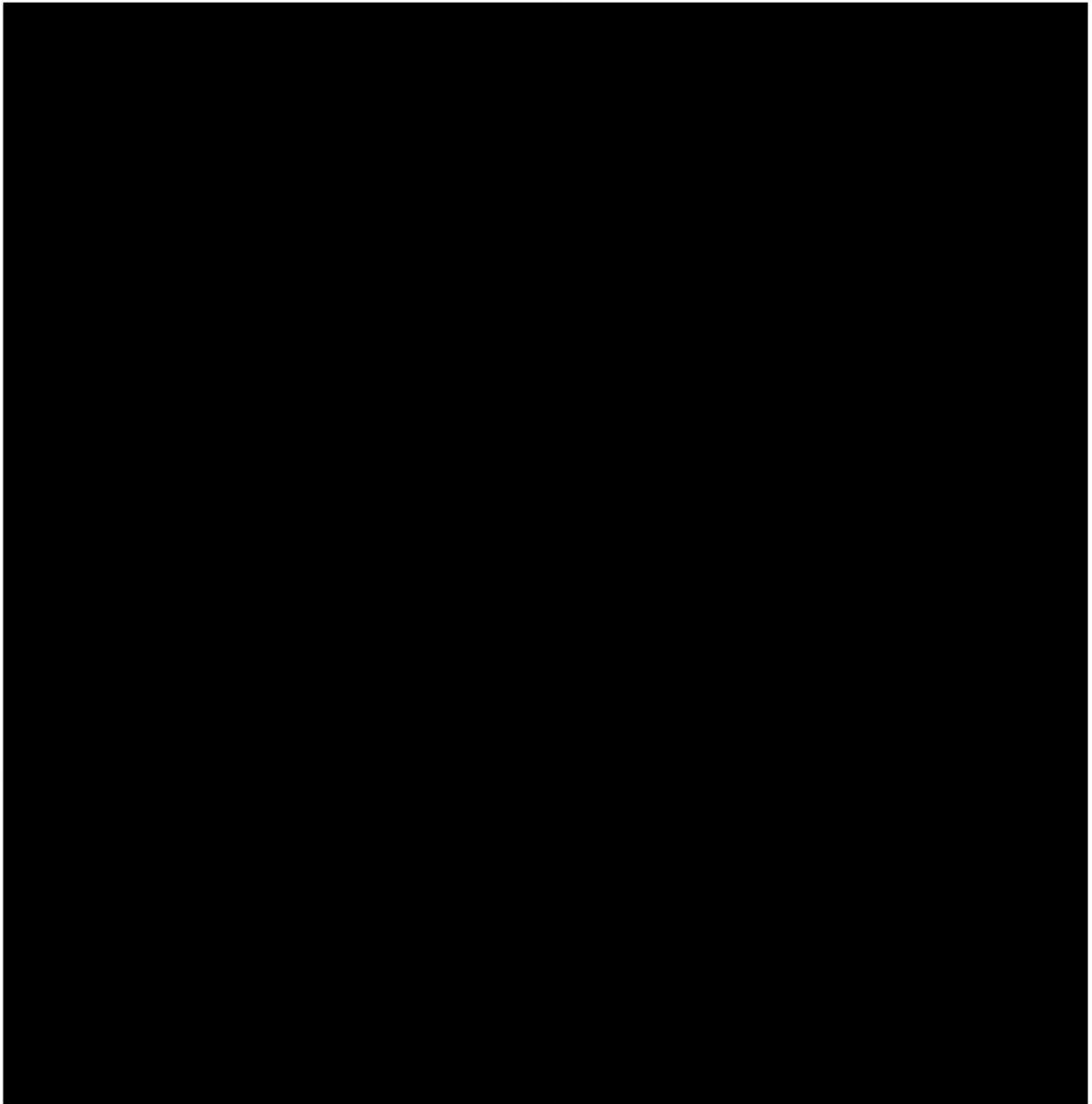


EXHIBIT
1



IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

IN THE MATTER OF THE ESTATE OF
JINGLEI YI, DECEASED

NO. 60PR-15-123-16

ORDER APPOINTING SPECIAL ADMINISTRATOR

On this 22nd day of January, 2015, is presented to the Court the Petition of Dayong Yang to appoint a Special Administrator of the estate of Jinglei Yi, deceased, for the limited purpose of performing any and all acts necessary to investigate, and, if warranted, prosecute a wrongful death claim relative to the circumstances surrounding Jinglei Yi's death, which occurred on January 14, 2013, and upon consideration of such petition, and the facts and evidence in support thereof, the Court finds:

1. A Special Administrator of the estate would be proper and should be appointed for:

<u>NAME</u>	<u>DOB</u>	<u>SEX</u>	<u>ADDRESS</u>
-------------	------------	------------	----------------

Jinglei Yi			
------------	--	--	--

2. On January 14, 2013, Jinglei Yi suffered serious personal injuries and died intestate when her vehicle entered a small retaining pond near the intersection of Capitol Hill Boulevard and Pennsylvania Avenue/Rushmore Avenue.

3. There is no court appointed Special Administrator of the estate of Jinglei Yi, deceased.

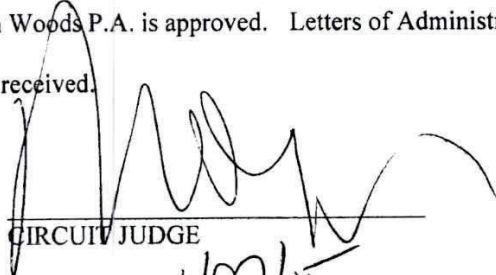
4. The employment contract entered between Dayong Yang and McMath Woods P.A., 711 West Third Street, Little Rock, Arkansas 72201, as attorneys, to represent the Special Administrator is customary according to the customs and usages of the legal community, and the compensation to be paid to the attorneys involved is reasonable and necessary to pursue this

matter.

5. That no part of the wrongful death recovery shall be subject to the debts of the deceased or become a part of the assets of the estate of the deceased person.

IT IS THEREFORE CONSIDERED, ORDERED and ADJUDGED that the Petition for Appointment of Special Administrator of the estate of Jinglei Yi, deceased, be, and is, granted; Regions Bank Trust Department is appointed Special Administrator of the estate of Jinglei Yi, deceased, for the limited purpose of performing any and all acts necessary to investigate, and, if warranted, to pursue a wrongful death claim relative to the circumstances surrounding the death of Jinglei Yi, which occurred on January 14, 2013; and the employment contract requested in the petition between Dayong Yang and McMath Woods P.A. is approved. Letters of Administration shall be issued without bond until assets are received.

IT IS SO ORDERED.



CIRCUIT JUDGE

DATE: 1/22/15

Prepared by:

/s/ Carter C. Stein
Carter C. Stein, AR Bar No. 04049
McMath Woods P.A.
711 West Third Street
Little Rock, AR 72201
Telephone: (501) 396-5400
Facsimile: (501) 374-5118
carter@mcmathlaw.com

RECEIVED

JAN 27 2015 

LARRY CRANE
CIRCUIT COUNTY CLERK

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

IN THE MATTER OF THE ESTATE OF
JINGLEI YI, DECEASED

NO. 60PR-15-123-16

ACCEPTANCE OF APPOINTMENT AS SPECIAL ADMINISTRATOR

The undersigned, Regions Bank Trust Department, having been appointed Special Administrator of the Estate of Jinglei Yi deceased, accepts the appointment.

DATED this 29th day of January, 2015.


Regions Bank Trust Department

STATE OF AR)
COUNTY OF Pulaski)

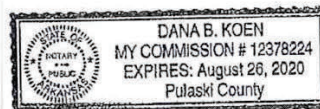
SUBSCRIBED AND SWORN to before me, a Notary Public, on this 29th
day of January, 2015.


NOTARY PUBLIC

Prepared By:



Carter C. Stein, AR Bar No. 04049
McMath Woods P.A.
711 West Third Street
Little Rock, AR 72201
Telephone: (501) 396-5400
Facsimile: (501) 374-5118
carter@mcmathlaw.com



IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
PROBATE DIVISION

No. 60PR-15-123

IN THE MATTER OF THE ESTATE OF JINGLEI YI
, deceased

LETTER OF SPECIAL ADMINISTRATION

REGIONIS BANK TRUST DEPARTMENT, having been appointed and qualified as
Special Administrator of the Estate of JINGLEI YI, who died on January 14, 2013, is
hereby authorized to act as Special Administrator for and in behalf of the Estate and to
take possession of the Estate's property as authorized by law.

ISSUED this date: 29-JAN-2015

LARRY CRANE, CIRCUIT CLERK



[Signature]
SONJA D SCOTT, PULASKI CLERK

**BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas**

**REGIONS BANK TRUST DEPARTMENT,
as Special Administrator of the Estate of
JINGLEI YI, deceased**

CLAIMANT

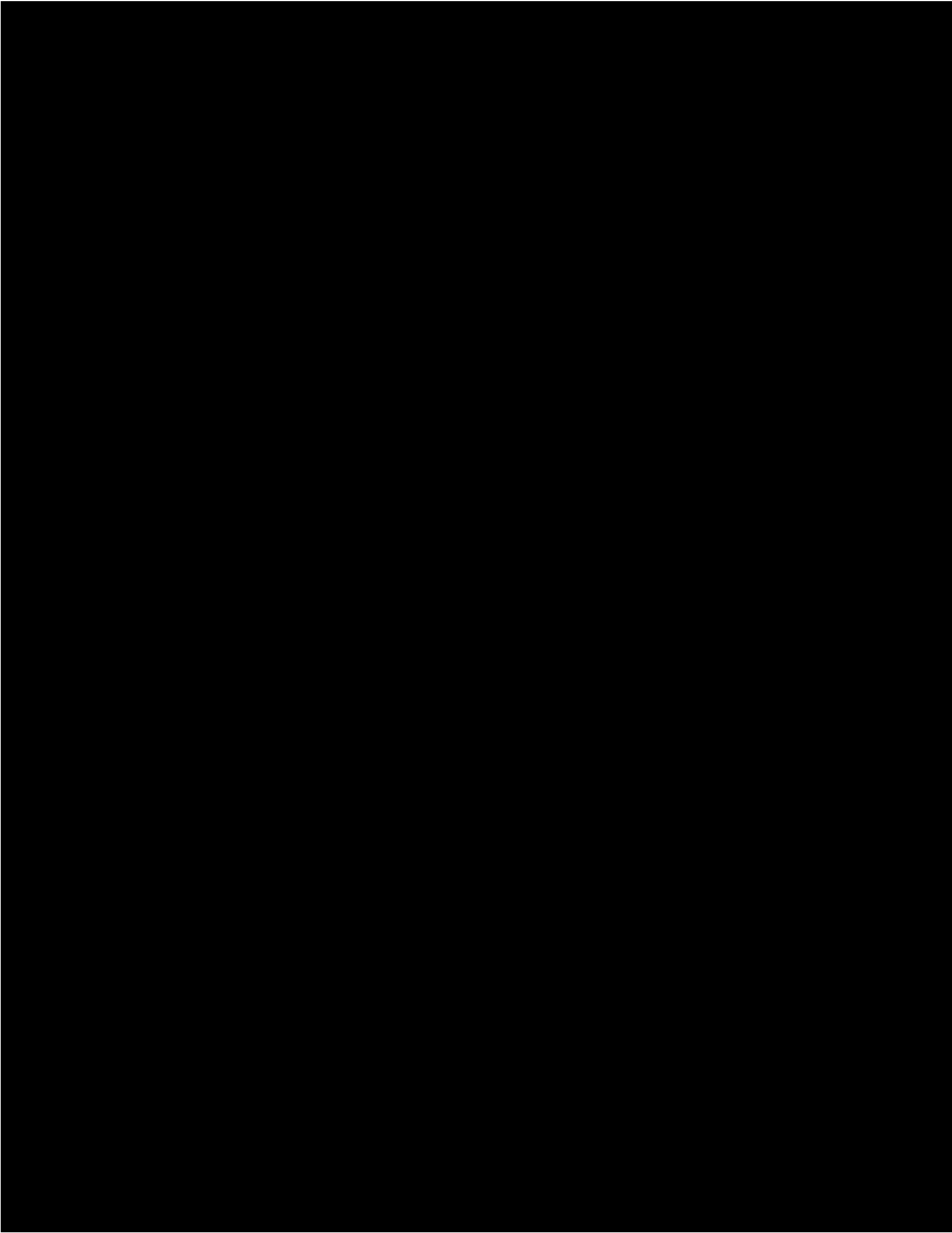
vs.

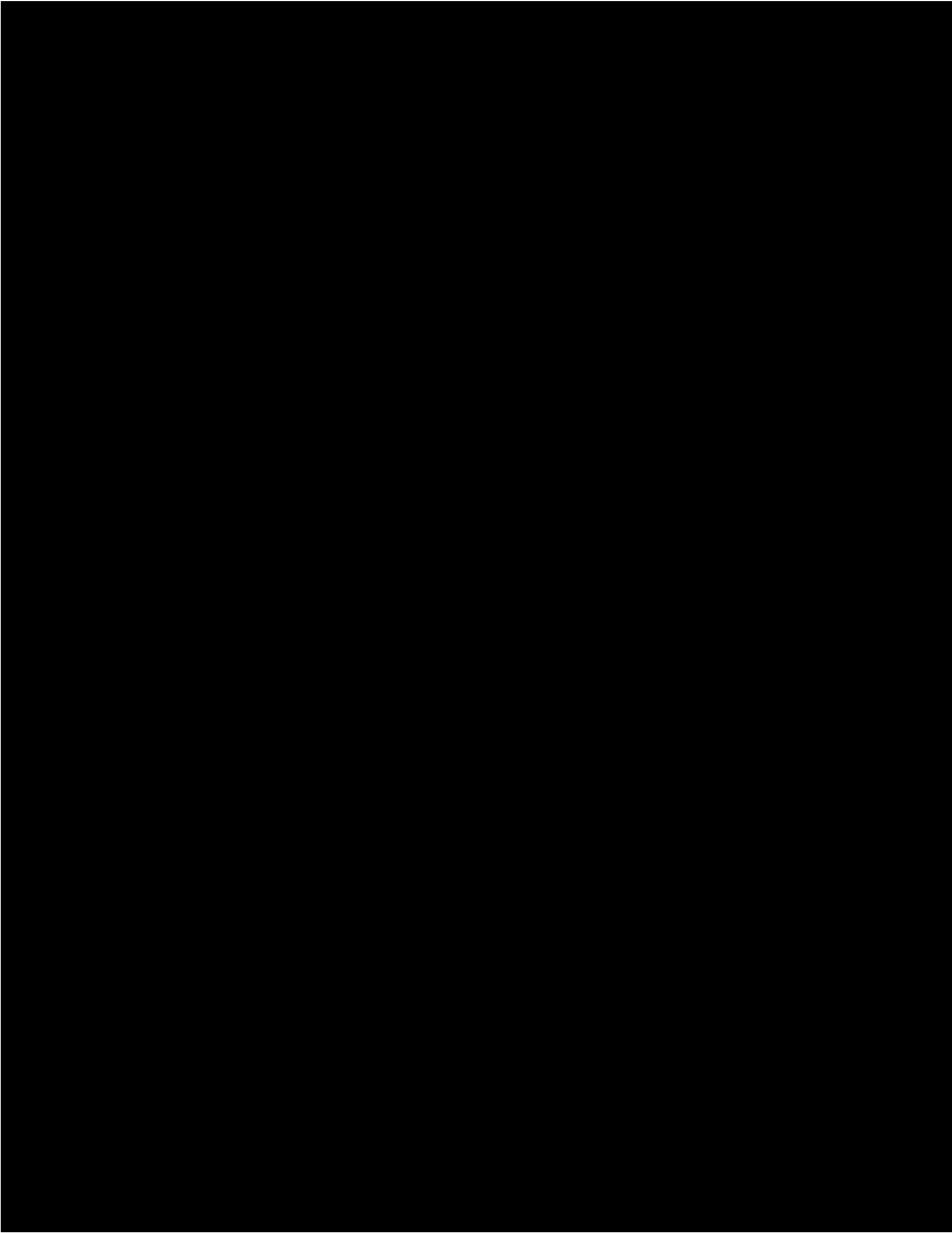
STATE OF ARKANSAS

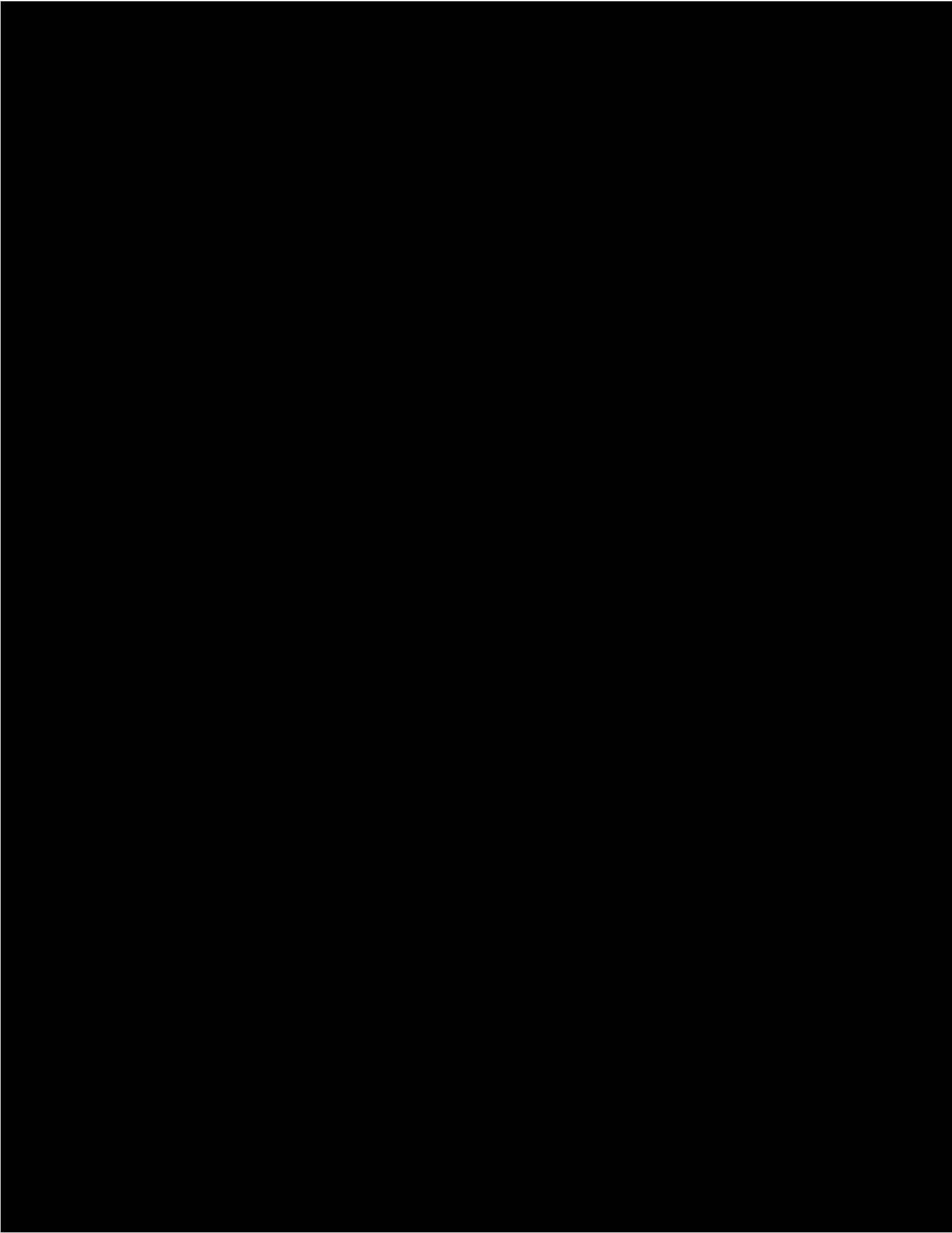
RESPONDENT

Summary of Medical Treatment









JAMES BRUCE McMATH
SAMUEL E. LEDBETTER
WILL BOND
NEIL CHAMBERLIN
CHARLES D. HARRISON
CARTER C. STEIN
ROSS NOLAND



711 WEST THIRD STREET
LITTLE ROCK, AR 72201
501-396-5400
FAX: 501-374-5118
www.mcmathlaw.com

MART VEHIK, OF COUNSEL
PHILLIP H. McMATH, OF COUNSEL

CARTER C. STEIN
Direct No. 501-396-5409
carter@mcmathlaw.com

SIDNEY S. McMATH (1912-2003)
HENRY WOODS (1918-2002)
WINSLOW DRUMMOND (1933-2005)
LELAND F. LEATHERMAN (1915-2006)

SABRINA BAKER
Paralegal
Direct No. 501-396-5402
sabrina@mcmathlaw.com

January 13, 2016

Via Hand Delivery Only

Brenda Wade, Director
Arkansas State Claims Commission
101 East Capitol Avenue
Suite 410
Little Rock, Arkansas 72201

Re: *Regions Bank Trust Department, as Special Administrator of the estate of Jinglei Yi, deceased vs. State of Arkansas*; Arkansas State Claims Commission

Brenda:

On behalf of Regions Bank Trust Department, as special administrator of the estate of Jinglei Yi, deceased, I am filing the following:

- 1) complaint;
- 2) personal injury incident report form;
- 3) a continued explanation of complaint;
- 4) probate filings;
- 5) summary of medical treatment;
- 6) medical expenses summary; and
- 7) death certificate.

As this filing is for an indemnification claim relating to a case presently pending in Arkansas circuit court styled as *Regions Bank Trust Department, as Special Administrator of the estate of Jinglei Yi, deceased v. City of Little Rock, Arkansas, et al.*, Pulaski County Circuit Court, 16th Division, Case No. 60CV-15-4103, the claimant respectfully requests that upon the

Since 1953, a tradition of legal excellence.



filing of this matter before the Arkansas State Claims Commission, it *be held in abeyance* until the conclusion of the circuit court action.

Feel free to call me to discuss.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Carter C. Stein', is written over a horizontal line.

Carter C. Stein

CCS/sb

Enc.

**BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas**

**REGIONS BANK TRUST DEPARTMENT,
as Special Administrator of the Estate of
JINGLEI YI, deceased**

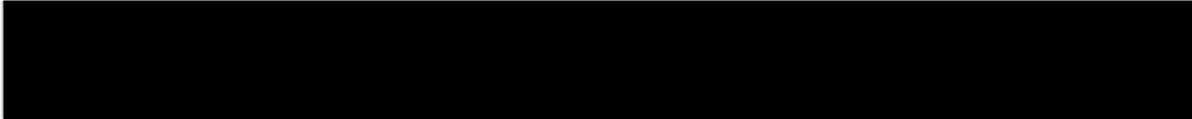
CLAIMANT

vs.

STATE OF ARKANSAS

RESPONDENT

Summary of Medical Treatment



JAMES BRUCE McMATH
SAMUEL E. LEDBETTER
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MART VEHIK, OF COUNSEL
PHILLIP H. McMATH, OF COUNSEL

CARTER C. STEIN
Direct No. 501-396-5409
carter@mcmathlaw.com

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Since 1953, a tradition of legal excellence.



Claims Commission Filing - Yi
January 13, 2016
Page 2

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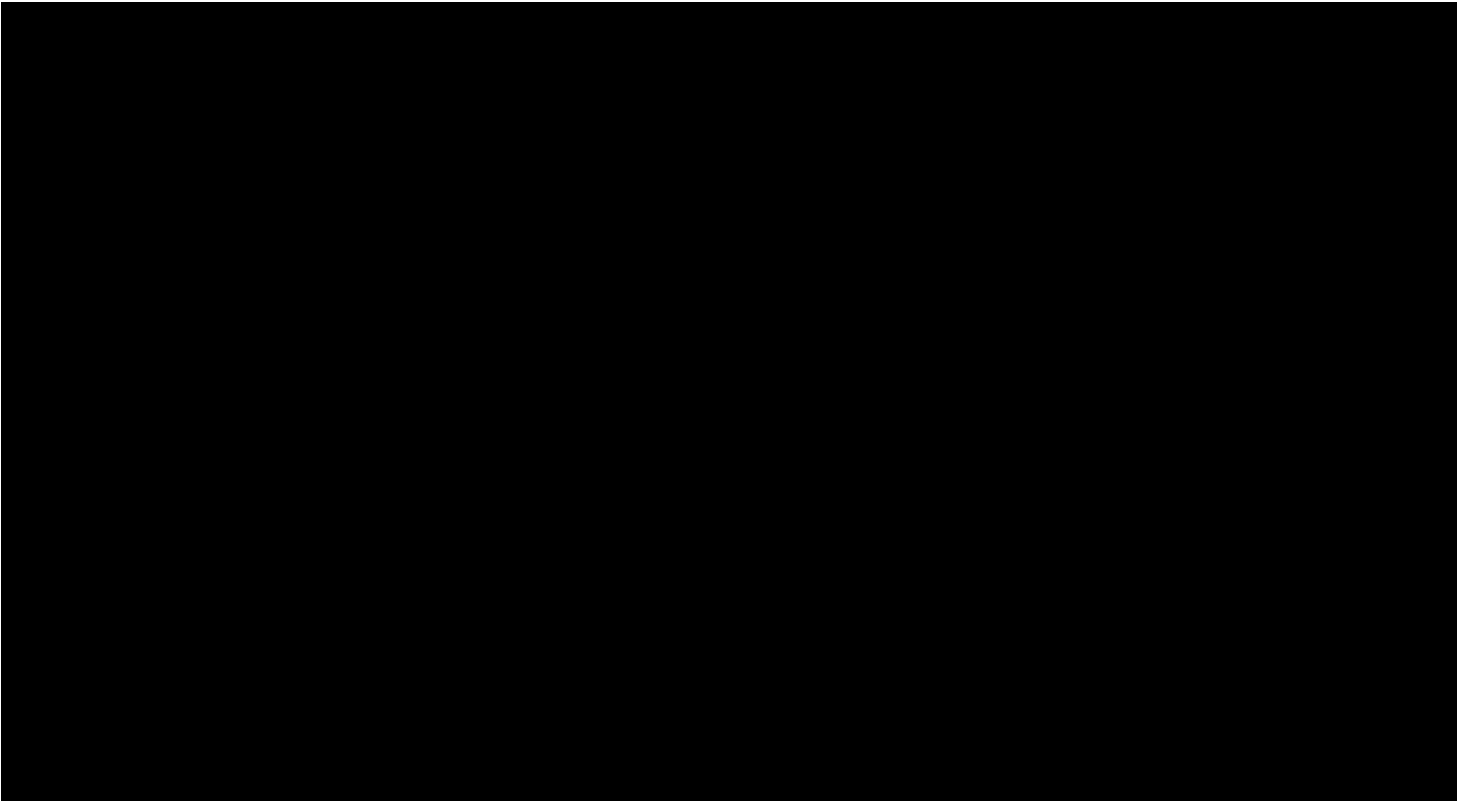
Sincerely,

A handwritten signature in blue ink, appearing to read 'Carter C. Stein', is written above the printed name.

Carter C. Stein

CCS/sb

Enc.



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

- ☐ Mr.
☐ Mrs.
☐ Ms.
☐ Miss

Regions Bank Trust Department, as Special
Administrator of the Estate of Jingle Yi, deceased
vs. Claimant

State of Arkansas, Respondent

Regions Bank Trust Department, as
Special Administrator of the Estate
of Jingle Yi, deceased

COMPLAINT

the above named Claimant, of 400 N. Capitol Ave. 7th Floor Little Rock
(Name) (Street or P.O.D. & No.) (City)
AR 72201 (501) 371-6719 County of Pulaski represented by Carter C. Stein, McManis Woods P.A.
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)
of 711 W. 3rd St. Little Rock AR 72201 (501) 396-5409 (501) 374-5118, says:
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: Arkansas Department of Emergency Management Amount sought: Amount to be determined by jury.
Month, day, year and place of incident or service: January 14, 2013; Capitol Hill Blvd. & Rushmore Ave. Little Rock, AR
Explanation: This is an indemnification claim. Please see the attached typewritten explanation.

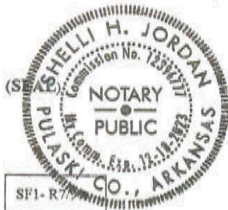
As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?
No; when?; to whom?; and that the following action was taken thereon: (Department)

and that \$ was paid thereon: (2) Has any third person or corporation an interest in this claim? Yes; if so, state name and address
City of Little Rock, 500 W. Markham St. Little Rock AR 72201
(Name) (Street or P.O.D. & No.) (City) (State) (Zip Code)
and that the nature thereof is as follows: City of Little Rock was called upon to assist State and ADEM
in provision of 911 services; and was acquired on January 14, 2013, in the following manner:
City of Little Rock has been sued for their actions performed for State and ADEM.

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.

Erin Behring, Regions Bank Trust Department
(Print Claimant/Representative Name)

Erin Behring for Regions
(Signature of Claimant/Representative)



SWORN TO and subscribed before me at Little Rock AR

on this 13th day of January, 2016
(Date) (Month) (Year)

Julie A. Jella
(Notary Public)

My Commission Expires: 12 18 2023
(Month) (Day) (Year)

**BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas**

**REGIONS BANK TRUST DEPARTMENT,
as Special Administrator of the Estate of
JINGLEI YI, deceased**

CLAIMANT

vs.

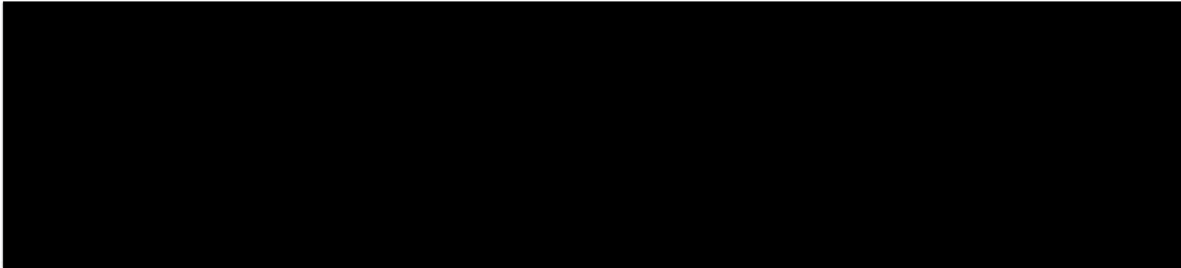
STATE OF ARKANSAS

RESPONDENT

Explanation (Continued from COMPLAINT form):

1. On the morning of January 14, 2013, Jinglei Yi and her then five year old son Le Yang were in a 2006 Ford Expedition headed east on Capitol Hill Boulevard.
2. Jinglei stopped at the stop sign at the intersection of Capitol Hill Boulevard and Pennsylvania Avenue/Rushmore Avenue.
3. As Jinglei proceeded through the intersection, she hit a patch of ice and lost control of her vehicle. Jinglei's vehicle continued east approximately 256 feet before going over the southbound curb line, leaving the roadway, striking a small tree, going down a hill, and entering a retaining pond on the south side of Capitol Hill Boulevard.
4. Jinglei used her cell phone to call Arkansas's 911 system at 7:55:25 a.m.
5. Jinglei's 911 call was answered by the Pulaski County Sheriff's 911 Communications Center. Jinglei told the female Pulaski County 911 call taker her vehicle had fallen in the water. She stated she was in the car with her child. The Pulaski County call taker asked Jinglei if she slid off into the pond and said "I see where you're at."
6. The Pulaski County call taker told Jinglei she was getting her to the correct agency to get its fire department to help Jinglei and Le. The Pulaski County call taker transferred Jinglei's 911 call to the Little Rock Police Department Communications Center because Jinglei and Yi were within the city limits.

7. The Pulaski County call taker, with Jinglei on the line, called Little Rock 911 at 7:56:03 a.m.
8. Candace Middleton, a Little Rock employee, answered the call.
9. The female Pulaski County 911 operator told Middleton that Jinglei and Le were in a pond just east of Rushmore Avenue on the south side of the road. The Pulaski County call taker told Jinglei she was letting her speak with Little Rock 911.
10. Jinglei told Middleton "I'm falling in a pond and I feel the water in my car right now." Jinglei told Middleton her location, confirmed Le was in the car with her, and spelled her name.
11. In response to Jinglei's 911 call about a vehicle sinking in a pond, Middleton failed to enter the call for police and fire dispatch.
12. Middleton did call MEMS to have an ambulance go to the scene.
13. MEMS personnel arrived at the scene at 8:20:18 a.m. but police and fire department personnel were not there.
14. MEMS personnel called MEMS dispatch to check status of police and fire units.
15. MEMS dispatch called Pulaski County Sheriff's 911 Communications Center to check status of police and fire units.
16. Pulaski County Sheriff's 911 Communications Center advised MEMS dispatch that the call in question was a Little Rock call.
17. MEMS dispatch called Little Rock 911 at 8:21 a.m. about the status of police and fire units. At this time it was discovered that the call had not been entered.
18. The call was entered by Little Rock 911 at 8:23:02 a.m.
19. Little Rock water rescue units arrived at 8:40:34 a.m.
20. Jinglei Yi was extricated from the submerged vehicle at 8:48 a.m.



23. Jinglei Yi's injuries and death were proximately caused by the negligence of the City of Little Rock and its employees who were acting on behalf of the State of Arkansas and the Arkansas Department of Emergency Management.

24. The City of Little Rock "shall be immune from liability and from suit for damages except to the extent that [it] may be covered by liability insurance." Ark. Code Ann. § 21-9-301(a).

25. However, an exception to the City of Little Rock's immunity exists when it is sued for actions it undertakes for the State of Arkansas. Ark. Code. Ann. § 21-9-304.

26. "When any city of the first class . . . and its employees are called upon to assist the state and its employees and, as a result, are sued for their actions performed under the supervision of a state official or employee, the Attorney General shall defend the city of the first class . . . and its employees." Ark. Code Ann. § 21-9-304(a).

27. Here, the City of Little Rock has been called upon by the State of Arkansas and the Arkansas Department of Emergency Management to operate a public service answering point in connection with the statewide 911 system. Ark. Code Ann. § 21-9-304(a); *See also* Ark. Code Ann. § 12-10-302.

28. Further, the actions of the City of Little Rock in hiring, training, supervising, and retaining Middleton, maintaining its computer aided dispatch system, adequately staffing its Communications Center, Middleton's response to Jinglei's 911 call, and the police and fire department's response were performed under the supervision of David Maxwell, the head of the

Arkansas Department of Emergency Management who was appointed by the Governor of Arkansas as the State 911 Coordinator, and in furtherance of the State of Arkansas's desire to operate a statewide 911 system. Ark. Code Ann. § 21-9-304(a).

29. “***Should*** a judgment be rendered against the city of the first class . . . or its employees, the ***state shall pay*** actual, but not punitive, damages adjudged by a state or federal court, or entered by the court as a result of a compromise settlement approved and recommended by the Attorney General, based on an act or omission by the officer or employee while acting without malice and in good faith within the course and scope of his or her employment and in performance of his or her official duties.” Ark. Code Ann. § 21-9-304(a) (emphasis added).

30. Accordingly, ***if*** a judgment is rendered for Regions Bank Trust Department, as special administrator of the estate of Jinglei Yi, deceased, against the City of Little Rock or its employees, then the ***state shall pay*** actual damages awarded by the jury.

31. The case against the City of Little Rock and MEMS is presently pending in Arkansas circuit court in a case styled as *Regions Bank Trust Department, as Special Administrator of the estate of Jinglei Yi, deceased v. City of Little Rock, Arkansas, et al.*, Pulaski County Circuit Court, 16th Division, Case No. 60CV-15-4103.

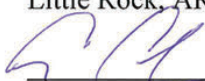
32. Regions Bank is filing this indemnification claim now before the Arkansas State Claims Commission, prior to the running of the three year statute of limitations for negligence claims in Arkansas, so that if a judgment is rendered in its favor against the City of Little Rock and/or its employees it may then be able to present its indemnification claim to the Arkansas State Claims Commission for payment.

33. Additional pleadings and filings from the above referenced case, as well as other supporting documentation, will be provided to the Arkansas State Claims Commission.

Respectfully Submitted,

McMATH WOODS P.A.
711 West Third Street
Little Rock, AR 72201

By:




Carter C. Stein, AR Bar #2004049

Email: carter@mcmathlaw.com

*Attorney for Regions Bank Trust Department,
as special administrator of
the estate of Jinglei Yi, deceased*

Sworn to and subscribed before me at Little Rock, AR
on this 13th day of January, 2016.




Notary Public

My commission expires: Feb. 22, 2021

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

SECTION I
CLAIMANT

Regions Bank Trust Department, as Special Administrator of the estate of Jinglei Yi, deceased
ADDRESS 400 W. Capitol Ave., Ste. 700
CITY & STATE Little Rock, AR ZIP CODE 72201

DATE OF INCIDENT: January 14, 2013 19 TIME 7:55 a.m.

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

Jinglei Yi suffered a drowning event in a submerged vehicle due to a delayed 911 response by the City of Little Rock. She was treated at the scene and at Baptist Hospital prior to her death that same day. She had medical

(If personal injury claim only, move on to Section IV) *Expenses of over \$16,000.00*

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	AMOUNT
1. _____	_____	\$ _____
2. _____	_____	\$ _____
3. _____	_____	\$ _____

SECTION III

Was property covered by insurance? Yes () No ()

If yes, what is the deductible? \$ _____

NAME OF INSURANCE CARRIER

ADDRESS

SECTION IV

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

If yes, is medical insurance:

If yes, what is the deductible? \$ None

A. Job-based Yes (X) No ()

B. Uninsured Motorist Yes () No (X)

C. Private Pay Yes (X) No ()

NAME OF INSURANCE CARRIER

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: Scott Dettrick, Stephanie Berthia, and Wayne Bowley all of the Little Rock Police Department

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

Sworn to and subscribed before me at Little Rock AR

on this 12th day of Jan, 19 2013
day month year

My Commission Expires 12-18-2023

[Signature]
Signature of Notary Public

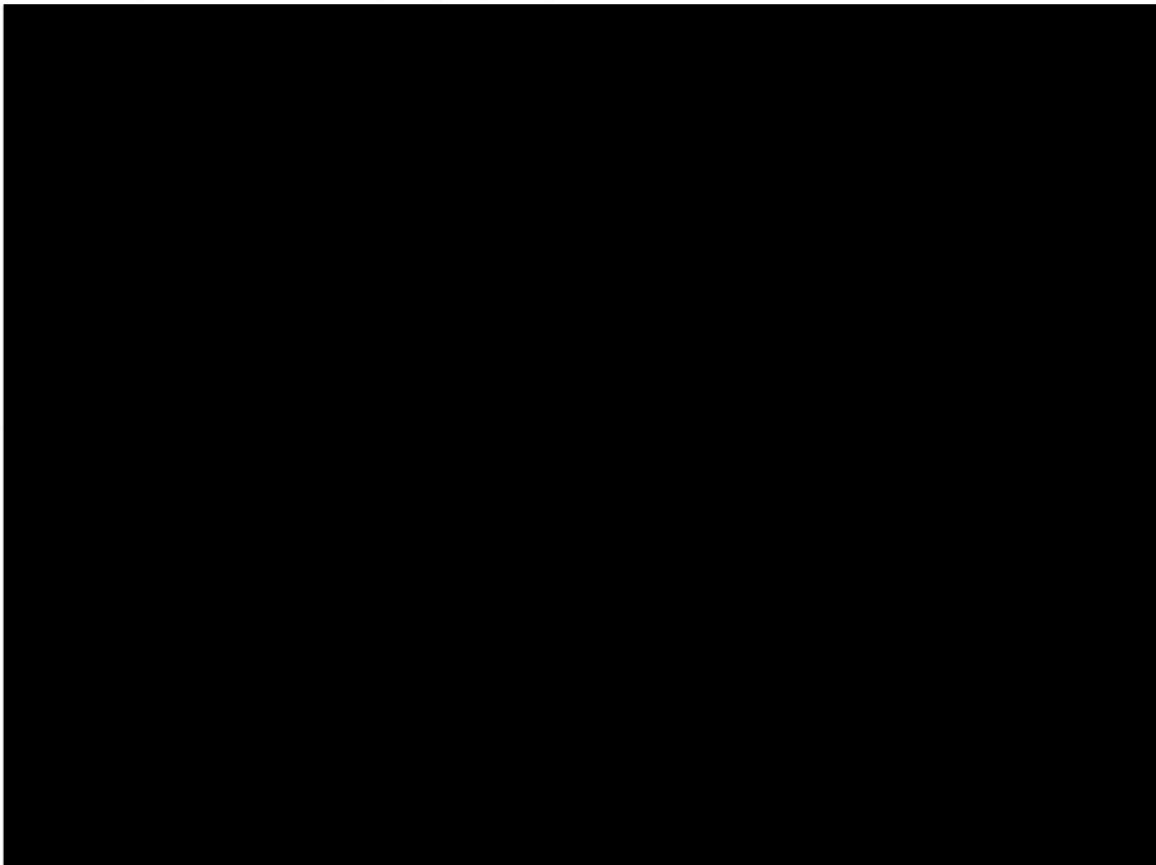
IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

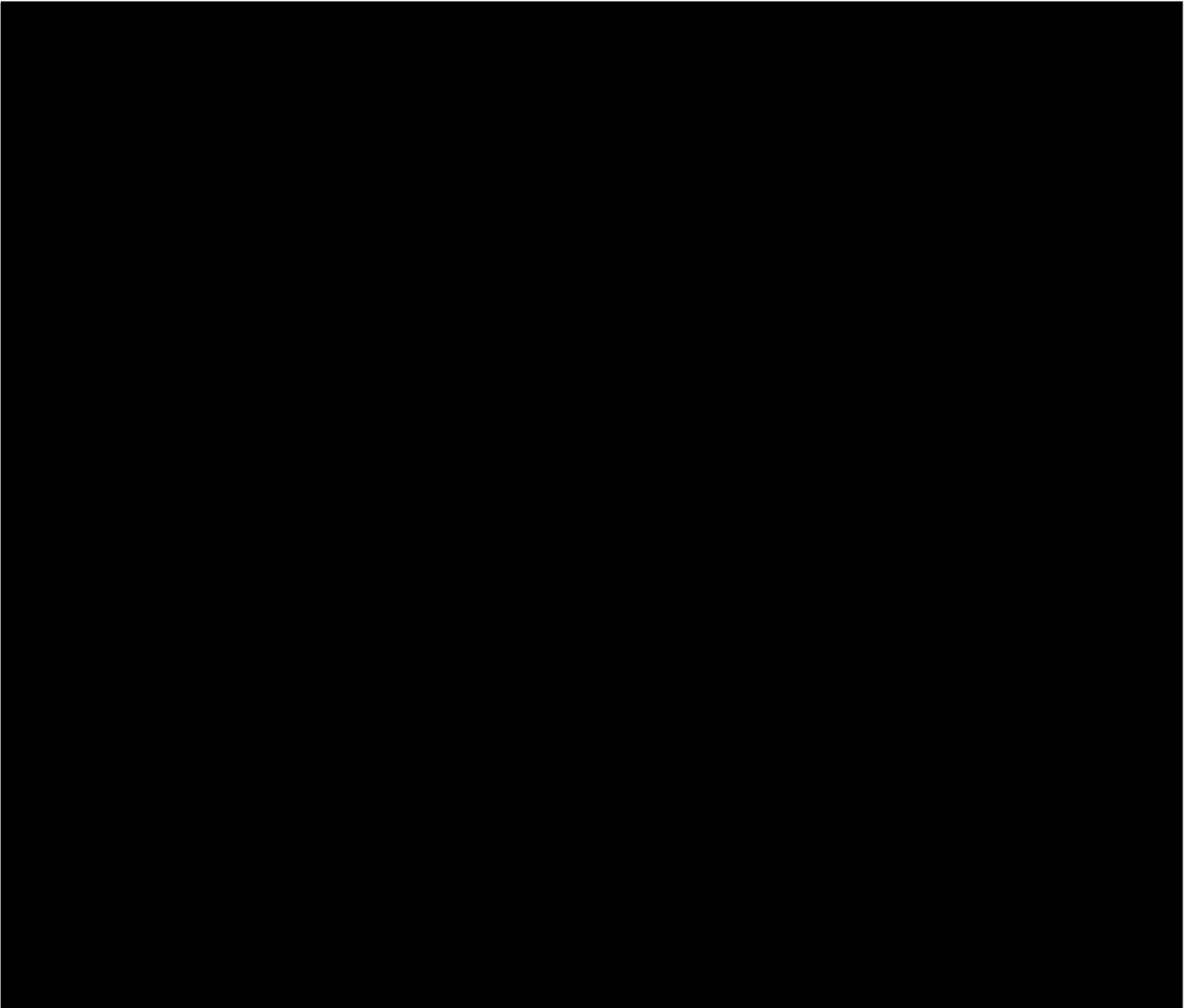
IN THE MATTER OF THE ESTATE OF
JINGLEI YI, DECEASED

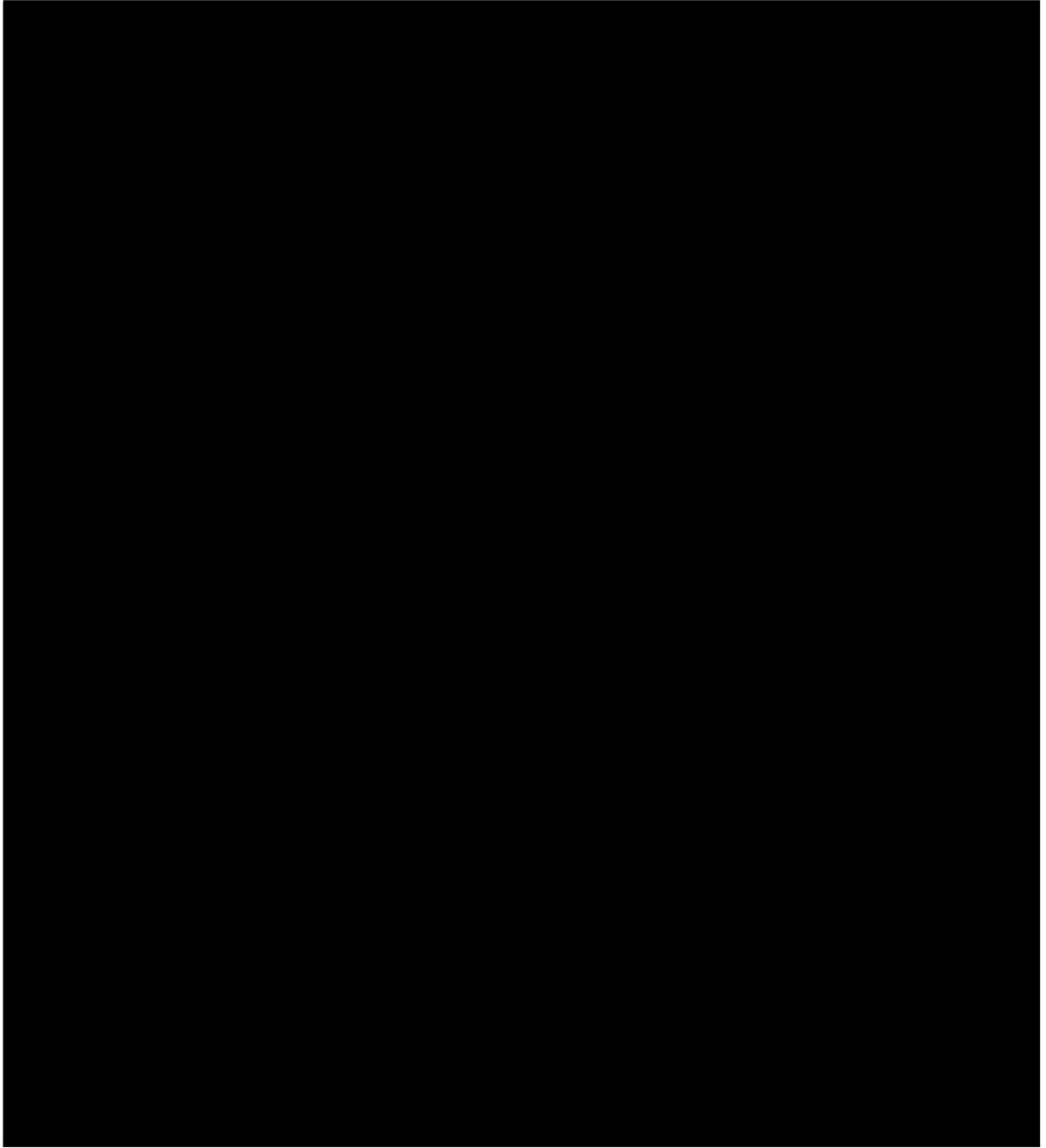
NO. _____

PETITION FOR APPOINTMENT OF SPECIAL ADMINISTRATOR

Dayong Yang, by and through his attorneys, McMath Woods P.A., petitions that letters of Special Administration for Jinglei Yi's estate be issued. Special Administration is sought to allow for the investigation and, if warranted, prosecution of a wrongful death claim relative to Jinglei Yi's death, which occurred on January 14, 2013. The facts, so far as they are known or reasonably can be ascertained by Dayong Yang, are:





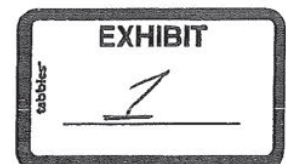
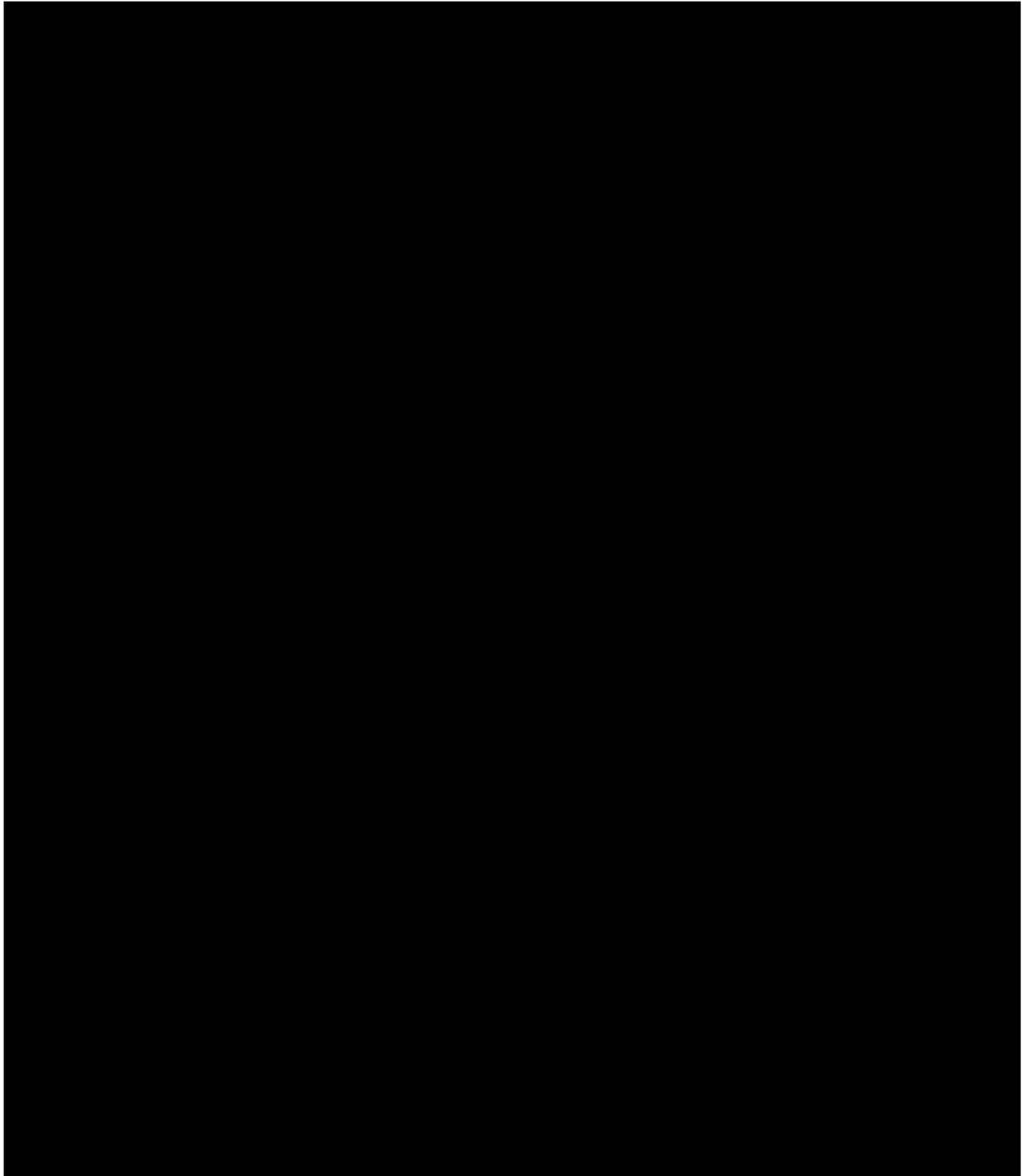


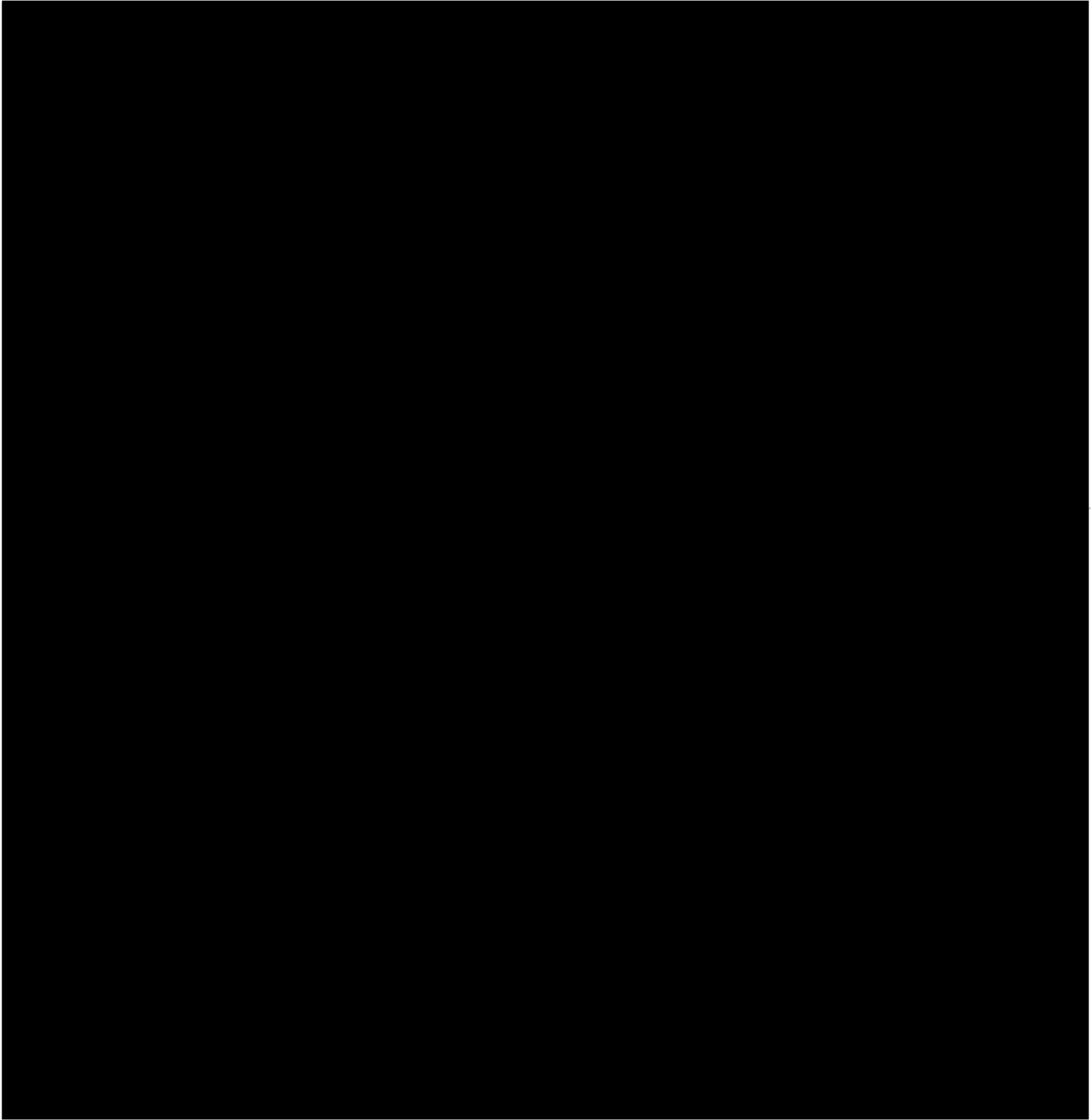
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Prepared By:

A handwritten signature in black ink, appearing to read 'C. Stein', with a horizontal line underneath it.

Carter C. Stein, AR Bar No. 04049
McMath Woods P.A.
711 West Third Street
Little Rock, AR 72201
Telephone: (501) 396-5400
Facsimile: (501) 374-5118
carter@mcmathlaw.com





IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

IN THE MATTER OF THE ESTATE OF
JINGLEI YI, DECEASED

NO. 60PR-15-123-16

ORDER APPOINTING SPECIAL ADMINISTRATOR

On this 20th day of January, 2015, is presented to the Court the Petition of Dayong Yang to appoint a Special Administrator of the estate of Jinglei Yi, deceased, for the limited purpose of performing any and all acts necessary to investigate, and, if warranted, prosecute a wrongful death claim relative to the circumstances surrounding Jinglei Yi's death, which occurred on January 14, 2013, and upon consideration of such petition, and the facts and evidence in support thereof, the Court finds:

1. A Special Administrator of the estate would be proper and should be appointed for:

<u>NAME</u>	<u>DOB</u>	<u>SEX</u>	<u>ADDRESS</u>
-------------	------------	------------	----------------

Jinglei Yi			
------------	--	--	--

2. On January 14, 2013, Jinglei Yi suffered serious personal injuries and died intestate when her vehicle entered a small retaining pond near the intersection of Capitol Hill Boulevard and Pennsylvania Avenue/Rushmore Avenue.

3. There is no court appointed Special Administrator of the estate of Jinglei Yi, deceased.

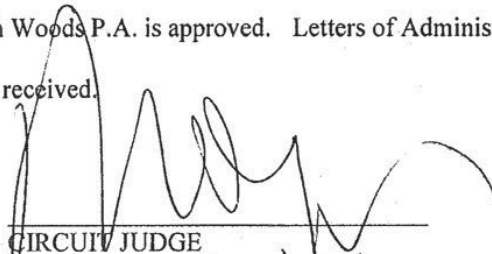
4. The employment contract entered between Dayong Yang and McMath Woods P.A., 711 West Third Street, Little Rock, Arkansas 72201, as attorneys, to represent the Special Administrator is customary according to the customs and usages of the legal community, and the compensation to be paid to the attorneys involved is reasonable and necessary to pursue this

matter.

5. That no part of the wrongful death recovery shall be subject to the debts of the deceased or become a part of the assets of the estate of the deceased person.

IT IS THEREFORE CONSIDERED, ORDERED and ADJUDGED that the Petition for Appointment of Special Administrator of the estate of Jinglei Yi, deceased, be, and is, granted; Regions Bank Trust Department is appointed Special Administrator of the estate of Jinglei Yi, deceased, for the limited purpose of performing any and all acts necessary to investigate, and, if warranted, to pursue a wrongful death claim relative to the circumstances surrounding the death of Jinglei Yi, which occurred on January 14, 2013; and the employment contract requested in the petition between Dayong Yang and McMath Woods P.A. is approved. Letters of Administration shall be issued without bond until assets are received.

IT IS SO ORDERED.


CIRCUIT JUDGE

DATE: 1/22/15

Prepared by:

/s/ Carter C. Stein
Carter C. Stein, AR Bar No. 04049
McMath Woods P.A.
711 West Third Street
Little Rock, AR 72201
Telephone: (501) 396-5400
Facsimile: (501) 374-5118
carter@mcmathlaw.com

RECEIVED

JAN 27 2015 *LC*

LARRY CRANE
CIRCUIT COUNTY CLERK

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

IN THE MATTER OF THE ESTATE OF
JINGLEI YI, DECEASED

NO. 60PR-15-123-16

ACCEPTANCE OF APPOINTMENT AS SPECIAL ADMINISTRATOR

The undersigned, Regions Bank Trust Department, having been appointed Special
Administrator of the Estate of Jinglei Yi deceased, accepts the appointment.

DATED this 29th day of January, 2015.

[Signature]
Regions Bank Trust Department

STATE OF AR)
COUNTY OF Pulaski)

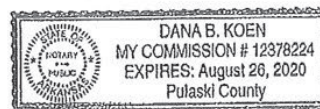
SUBSCRIBED AND SWORN to before me, a Notary Public, on this 29th
day of January, 2015.

[Signature]
NOTARY PUBLIC

Prepared By:

[Signature]

Carter C. Stein, AR Bar No. 04049
McMath Woods P.A.
711 West Third Street
Little Rock, AR 72201
Telephone: (501) 396-5400
Facsimile: (501) 374-5118
carter@mcmathlaw.com



IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
PROBATE DIVISION

No. 60PR-15-123

IN THE MATTER OF THE ESTATE OF JINGLEI YI
, deceased

LETTER OF SPECIAL ADMINISTRATION

REGIONIS BANK TRUST DEPARTMENT, having been appointed and qualified as
Special Administrator of the Estate of JINGLEI YI, who died on January 14, 2013, is
hereby authorized to act as Special Administrator for and in behalf of the Estate and to
take possession of the Estate's property as authorized by law.

ISSUED this date: 29-JAN-2015

LARRY CRANE, CIRCUIT CLERK



[Signature]
SONJA D SCOTT, PULASKI CLERK

ARKANSAS STATE CLAIMS COMMISSION

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



BRENDA WADE
DIRECTOR

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

January 13, 2016

Mr. David Maxwell, Director
AR Department of Emergency Management
Building 9501
Camp Joseph T. Robinson
North Little Rock, AR 72199

Re: Regions Bank Trust c/o Jinglei Yi Estate
Claim #16-0497-CC
Vs.
ADEM

Dear Mr. Maxwell:

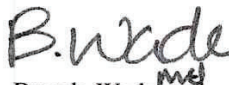
Enclosed is a copy of the above-styled claim for your review.

Please notify this office within thirty (30) calendar days of the receipt of same (**receipt will be assumed within three (3) days** unless this office is notified immediately, in writing, that a lengthier period of time has passed before receipt) whether your agency plans to admit liability and recommend payment or deny liability and contest this claim.

Please indicate (as required by Ark. Code §19-5-1009, Section C) the amount, agency number, fund code, appropriation code and activity/section/unit/element this claim should be charged against, if liability is admitted, or should the Commission approve the claim for payment. This information must be furnished to this office whether your agency is admitting or denying liability.

Thank you for your cooperation.

Sincerely,


Brenda Wade
Director

BW/mh

ARKANSAS STATE CLAIMS COMMISSION



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

BRENDA WADE
DIRECTOR

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

February 9, 2016

Mr. Carter Stein
Attorney-at-Law
711 West 3rd Street
Little Rock, AR 72201

RE: Regions Bank Trust, Admin. of
Jinglei Yi Estate
Claim #: 16-0497-CC
Vs.
ADEM

Dear Mr. Stein:

Please be advised that the Respondent in the above-styled claim is disputing liability in an "answer" filed on your claim. This letter does not deal with any motions, discovery request or other matters related to this claim. If any pleadings are filed on your claim, you will still need to respond to those pleadings within the appropriate timeframe.

When liability is contested by the Respondent, the only alternative available to the Claimant is to appear before the Arkansas State Claims Commission at an oral hearing so testimony and evidence may be presented to refute the position of the Respondent. If you wish to attend a hearing on this claim, please notify this office in writing within fifteen (15) calendar days from the date of this letter and a hearing will be arranged.

If you fail to respond to this letter, or do not wish to pursue this claim at a hearing, this claim will be dismissed at the next meeting of the Claims Commission.

Sincerely,

B. Wade
Brenda Wade
Director

BW/jg

cc: Mr. Patrick Hollingsworth, Assistant Attorney General
Ms. Erin Behring, Regions Bank Trust Department, for Claimant

FEB 09 2016

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

RECEIVED

REGIONS BANK TRUST DEPARTMENT
administrator for the Estate of
Jinglei Yi, deceased

CLAIMANT

VS.

Claim No. 16-0497-CC

STATE OF ARKANSAS,
ARKANSAS DEPARTMENT OF
EMERGENCY MANAGEMENT

RESPONDENT

ANSWER

Comes the State of Arkansas, Arkansas Department of Emergency Management, through its attorney, Leslie Rutledge, Attorney General, and Patrick Hollingsworth, Assistant Attorney General, and for it answer states as follows:

1. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 1 of the Complaint.
2. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 2 of the Complaint.
3. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 3 of the Complaint.
4. The Respondent denies the allegations of paragraph 4 of the Complaint. The State of Arkansas has no 911 system. So-called 911 systems are owned, operated and managed by local entities.
5. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 5 of the Complaint.

6. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 6 of the Complaint.

7. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 7 of the Complaint.

8. The Respondent admits the allegations of paragraph 8 of the Complaint.

9. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 9 of the Complaint.

10. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 10 of the Complaint.

11. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 11 of the Complaint.

12. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 12 of the Complaint.

13. The Respondent admits that MEMS did arrive at the scene but does not have sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 13 of the Complaint.

14. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 14 of the Complaint.

15. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 15 of the Complaint.

16. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 16 of the Complaint.

17. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 17 of the Complaint.

18. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 18 of the Complaint.

19. The Respondent admits that Little Rock fire department employees designated for water rescue arrived, but does not have sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 19 of the Complaint.

20. The Respondent admits that the Jinglei Yi was removed from the vehicle. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 20 of the Complaint.

21. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 21 of the Complaint.

22. The Respondent admits that Jinglei Yi passed away, but does not have sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 22 of the Complaint.

23. The Respondent does not have sufficient information or knowledge to form a belief as to the truth or falsity of the allegation that the death of Jinglei Yi was caused by negligence on the part of the City of Little Rock or its employees. The Respondent denies each and every other allegation of paragraph 23 of the Complaint. Neither the City of Little Rock, nor its employees, were acting on behalf of the State of Arkansas or any agency of the State of Arkansas.

24. The Respondent admits that paragraph 24 of the Complaint recites a portion of section 21-9-301(a) of the Arkansas Code.

25. The Respondent denies the allegations of paragraph 25 of the Amended Complaint.
26. The Respondent admits that paragraph 26 of the Complaint recites a portion of section 21-9-304(a) of the Arkansas Code.
27. The Respondent denies the allegations of paragraph 27 of the Complaint.
28. The Respondent denies the allegation of 28 of the Complaint.
29. The Respondent denies the allegations of paragraph 29 of the Complaint. The language recited is an excerpt from section 21-9-304(b) of the Arkansas Code.
30. The Respondent denies the allegations of paragraph 30 of the Complaint.
31. The Respondent does not have sufficient information or knowledge to admit or deny the allegations concerning the Claimant's reasons or intent for filing this claim.
32. The Respondent denies each and every other allegation of the Complaint not specifically admitted herein.
33. The Complaint fails to state facts upon which relief may be granted.
34. The Claimant is presently a plaintiff in the case of Regions Trust v. City of Little Rock, et al, pending in the Circuit Court of Pulaski County, Arkansas, asserting against the City of Little Rock and Little Rock Ambulance Authority D/B/A Metropolitan Emergency Medical Services ("MEMS") claims for recovery of damages related to the same events and circumstances alleged in this case. Upon information and belief, MEMS maintains insurance that, should liability attach, would provide a source of payment. The Claimant has further admitted that medical insurance paid for the costs of treatment of Jinglei Yi. The Claimant has failed to provide the affidavit required by Ark. Code Ann. § 19-10-302(b).

35. The Complaint fails to state the amount of damages sought, and therefore does not meet the requirements of rules 1.5(e) and 2.1 of the Rules of Practice and Procedure of the Arkansas Claims Commission.

36. The Claimant lacks standing to assert a claim under Ark. Code Ann. § 21-9-304.

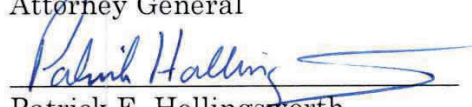
37. The Respondent cannot be liable for independent acts of individuals or entities who are not officers or employees of the State of Arkansas because any such liability would constitute an unconstitutional lending of the credit of the State of Arkansas.

38. The Respondent cannot be liable for independent acts of officers or employees of the City of Little Rock or MEMS because the State of Arkansas cannot constitutionally pay the debt or liability of any city that might arise from the circumstances at issue in this case.

Wherefore, the Respondent prays that the Complaint be dismissed, and for all other appropriate relief.

Respectfully submitted,
LESLIE RUTLEDGE
Attorney General

By:


Patrick E. Hollingsworth
Ark Bar No. 84075
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
PH: (501) 682-1051
Fax: (501) 682-2591
Patrick.hollingsworth@arkansasag.gov
*Attorneys for Respondent State of Arkansas,
Department of Emergency Management*

CERTIFICATE OF SERVICE

I Patrick E. Hollingsworth, hereby certify that on February 9, 2016, I caused a copy of the forgoing to be placed in the U.S. Mail, with sufficient postage prepaid, addressed as follows:

Carter C. Stein
McMATH WOODS
711 West Third Street
Little Rock, AR 72201


Patrick E. Hollingsworth

JAMES BRUCE McMATH
SAMUEL E. LEDBETTER
WILL BOND
NEIL CHAMBERLIN
CHARLES D. HARRISON
CARTER C. STEIN

MART VEHIK, OF COUNSEL
PHILLIP H. McMATH, OF COUNSEL

SIDNEY S. McMATH (1912-2003)
HENRY WOODS (1918-2002)
WINSLOW DRUMMOND (1933-2005)
LELAND F. LEATHERMAN (1915-2006)



McMATH WOODS P.A.
INJURY & ENVIRONMENTAL ATTORNEYS
PERSONAL ATTENTION, PROVEN RESULTS SINCE 1953

711 WEST THIRD STREET
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FAX: 501-374-5118
www.mcmathlaw.com

CARTER C. STEIN
Direct No. 501-396-5409
carter@mcmathlaw.com

SABRINA BAKER
Paralegal
Direct No. 501-396-5402
sabrina@mcmathlaw.com

February 17, 2016

Brenda Wade, Director
Arkansas State Claims Commission
101 East Capitol Avenue
Suite 410
Little Rock, Arkansas 72201

Arkansas Claims Commission
FEB 18 2016
RECEIVED

Re: *Yang v. State*, No. 16-0496-CC
Regions Bank Trust v. State, No. 16-0497-CC

Brenda:

This correspondence is a follow up to our telephone conversation on Friday, February 12, 2016. I called in response to the February 9, 2016 letters, copies of which are attached, stating that hearings needed to be requested within fifteen days of the letters otherwise the claims would be dismissed.

During our telephone conversation, you confirmed both *Yang v. State* and *Regions Bank Trust v. State* are being held in abeyance as requested by the parties. See attached file-marked January 12, 2016 letter from McMath Woods in *Yang v. State*; file-marked January 13, 2016 letter from McMath Woods in *Regions Bank Trust v. State*; and February 9, 2016 letter from the Arkansas Attorney General's Office in *Yang v. State* and *Regions Bank Trust v. State*, all requesting the cases be held in abeyance.

I respectfully request the Arkansas State Claims Commission confirm in writing that *Yang v. State* and *Regions Bank Trust v. State* will be held in abeyance until the conclusion of *City of Little Rock, et al. v. Dayong Yang, as Special Administrator of the estate of Le Yang, deceased*; Arkansas Supreme Court, Case No. CV-15-1057, on appeal from *Dayong Yang, as Special Administrator of the estate of Le Yang, deceased v. City of Little Rock, Arkansas, et al.*, Pulaski County Circuit Court, 6th Division, Case No. 60CV-13-3115, and *Regions Bank Trust Department, as Special Administrator of the estate of Jinglei Yi, deceased v. City of Little Rock, Arkansas, et al.*, Pulaski County Circuit Court, 16th Division, Case No. 60CV-15-4103.

Since 1953, a tradition of legal excellence.



McMATH WOODS P.A.

Claims Commission Follow Up – Yang/Regions
February 17, 2016
Page 2

Feel free to call me to discuss.

Sincerely,

Carter C. Stein

CCS/sb

Enc.

cc (w/enc.): Dayong Yang (via email only)
Erin Behring (via email only)
Patrick Hollingsworth (via email only)

no need to send
allegace ltr until
2019

(Full)

11/30/17

CI's counsel confirmed that
this underlying case has
not yet gone to trial
needs to stay in allegace

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

June 4, 2019

Mr. Carter C. Stein
McMath Woods P.A.
711 West Third Street
Little Rock, Arkansas 72201

(via email and U.S. Mail)

RE: ***Dayong Yang, administrator for the Estate of Le Yang, deceased v. State of Arkansas,
Arkansas Department of Emergency Management***
Claim No. 16-0496-CC

***Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi,
deceased v. State of Arkansas, Arkansas Department of Emergency Management***
Claim No. 16-0497-CC

Dear Mr. Stein,

The above-styled claims have been held in abeyance for an extended period of time. Please notify this office in writing by Tuesday, June 25, 2019, whether the appeal in the underlying lawsuit related to Claim No. 16-0496-CC has been decided, such that Claim No. 16-0496-CC may proceed. Please also advise the Claims Commission as to the status of the underlying lawsuit related to Claim No. 16-0497-CC.

Failure to provide this information may result in the dismissal of these claims for failure to prosecute.

Sincerely,

Kathryn Irby

ES: kmirby

cc: Vincent P. France, *counsel for Respondent* (via email only)

From: [Kathryn Irby](#)
To: [Carter Stein](#)
Cc: [Vincent France](#)
Subject: Yang v. ADEM, Regions Bank Trust Dept. v. ADEM -- abeyance status letter
Date: Tuesday, June 4, 2019 3:08:00 PM
Attachments: [Yang v. ADEM, Regions v. ADEM -- abeyance status letter.pdf](#)

Carter and Vincent, please see attached correspondence.

Thanks,
Kathryn

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: [Kathryn Irby](#)
To: [Misty Scott](#)
Subject: FW: Yang v. ADEM, Regions Bank Trust Dept. v. ADEM -- abeyance status letter
Date: Tuesday, June 25, 2019 11:25:17 AM
Attachments: [Responsive Letter to Kathryn Irby \(6-24-2019\).pdf](#)

From: Carter Stein <Carter@mcmathlaw.com>
Sent: Monday, June 24, 2019 6:49 PM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Cc: Vincent France <vincent.france@arkansasag.gov>; Sarah Jewell <sarah@mcmathlaw.com>; Charles Harrison <Charles@mcmathlaw.com>
Subject: RE: Yang v. ADEM, Regions Bank Trust Dept. v. ADEM -- abeyance status letter

Kathryn –

Please see the attached response.

Feel free to call me to discuss.

Thanks.

Carter C. Stein

McMath Woods P.A.

(501) 396-5409 - Office

www.mcmathlaw.com

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Tuesday, June 04, 2019 3:08 PM
To: Carter Stein <Carter@mcmathlaw.com>
Cc: Vincent France <vincent.france@arkansasag.gov>
Subject: Yang v. ADEM, Regions Bank Trust Dept. v. ADEM -- abeyance status letter

Carter and Vincent, please see attached correspondence.

Thanks,
Kathryn

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201

(501) 682-2822

SAMUEL E. LEDBETTER
WILL BOND
NEIL CHAMBERLIN
CHARLES D. HARRISON
JOHN D. COULTER
CARTER C. STEIN
SARAH C. JEWELL

JAMES BRUCE McMATH, OF COUNSEL
PHILLIP H. McMATH, OF COUNSEL

SIDNEY S. McMATH (1912-2003)
HENRY WOODS (1918-2002)
WINSLOW DRUMMOND (1933-2005)
LELAND F. LEATHERMAN (1915-2006)



McMATH WOODS P.A.
INJURY, ENVIRONMENTAL & EMPLOYMENT ATTORNEYS

PERSONAL ATTENTION, PROVEN RESULTS SINCE 1953

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Certified Paralegal
Direct No. 501-396-5402
sabrina@mcmathlaw.com

June 24, 2019

Via Email kathryn.irby@arkansas.gov Only

Kathryn Irby, Director
Arkansas State Claims Commission
101 East Capitol Avenue
Suite 410
Little Rock, Arkansas 72201

Re: *Yang v. State*, No. 16-0496-CC and *Regions v. State*, No. 16-0497-CC

Kathryn:

I am responding to your June 4, 2019, correspondence, a copy of which is enclosed. I respectfully request *Yang v. State*, No. 16-0496-CC, and *Regions v. State*, 16-0497-CC, remain in abeyance.

On May 30, 2019, the Supreme Court of Arkansas entered a decision in *Yang v. City of Little Rock, et al.*, Ark. Sup. Ct. CV-18-109. A copy of the opinion is attached. Although the Claims Commission ruled in its December 6, 2017, Order, a copy of which is attached, that *Yang v. State* could proceed to hearing upon resolution of the appeal in the underlying litigation, I believe having the Claims Commission hear *Yang v. State* and *Regions v. State* at the same time would best serve judicial economy.

Regions Bank v. City of Little Rock, Arkansas, et al., Pulaski County Circuit Court, 16th Division, Case No. 60CV-15-4103, remains pending. With the Supreme Court of Arkansas's opinion in *Yang v. Little Rock, et al.*, I should be able to wrap up *Regions Bank v. City of Little Rock, Arkansas, et al.* by the end of the year. Upon resolution of *Regions Bank v. City of Little Rock, Arkansas, et al.*, I will request *Yang v. State* and *Regions v. State* be set for hearing before the Claims Commission.



McMATH WOODS P.A.

Response to Kathryn Irby – Yang
June 24, 2019
Page 2

Feel free to call me to discuss.

Sincerely,

Carter C. Stein

CCS/sb

Enc.

cc (w/enc.): Dayong Yang (via email only)
Vincent France (via email vincent.france@arkansasag.gov only)
Thomas M. Carpenter (via email tcarpenter@littlerock.gov only)

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

June 4, 2019

Mr. Carter C. Stein
McMath Woods P.A.
711 West Third Street
Little Rock, Arkansas 72201

(via email and U.S. Mail)

RE: ***Dayong Yang, administrator for the Estate of Le Yang, deceased v. State of Arkansas,
Arkansas Department of Emergency Management***
Claim No. 16-0496-CC

***Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi,
deceased v. State of Arkansas, Arkansas Department of Emergency Management***
Claim No. 16-0497-CC

Dear Mr. Stein,

The above-styled claims have been held in abeyance for an extended period of time. Please notify this office in writing by Tuesday, June 25, 2019, whether the appeal in the underlying lawsuit related to Claim No. 16-0496-CC has been decided, such that Claim No. 16-0496-CC may proceed. Please also advise the Claims Commission as to the status of the underlying lawsuit related to Claim No. 16-0497-CC.

Failure to provide this information may result in the dismissal of these claims for failure to prosecute.

Sincerely,

Kathryn Irby

ES: kmirby

cc: Vincent P. France, *counsel for Respondent* (via email only)

SUPREME COURT OF ARKANSAS

No. CV-18-109

DAYONG YANG, AS SPECIAL
ADMINISTRATOR OF THE ESTATE
OF LE YANG, DECEASED
APPELLANT

V.

CITY OF LITTLE ROCK, ARKANSAS;
STUART THOMAS, INDIVIDUALLY
AND IN HIS OFFICIAL CAPACITY AS
CHIEF OF POLICE FOR THE CITY OF
LITTLE ROCK; WAYNE BEWLEY,
INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITY AS ASSISTANT
CHIEF OF POLICE FOR THE CITY OF
LITTLE ROCK; LAURA MARTIN,
INDIVIDUALLY AND IN HER
OFFICIAL CAPACITY AS
COMMUNICATIONS CENTER
MANAGER FOR THE CITY OF
LITTLE ROCK; LINDA WILSON,
INDIVIDUALLY AND IN HER
OFFICIAL CAPACITY AS
COMMUNICATIONS
ADMINISTRATOR FOR THE CITY
OF LITTLE ROCK; SHARON
MARTIN, IN HER OFFICIAL
CAPACITY AS COMMUNICATIONS
SHIFT SUPERVISOR FOR THE CITY
OF LITTLE ROCK; ALAN CATE,
INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITY AS
COMMUNICATIONS SHIFT
SUPERVISOR FOR THE CITY OF
LITTLE ROCK; MARQUITA DOOLEY,
INDIVIDUALLY AND IN HER
OFFICIAL CAPACITY AS
EMERGENCY COMMUNICATIONS
TRAINER FOR THE CITY OF LITTLE
ROCK; CANDACE MIDDLETON,

Opinion Delivered: May 30, 2019

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. 60CV-13-3115]

HONORABLE TIMOTHY DAVIS FOX,
JUDGE

AFFIRMED.

INDIVIDUALLY AND IN HER
OFFICIAL CAPACITY AS
COMMUNICATIONS CALL TAKER
FOR THE CITY OF LITTLE ROCK;
KAREN GRIMM, INDIVIDUALLY
AND IN HER OFFICIAL CAPACITY AS
COMMUNICATIONS SYSTEMS
SPECIALIST FOR THE CITY OF
LITTLE ROCK; GREGORY L.
SUMMERS, INDIVIDUALLY AND IN
HIS OFFICIAL CAPACITY AS FIRE
CHIEF FOR THE CITY OF LITTLE
ROCK; ROBERT SHARP,
INDIVIDUALLY AND IN HIS
OFFICIAL CAPACITY AS FIRE
CAPTAIN FOR THE CITY OF LITTLE
ROCK; AND FRANK SCOTT AND
EDDIE RHINE, INDIVIDUALLY AND
IN THEIR OFFICIAL CAPACITIES AS
FIREFIGHTERS FOR THE CITY OF
LITTLE ROCK

APPELLEES

JOHN DAN KEMP, Chief Justice

Appellant Dayong Yang, as special administrator of the estate of his deceased son, Le Yang, appeals an order of the Pulaski County Circuit Court granting summary judgment to appellees City of Little Rock, Arkansas; Stuart Thomas; Wayne Bewley; Laura Martin; Linda Wilson; Sharon Martin; Alan Cate; Marquita Dooley; Candace Middleton; Karen Grimm; Gregory L. Summers; Robert Sharp; Frank Scott; and Eddie Rhine (“the City”). For reversal, Yang argues that the circuit court erred in granting summary judgment on his negligence and civil-rights claims. We affirm.

I. Facts

This court provided a full recitation of the facts in *City of Little Rock v. Yang*, 2017 Ark. 18, 509 S.W.3d 632 (“*Yang I*”). Yang had filed a wrongful-death action against the City and others over the City’s alleged mishandling of a 911 call seeking rescue services for his son. In his third amended complaint, Yang alleged negligence causes of action arising under Arkansas law and civil-rights violations under 42 U.S.C. section 1983, the Fourteenth Amendment to the United States Constitution, and Arkansas law. He also sought compensatory and punitive damages. In *Yang I*, we affirmed the circuit court’s denial of the City’s motion for summary judgment on the negligence claims. We held that the City and its employees had failed to plead and prove that it was entitled to municipal immunity. We reversed the circuit court’s denial of summary judgment on Yang’s negligence claims against MEMS. *Id.*, 509 S.W.3d 632.

On remand, the City moved for summary judgment on Yang’s negligence claims and asserted municipal immunity. Specifically, the City claimed that it had no general-liability coverage under Arkansas Code Annotated section 21-9-301 (Repl. 2016). With its motion, the City submitted affidavits from Bruce Moore, city manager, and Stacey Witherell, human-resources director. In their affidavits, they stated that the City did not possess any general-liability insurance policy that would cover Yang’s claims. The City did not seek dismissal of Yang’s civil-rights claims in its motion. Yang filed his response to the City’s renewed motion for summary judgment and argued that it should be denied because this court had ruled on the City’s affirmative defense of municipal immunity, and

alternatively, that the City had failed to establish a prima facie entitlement to summary judgment.

On April 13, 2017, the circuit court entered an order granting the City's motion for summary judgment and dismissing the City with prejudice. Yang subsequently filed a motion requesting modification of the circuit court's order. He asked the circuit court to clarify that the City had not been dismissed with prejudice because Yang's section 1983 claims remained pending. The City responded that the circuit court was within its discretion to issue the order dismissing the City with prejudice. On May 25, 2017, the circuit court denied Yang's motion requesting modification of the order. Yang now brings his appeal.¹

II. *Negligence Claims*

For his first point on appeal, Yang argues that the circuit court erred in granting summary judgment in favor of the City. Specifically, Yang contends that the City did not prove any entitlement to municipal immunity under Arkansas Code Annotated section 21-9-301 because it failed to prove its lack of general-liability insurance coverage.

A circuit court will grant summary judgment only when it is apparent that no genuine issues of material fact exist requiring litigation and that the moving party is entitled to judgment as a matter of law. *Cannady v. St. Vincent Infirmary Med. Ctr.*, 2018 Ark. 35, 537 S.W.3d 259. The burden of proof shifts to the opposing party once the moving party establishes a prima facie entitlement to summary judgment, and the opposing party must demonstrate the existence of a material issue of fact. *Id.*, 537 S.W.3d 259. After reviewing

¹ Additionally, the circuit court dismissed MEMS with prejudice, entered a default judgment against Middleton, and, after a bench trial, awarded Yang a judgment against Middleton for \$17,627,638.04.

the undisputed facts, the circuit court should deny summary judgment if, under the evidence, reasonable minds might reach different conclusions from the same undisputed facts. *Id.*, 537 S.W.3d 259. On appeal, this court determines if summary judgment was appropriate based on whether the evidentiary items presented by the moving party leave a material question of fact unanswered. *Id.*, 537 S.W.3d 259. This court views the evidence in the light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party. *Id.*, 537 S.W.3d 259. This review is not limited to the pleadings but also includes the affidavits and other documents filed by the parties. *Id.*, 537 S.W.3d 259; *see also* Ark. R. Civ. P. 56(c).

The issue of whether a government defendant is immune from suit at the summary-judgment stage is purely a question of law. *Repking v. Lokey*, 2010 Ark. 356, 377 S.W.3d 211; *City of Fayetteville v. Romine*, 373 Ark. 318, 284 S.W.3d 10 (2008); *Baldrige v. Cordes*, 350 Ark. 114, 85 S.W.3d 511 (2002). On appeal, this court reviews the issue of immunity de novo. *Repking*, 2010 Ark. 356, 377 S.W.3d 211; *Cooper Realty Inv., Inc. v. Ark. Contractors Licensing Bd.*, 355 Ark. 156, 134 S.W.3d 1 (2003) (stating that the interpretation and application of an Arkansas statute is a question of law, which this court reviews de novo).

The issue here is whether the City enjoys municipal immunity pursuant to Arkansas Code Annotated section 21-9-301, which provides,

(a) It is declared to be the public policy of the State of Arkansas that all counties, municipal corporations, school districts, public charter schools, special improvement districts, and all other political subdivisions of the state and any of their boards, commissions, agencies, authorities, or other governing bodies shall be immune from liability and from suit for damages except to the extent that they may be covered by liability insurance.

(b) No tort action shall lie against any such political subdivision because of the acts of its agents and employees.

We have stated that Arkansas Code Annotated section 21-9-301 “establishes . . . an immunity defense.” *Vent v. Johnson*, 2009 Ark. 92, at 12, 303 S.W.3d 46, 52 (citing *W. Memphis Sch. Dist. No. 4 v. Cir. Ct. of Crittenden Cty.*, 316 Ark. 290, 295, 871 S.W.2d 368, 371 (1994)).

Yang cites *Helena-West Helena School District v. Monday*, 361 Ark. 82, 204 S.W.3d 514 (2005), for the proposition that the City failed to meet its burden of proving that it had no general-liability coverage. But Yang’s argument is misplaced. In *Helena-West Helena*, Monday sued for slip-and-fall injuries sustained by her son. The school district moved for summary judgment and attached an affidavit claiming it had no general-liability insurance policy that would cover the claim. However, the school district failed to attach a copy of its motor-vehicle policy to its motion. This court affirmed and held that because the school district was required to maintain insurance coverage on its school buses, the school district had failed to attach the required motor-vehicle policy to its motion for summary judgment. *Id.*, 204 S.W.3d 514.

We have stated that an affidavit stating that there is no general-liability coverage establishes a prima facie entitlement to summary judgment. See *City of Malvern v. Jenkins*, 2013 Ark. 24, 425 S.W.3d 711. In *City of Malvern*, two property owners filed suit against the city for damage to a water pipe on their property. The circuit court denied the city’s motion for summary judgment on immunity grounds. We reversed and remanded, holding that the mayor’s affidavit sufficiently established that the city did not have coverage for the property owners’ claims. We concluded that the property owners failed to meet proof with

proof and that the city was entitled to statutory immunity because it had proved that it did not have insurance to cover the tort claim. *Id.* at 10, 425 S.W.3d at 717.

In the present case, the City attached two affidavits in support of its motion for summary judgment. First, in his affidavit, Moore stated,

3. As City Manager, I would have been familiar with any policy of general liability insurance coverage held by the City of Little Rock before, during and after January 14, 2013. The City of Little Rock did not have general liability insurance on January 14, 2013, the date of the accident giving rise to this cause of action.

4. After a search of all insurance records and insurance documents issued on behalf of the City of Little Rock, I hereby state that the City of Little Rock did not have, carry or provide any policy of general liability insurance on January 14, 2013.

The City also attached the affidavit of Witherell, who stated,

2. As Human Resources Director, I have custody and control over all insurance records for the City of Little Rock, including files which contain any record of general liability insurance issued to the City of Little Rock as the policy holder.

3. After a search of all insurance records and insurance documents issued on behalf of the City on or before January 14, 2013, I do hereby certify that the City of Little Rock did not have, carry or provide any policy of general liability insurance on January 14, 2013, the date of the accident leading to the cause of action in this matter.

These two affidavits, like the mayor's affidavit in *City of Malvern*, 2013 Ark. 24, 425 S.W.3d 711, sufficiently establish that the City did not possess general-liability insurance at the time of the accident to cover Yang's claims. Moreover, Yang did not meet proof with proof to demonstrate the existence of a genuine issue of material fact on this issue. Therefore, because the City put forth proof that it did not have insurance coverage for the negligence claims alleged by Yang, we hold that the City is entitled to municipal immunity under section 21-9-301, and we affirm the circuit court's grant of summary judgment.

III. *Civil-Rights Claims*

For his second point on appeal, Yang argues that the circuit court erred in granting summary judgment on his section 1983 claims. Specifically, Yang contends that the City violated his son's civil rights because (1) the City failed to provide competent emergency services, thereby depriving his son of his life and liberty interests; (2) the City's water rescue operations policy prevented rescue attempts by anyone other than a designated water rescue unit, and that policy deprived his son of his life and liberty interests; (3) his son had a substantive property right to rescue services, and as a result, he was deprived of due process; and (4) his son's estate has a procedural due-process right to a "post-taking process of some kind."

Section 1983 provides a cause of action for individuals who have sustained a deprivation of rights secured by the United States Constitution or by federal law. 42 U.S.C. § 1983. To establish a violation of section 1983, Yang must show that the deprivation (1) was a right secured by the United States Constitution and the laws of the United States and (2) was caused by the City's acting under the color of state law. *Early v. Crockett*, 2014 Ark. 278, 436 S.W.3d 141. State employees have qualified immunity from suit under section 1983 similar to the immunity that applies to them under Arkansas law. *Id.*, 436 S.W.3d 141. Courts evaluating a claim of immunity must determine whether the plaintiff has alleged the deprivation of an actual constitutional right and, if so, whether that right was clearly established at the time of the alleged violation. *Id.*, 436 S.W.3d 141.

A. No Right to Rescue

We first address Yang's contentions that the City (1) failed to provide competent emergency services, (2) violated his son's substantive due-process rights because he had a property right in those services, and (3) violated his son's procedural due-process rights.

The Supreme Court of the United States has held that individuals do not have a constitutional right to governmental aid. *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189 (1989). The Court stated that "[its] cases have recognized that the Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual." *Id.* at 196. The Court further stated that "the Due Process Clause of the Fourteenth Amendment . . . does not transform every tort committed by a state actor into a constitutional violation." *Id.* at 202. "Government generally has no constitutional duty to provide rescue services to its citizens, and if it does provide such services, it has no constitutional duty to provide competent services to people not in its custody." *Salazar v. City of Chicago*, 940 F.2d 233, 237 (7th Cir. 1991); *see also DeShaney*, 489 U.S. 189; *Archie v. City of Racine*, 847 F.2d 1211, 1220–23 (7th Cir. 1988).

Given this precedent, we conclude that, as a matter of law, the City had no constitutional duty to provide rescue services for Yang's son. Nor does the record reflect that the City acted under color of state law during its rescue efforts. Furthermore, Yang failed to attach any affidavits or supporting documentation to his response to the City's motion for summary judgment. He merely asserted in a footnote that the City's motion for summary judgment did not seek dismissal of his claims against the City under 42 U.S.C. section 1983 and that he "will not address how the execution of the City's policies and

customs proximately caused a deprivation of Le Yang's constitutional right to life, liberty, and property." More significant, in his motion requesting modification of the circuit court's order, Yang failed to present any constitutional arguments on his civil-rights claims. Thus, Yang did not meet proof with proof on his civil-rights claims. We conclude that Yang's contentions lack merit because no constitutional violation had occurred at the time of the City's rescue efforts.

B. State-Created-Danger Exception

Next, Yang contends that the circuit court erred in granting summary judgment because his section 1983 claims fall under the state-created-danger exception. He asserts that the City's water-rescue-operations policy prevented any rescue attempts by others and that this policy deprived his son of his life and liberty interests.

There are two exceptions to the general rule that the government has no constitutional duty to render aid: (1) the special-relationship exception and (2) the state-created-danger exception. *Johnson v. City of Seattle*, 474 F.3d 634, 639 (9th Cir. 2007). Under the state-created-danger exception, there is a duty to protect when the state official affirmatively places an "individual in a position of danger that [the person] would not otherwise have faced." *Repking*, 2010 Ark. 356, at 9, 377 S.W.3d at 218.

In *Ross v. United States*, 910 F.2d 1422 (7th Cir. 1990), a mother brought an action against the city and others after her son fell into Lake Michigan at the tip of the breakwater. Emergency personnel arrived at the scene. One of the deputies ordered civilian scuba divers to cease their rescue efforts. Thirty minutes later, the authorized divers retrieved the boy's

body, and he was pronounced dead the following morning. His mother filed suit. The district court entered summary judgment in favor of the deputy. The Seventh Circuit stated,

Absent a constitutional duty to provide these rescue services, . . . the city cannot be held liable. On this point, we need do no more than cite the line of precedent from the Supreme Court and this court, holding that the government's failure to provide essential services does not violate the Constitution. See *DeShaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189 (1989); *Doe v. Milwaukee County*, 903 F.2d 499, 502 (7th Cir. 1990); *Archie v. City of Racine*, 847 F.2d 1211, 1220–23 (7th Cir. 1988) (en banc), cert. denied, 489 U.S. 1065 (1989). The plaintiff's allegations of municipal policy cannot surmount the main obstacle to her claim: the city simply had no constitutional obligation to save William's life.

Id. at 1428. In *Ross*, the court held that the county's policy—not the city's—"of arbitrarily cutting off private sources of rescue without providing a meaningful alternative . . . led to the deprivation of William's constitutionally protected right to life, [and Ross's] claim is cognizable under section 1983." *Id.* at 1431.

Ross is distinguishable from the present case because Yang did not present any evidence that a rescue attempt by any person, whether official or civilian, was arbitrarily prohibited by the City. Here, unlike the circumstances in *Ross*, there were no reasonable alternative avenues of rescue, and the City did not arbitrarily cut off any private source of rescue. By failing to offer proof with proof, Yang did not demonstrate the existence of a material issue of fact that the City, during its rescue efforts, affirmatively placed Yang's son in a position of danger that he "would not otherwise have faced." *Repking*, 2010 Ark. 356, at 9, 377 S.W.3d at 218. Because the state-created-danger exception does not apply, we hold that, as a matter of law, the circuit court did not err in granting summary judgment on Yang's civil-rights claims brought under 42 U.S.C. section 1983. Accordingly, we affirm.

Affirmed.

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

**DAYONG YANG, AS SPECIAL
ADMINISTRATOR OF THE
ESTATE OF LE YANG, DECEASED**

CLAIMANT

V. CLAIM NO. 16-0496-CC

**STATE OF ARKANSAS, ARKANSAS
DEPARTMENT OF EMERGENCY
MANAGEMENT**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is a request by the State of Arkansas and the Arkansas Department of Emergency Management (collectively, the “Respondents”) to remove the January 19, 2018, hearing from the docket and to hold the instant claim in abeyance until the underlying litigation in the instant claim, as well as the companion claim, has been fully and finally resolved. Claimant Dayong Yang, as Special Administrator of the Estate of Le Yang, deceased (the “Claimant”) objects to the removal of the hearing from the January 19, 2018, docket.

Prior to entry of this order, Respondent also filed a motion for judgment on the pleadings and brief in support.

Based upon the letter briefs filed by both parties and the law of Arkansas, the Claims Commission hereby finds as follows:

1. The Claims Commission has jurisdiction to hear this claim pursuant to Ark. Code Ann. § 19-10-204(a).
2. The instant claim was filed on January 12, 2016.
3. The companion claim, *Regions Bank Truck Department, as Special Administrator of the Estate of Jinglei Yi, deceased v. State of Arkansas, Arkansas Department of Emergency*

Management, Claims Commission Claim No. 16-0497-CC (the “Companion Claim”), was also filed January 12, 2016.

4. Both claims arise out of the same tragic facts. On January 14, 2013, Jinglei Yi was driving with her son, Le Yang, in the vehicle when she hit a patch of ice. Yi lost control of her vehicle, and the vehicle ended up in a retaining pond. Yi called 911, but rescue units did not arrive until nearly 45 minutes later. Yi was pronounced dead at the hospital, and her son suffered an anoxic brain injury. Le Yang died two years later from pneumonia complicated by his injuries.

5. The instant claim relates to the death of Le Yang.

6. The Companion Claim relates to the death of Jinglei Yi.

7. The underlying litigation in the Companion Claim has been stayed pending resolution of the underlying litigation in the instant claim.

8. In the underlying litigation in the instant claim, Claimant received a judgment against a City of Little Rock employee for \$17,627,638.04.

9. Claimant now seeks to recover that amount from the State pursuant to Ark. Code Ann. § 21-9-304(b).

10. Upon request by Claimant’s counsel, the instant claim was removed from abeyance and scheduled for hearing.

11. Respondents then objected to the scheduling of this claim for hearing, stating that a hearing should not be scheduled until the underlying litigation in both the instant claim and the Companion Claim is concluded.

12. Claimant’s counsel confirmed to the Claims Commission that an appeal is pending in the underlying litigation related to the instant claim.

13. The Claims Commission finds that the instant claim should be placed back into abeyance pending resolution of the appeal in the underlying litigation related to the instant claim.

However, once the appeal is final, the instant claim can proceed to hearing. The Claims Commission is unpersuaded that the instant claim and the Companion Claim must be heard simultaneously.

14. As such, Respondent's motion for judgment on the pleadings is denied, but the Respondent may renew its motion once the appeal in the underlying litigation has been resolved, and this claim has been removed from abeyance.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

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

DATE: December 6, 2017

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).

From: [Misty Scott](#) on behalf of [ASCC Pleadings](#)
To: [Carter Stein](#)
Cc: [Vincent France](#); [ASCC Pleadings](#); [Kathryn Irby](#)
Subject: CORR: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. State of Arkansas, AR Dept of Emergency Management, Claim No. 16-0497-CC
Date: Wednesday, June 2, 2021 4:13:54 PM
Attachments: [Regions Bank Trust Department v. ADEM.pdf](#)

Mr. Stein and Mr. France:

Please see attached. Contact Kathryn Irby with any questions.

Misty Scott
Arkansas State Claims Commission

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

June 2, 2021

Mr. Carter C. Stein
McMath Woods P.A.
711 West Third Street
Little Rock, Arkansas 72201

(via email)

Re: ***Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. State of Arkansas, Arkansas Department of Emergency Management Claim No. 16-0497-CC***

Dear Mr. Stein,

The above-styled claim has been held in abeyance for an extended period of time. Please notify this office in writing by Tuesday, July 6, 2021, whether the underlying lawsuit has been resolved, such that these claims may proceed. If the Claims Commission does not receive a timely response, these claims will be dismissed by the Claims Commission for failure to prosecute.

Sincerely,

Kathryn Irby

ES: msscott

cc: Vincent P. France, *counsel for Respondent* (via email)

From: [Carter Stein](#)
To: [ASCC Pleadings](#)
Cc: [Vincent France](#); [Kathryn Irby](#); [Carpenter, Tom](#); [Misty Scott](#)
Subject: RE: CORR: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. State of Arkansas, AR Dept of Emergency Management, Claim No. 16-0497-CC
Date: Tuesday, June 8, 2021 1:19:52 PM
Attachments: [\(6-8-21\) Status Letter to Kathryn Irby.pdf](#)

Ms. Irby and Ms. Scott –

Please see the attached correspondence on behalf of Regions.

I am copying Mr. France and Mr. Carpenter on this message.

Thanks.

Carter C. Stein

McMath Woods P.A.

(501) 396-5409 - Office

www.mcmathlaw.com

From: Misty Scott <Misty.Scott@arkansas.gov> **On Behalf Of** ASCC Pleadings
Sent: Wednesday, June 2, 2021 4:14 PM
To: Carter Stein <Carter@mcmathlaw.com>
Cc: Vincent France <vincent.france@arkansasag.gov>; ASCC Pleadings <ASCCPleadings@arkansas.gov>; Kathryn Irby <Kathryn.Irby@arkansas.gov>
Subject: CORR: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. State of Arkansas, AR Dept of Emergency Management, Claim No. 16-0497-CC

Mr. Stein and Mr. France:

Please see attached. Contact Kathryn Irby with any questions.

Misty Scott
Arkansas State Claims Commission

SAMUEL E. LEDBETTER
WILL BOND
NEIL CHAMBERLIN
CHARLES D. HARRISON
JOHN D. COULTER
CARTER C. STEIN
SARAH C. JEWELL

JAMES BRUCE McMATH, OF COUNSEL
PHILLIP H. McMATH, OF COUNSEL

SIDNEY S. McMATH (1912-2003)
HENRY WOODS (1928-2002)
WINSLOW DRUMMOND (1933-2005)
LELAND F. LEATHERMAN (1915-2006)



McMATH WOODS P.A.
**INJURY, ENVIRONMENTAL
& EMPLOYMENT LAW**

711 WEST THIRD STREET
LITTLE ROCK, AR 72201
501-396-5400
FAX: 501-374-5118
www.mcmathlaw.com

CARTER C. STEIN
Direct No. 501-396-5409
carter@mcmathlaw.com

SABRINA MARSHALL
Certified Paralegal
Direct No. 501-396-5402
sabrina@mcmathlaw.com

June 8, 2021

Via Email Kathryn.Irby@arkansas.gov Only

Kathryn Irby, Director
Arkansas State Claims Commission
101 East Capitol Avenue
Suite 410
Little Rock, Arkansas 72201

Re: *Regions v. Arkansas Department of Emergency Management*
Claim No. 16-0497-CC

Dear Ms. Irby:

I am writing in response to your June 2, 2021 letter, a copy of which is attached.

I respectfully request this case remain in abeyance.

The underlying case, *Regions Bank Trust Department, as Special Administrator of the estate of Jinglei Yi, deceased v. City of Little Rock, Arkansas, et al.*, Pulaski County Circuit Court, 16th Division, Case No. 60CV-15-4103, remains pending in Circuit Court. I anticipate the City of Little Rock will move for summary judgment in the future. I am copying Tom Carpenter, Little Rock's city attorney, on this correspondence.

Feel free to call me to discuss at 501-231-3342.

Sincerely,

Carter C. Stein

CCS/

Enc.

cc (w/enc.): Vincent P. France (via email only)
Thomas M. Carpenter (via email only)

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

June 2, 2021

Mr. Carter C. Stein
McMath Woods P.A.
711 West Third Street
Little Rock, Arkansas 72201

(via email)

Re: ***Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. State of Arkansas, Arkansas Department of Emergency Management Claim No. 16-0497-CC***

Dear Mr. Stein,

The above-styled claim has been held in abeyance for an extended period of time. Please notify this office in writing by Tuesday, July 6, 2021, whether the underlying lawsuit has been resolved, such that these claims may proceed. If the Claims Commission does not receive a timely response, these claims will be dismissed by the Claims Commission for failure to prosecute.

Sincerely,

Kathryn Irby

ES: msscott

cc: Vincent P. France, *counsel for Respondent* (via email)

From: [Kathryn Irby](#)
To: [Carter Stein](#); [ASCC Pleadings](#)
Cc: [Vincent France](#); [Carpenter, Tom](#); [Misty Scott](#)
Subject: RE: CORR: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. State of Arkansas, AR Dept of Emergency Management, Claim No. 16-0497-CC
Date: Tuesday, June 8, 2021 4:30:00 PM

Thanks, Carter. We'll continue to keep this claim in abeyance.

Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: Carter Stein <Carter@mcmathlaw.com>
Sent: Tuesday, June 8, 2021 1:19 PM
To: ASCC Pleadings <ASCCPleadings@arkansas.gov>
Cc: Vincent France <vincent.france@arkansasag.gov>; Kathryn Irby <Kathryn.Irby@arkansas.gov>; Carpenter, Tom <TCarpenter@littlerock.gov>; Misty Scott <misty.scott@arkansas.gov>
Subject: RE: CORR: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. State of Arkansas, AR Dept of Emergency Management, Claim No. 16-0497-CC

Ms. Irby and Ms. Scott –

Please see the attached correspondence on behalf of Regions.

I am copying Mr. France and Mr. Carpenter on this message.

Thanks.

Carter C. Stein
McMath Woods P.A.
(501) 396-5409 - Office
www.mcmathlaw.com

From: Misty Scott <Misty.Scott@arkansas.gov> **On Behalf Of** ASCC Pleadings
Sent: Wednesday, June 2, 2021 4:14 PM
To: Carter Stein <Carter@mcmathlaw.com>

Cc: Vincent France <vincent.france@arkansasag.gov>; ASCC Pleadings
<ASCCPleadings@arkansas.gov>; Kathryn Irby <Kathryn.Irby@arkansas.gov>

Subject: CORR: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. State of Arkansas, AR Dept of Emergency Management, Claim No. 16-0497-CC

Mr. Stein and Mr. France:

Please see attached. Contact Kathryn Irby with any questions.

Misty Scott
Arkansas State Claims Commission

From: [Misty Scott](#) on behalf of [ASCC Pleadings](#)
To: Carter@mcmathlaw.com; [John Payne](#)
Cc: [Katie Wilson](#); [ASCC Pleadings](#); [Kathryn Irby](#)
Subject: Rule 41B Notice: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. ADEM, Claim No. 16-0497-CC
Date: Tuesday, July 25, 2023 12:12:49 PM
Attachments: [Regions Bank v. SOA & ADEM-KI.pdf](#)
[Regions Bank-rule 41b notice.pdf](#)

Mr. Stein and Mr. Payne:

Please see attached Rule 41B Notice entered by the Claims Commission. Contact Kathryn Irby with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

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

July 25, 2023

Mr. Carter C. Stein
McMath Woods P.A.
711 West Third Street
Little Rock, Arkansas 72201

(via U.S. mail and email)

Mr. John Payne
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201

(via email)

Re: ***Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. State of Arkansas, Arkansas Department of Emergency Management***
Claim No. 16-0497-CC

Dear Mr. Stein and Mr. Payne:

Enclosed please find a Rule 41b Notice entered on July 21, 2023, by the Arkansas State Claims Commission. If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: msscott

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

**REGIONS BANK TRUST
DEPARTMENT, AS SPECIAL
ADMINISTRATOR FOR THE
ESTATE OF JINGLEI YI,
DECEASED**

CLAIMANT

V.

CLAIM NO. 16-0497-CC

**ARKANSAS DEPARTMENT OF
EMERGENCY MANAGEMENT**

RESPONDENT

RULE 41(B) NOTICE

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the claim of Regions Bank Trust Department, as special administrator for the Estate of Jinglei Yi, deceased (the “Claimant”) against the Arkansas Department of Emergency Management (the “Respondent”). More than 12 months have passed without any action by Claimant shown on the record. As such, pursuant to Ark. R. Civ. Proc. 41(b), the Claims Commission directs that this claim will be dismissed for want of prosecution unless, **on or before August 11, 2023**, Claimant files a statement establishing good cause why this claim should remain on the Claims Commission’s docket.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow, Chair



ARKANSAS STATE CLAIMS COMMISSION
Sylvester Smith

DATE: July 21, 2023

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(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).

From: [Carter Stein](#)
To: [ASCC Pleadings](#); [John Payne](#)
Cc: [Katie Wilson](#); [Kathryn Irby](#); [Charles Lyford](#); [Carpenter, Tom](#); [Sabrina Marshall](#)
Subject: RE: Rule 41B Notice: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. ADEM, Claim No. 16-0497-CC
Date: Thursday, August 3, 2023 10:30:19 AM
Attachments: [\(2023-08-03\) Letter to Kathryn Irby - Hearing Request.pdf](#)

Ms. Scott and Ms. Irby –

Please see the attached correspondence on behalf of the Claimant requesting a hearing date in this matter.

My cell is [REDACTED] .

Thanks.

Carter C. Stein

McMath Woods P.A.

(501) 396-5409 - Office

www.mcmathlaw.com

From: Misty Scott <Misty.Scott@arkansas.gov> **On Behalf Of** ASCC Pleadings
Sent: Tuesday, July 25, 2023 12:13 PM
To: Carter Stein <Carter@mcmathlaw.com>; John Payne <john.payne@arkansasag.gov>
Cc: Katie Wilson <katie.wilson@arkansasag.gov>; ASCC Pleadings <ASCCPleadings@arkansas.gov>; Kathryn Irby <Kathryn.Irby@arkansas.gov>
Subject: Rule 41B Notice: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. ADEM, Claim No. 16-0497-CC

Mr. Stein and Mr. Payne:

Please see attached Rule 41B Notice entered by the Claims Commission. Contact Kathryn Irby with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

SAMUEL E. LEDBETTER
WILL BOND
NEIL CHAMBERLIN
CHARLES D. HARRISON
CARTER C. STEIN
SARAH C. JEWELL
TIM GIATTINA

JAMES BRUCE McMATH, OF COUNSEL
PHILLIP H. McMATH, OF COUNSEL

SIDNEY S. McMATH (1912-2003)
HENRY WOODS (1918-2002)
WINSLOW DRUMMOND (1933-2005)
LELAND F. LEATHERMAN (1915-2006)
JOHN D. COULTER (1966-2022)



McMATH WOODS P.A.
INJURY & ENVIRONMENTAL LAW

711 WEST THIRD STREET
LITTLE ROCK, AR 72201
501-396-5400
FAX: 501-374-5118
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CARTER C. STEIN
Direct No. 501-396-5409
carter@mcmathlaw.com

SABRINA MARSHALL
Certified Paralegal
Direct No. 501-396-5402
sabrina@mcmathlaw.com

August 3, 2023

Via Email Kathryn.Irby@arkansas.gov Only

Kathryn Irby, Director
Arkansas State Claims Commission
101 East Capitol Avenue
Suite 410
Little Rock, Arkansas 72201

Re: *Regions v. Arkansas Department of Emergency Management*
Claim No. 16-0497-CC

Dear Ms. Irby:

I am writing in response to the Rule 41(b) Notice entered July 21, 2023, a copy of which is attached.

This matter has been held in abeyance for years during the pendency of the underlying case, *Regions Bank Trust Department, as Special Administrator of the estate of Jinglei Yi, deceased v. City of Little Rock, Arkansas, et al.*, Pulaski County Circuit Court, 16th Division, Case No. 60CV-15-4103. On March 13, 2023, Judge Morgan E. Welch entered summary judgment on behalf of the City defendants. On May 5, 2023, Judge Welch entered a default judgment against Candace Middleton. On June 22, 2023, Judge Welch entered a judgment on damages of \$5,000,000 on behalf of Regions against Candace Middleton. The aforementioned orders are attached.

For good cause shown this matter should not be dismissed and should instead be set for a hearing before the Claims Commission to determine whether the Arkansas Department of Emergency Management is obligated to pay the \$5,000,000 judgment against Candace Middleton.

I am copying opposing counsel on this communication with the Commission.

Feel free to call me to discuss at [REDACTED].

Sincerely,

Carter C. Stein



CCS/

Enc.

cc (w/enc.):	John Payne	<i>(via email only)</i>
	Charles Lyford	<i>(via email only)</i>
	Thomas M. Carpenter	<i>(via email only)</i>

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

July 25, 2023

Mr. Carter C. Stein
McMath Woods P.A.
711 West Third Street
Little Rock, Arkansas 72201

(via U.S. mail and email)

Mr. John Payne
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201

(via email)

Re: ***Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. State of Arkansas, Arkansas Department of Emergency Management***
Claim No. 16-0497-CC

Dear Mr. Stein and Mr. Payne:

Enclosed please find a Rule 41b Notice entered on July 21, 2023, by the Arkansas State Claims Commission. If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: msscott

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

**REGIONS BANK TRUST
DEPARTMENT, AS SPECIAL
ADMINISTRATOR FOR THE
ESTATE OF JINGLEI YI,
DECEASED**

CLAIMANT

V.

CLAIM NO. 16-0497-CC

**ARKANSAS DEPARTMENT OF
EMERGENCY MANAGEMENT**

RESPONDENT

RULE 41(B) NOTICE

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the claim of Regions Bank Trust Department, as special administrator for the Estate of Jinglei Yi, deceased (the “Claimant”) against the Arkansas Department of Emergency Management (the “Respondent”). More than 12 months have passed without any action by Claimant shown on the record. As such, pursuant to Ark. R. Civ. Proc. 41(b), the Claims Commission directs that this claim will be dismissed for want of prosecution unless, **on or before August 11, 2023**, Claimant files a statement establishing good cause why this claim should remain on the Claims Commission’s docket.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow, Chair



ARKANSAS STATE CLAIMS COMMISSION
Sylvester Smith

DATE: July 21, 2023

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(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).

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
16TH DIVISION

REGIONS BANK TRUST DEPARTMENT, as Special
Administrator of the Estate of JINGLEI YI, deceased

PLAINTIFF

vs.

Case No. 60CV-15-4103

CITY OF LITTLE ROCK, ARKANSAS, *et al*

DEFENDANTS

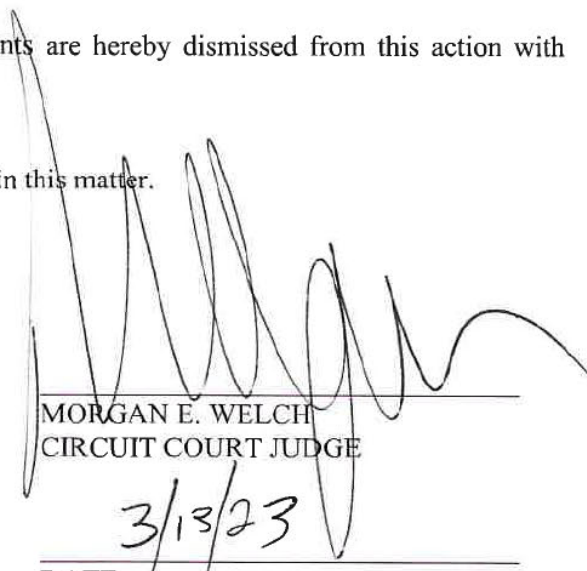
ORDER

On February 17, 2023, the City Defendants – City of Little Rock, Arkansas; Stuart Thomas; Wayne Bewley; Laura Martin; Linda Wilson; Sharon Martin; Alan Cate; Marquita Dooley; Karen Grimm; Gregory L. Summers; and Robert Sharp – filed their *Motion for Summary Judgment of All City Defendants Except Candace Middleton in her individual capacity*.

Upon consideration, the Court finds that City Defendants' motion for summary judgment should be and hereby is granted. City Defendants are hereby dismissed from this action with prejudice.

Candace Middleton remains a defendant in this matter.

IT IS SO ORDERED.


MORGAN E. WELCH
CIRCUIT COURT JUDGE

3/13/23
DATE

Prepared by:

/s/ Thomas M. Carpenter

Thomas M Carpenter, AR Bar #77024
City Attorney
Office of the City Attorney
500 West Markham, Suite 310
Little Rock, Arkansas 72201
(501) 371-4527
tcarpenter@littlerock.gov

Approved by:

/s/ Carter C. Stein

Carter C. Stein, AR Bar #2004049
McMath Woods P.A.
711 W. 3rd St.
Little Rock, AR 72201
(501) 396-5400
carter@mcmathlaw.com

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTEENTH DIVISION

REGIONS BANK TRUST DEPARTMENT, as Special
Administrator of the Estate of JINGLEI YI, deceased

PLAINTIFF

vs.

Case No. 60CV-15-4103

CANDACE MIDDLETON

DEFENDANT

ORDER GRANTING DEFAULT JUDGMENT

The Court, having considered Yi's Motion for Default Judgment as well as the facts and the law, hereby GRANTS Yi's Motion for Default Judgment.

Plaintiff Regions Bank Trust Department, as Special Administrator of the Estate of Jinglei Yi, deceased, is granted a default judgment. The amount of the judgment shall be determined by

the Court at a damages hearing to be held

Plaintiff to serve notice on Defendant at last known Address,
IT IS SO ORDERED.

HONORABLE MORGAN E. WELCH

DATE

Prepared By:

/s/ Carter C. Stein

Carter C. Stein, AR Bar No. 2004049

McMath Woods P.A.

711 West Third Street

Little Rock, AR 72201

Telephone: (501) 396-5400

carter@mcmathlaw.com

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTEENTH DIVISION

REGIONS BANK TRUST DEPARTMENT, as Special
Administrator of the Estate of JINGLEI YI, deceased

PLAINTIFF

vs.

Case No. 60CV-15-4103

CANDACE MIDDLETON

DEFENDANT

JUDGMENT ON DAMAGES

Yi is awarded judgment against Candace Middleton on the issue of damages. An
itemization of the judgment is as follows:

\$ 1,000,000 for Jinglei Yi's conscious pain and suffering prior to her
drowning death;

\$ 3,000,000 for Jinglei Yi's loss of life;

\$ 1,000,000 for the mental anguish suffered and reasonably probable
to be suffered in the future by Dayong Yang from the death of Jinglei Yi.

The total amount of the judgment against Candace Middleton is

\$ 5,000,000. Post-judgment interest may accrue.

IT IS SO ORDERED.


HONORABLE MORGAN E. WELCH
CIRCUIT JUDGE

6/22/23
DATE

Prepared by:

/s/ Carter C. Stein

Carter C. Stein, AR Bar No. 2004049

Charles D. Harrison, AR Bar No. 79082

McMATH WOODS P.A.

711 West Third Street

Little Rock, AR 72201

Telephone: (501) 396-5400

carter@mcmathlaw.com

charles@mcmathlaw.com

Attorneys for Regions Bank

Trust Department

as special administrator of

the estate of Jinglei Yi, deceased

CERTIFICATE OF SERVICE

This is to certify that the foregoing motion was filed with the court's electronic filing system on June 14, 2023. A copy of the motion will be served by process server on the following:

Candace Middleton



/s/ Carter C. Stein

Carter C. Stein

From: [Charles Lyford](#)
To: [Carter Stein](#); [Kathryn Irby](#); [ASCC Pleadings](#); [John Payne](#)
Cc: [Katie Wilson](#); [Sabrina Marshall](#)
Subject: RE: Rule 41B Notice: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. ADEM, Claim No. 16-0497-CC
Date: Thursday, August 3, 2023 4:21:49 PM

I agree, two hours should be enough. Thanks.

From: Carter Stein <Carter@mcmathlaw.com>
Sent: Thursday, August 3, 2023 4:05 PM
To: Kathryn Irby <Kathryn.Irby@arkansas.gov>; Charles Lyford <charles.lyford@arkansasag.gov>;
ASCC Pleadings <ASCCPleadings@arkansas.gov>; John Payne <john.payne@arkansasag.gov>
Cc: Katie Wilson <katie.wilson@arkansasag.gov>; Sabrina Marshall <Sabrina@mcmathlaw.com>
Subject: RE: Rule 41B Notice: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. ADEM, Claim No. 16-0497-CC

EXTERNAL EMAIL

Looks like we had a half-day motions hearing in the Yang case back in 2020. I think two hours should be sufficient for the Regions Bank/Yi case.

Thanks.

Carter

From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Thursday, August 3, 2023 3:59 PM
To: Charles Lyford <charles.lyford@arkansasag.gov>; ASCC Pleadings <ASCCPleadings@arkansas.gov>; Carter Stein <Carter@mcmathlaw.com>; John Payne <john.payne@arkansasag.gov>
Cc: Katie Wilson <katie.wilson@arkansasag.gov>; Carpenter, Tom <TCarpenter@littlerock.gov>; Sabrina Marshall <Sabrina@mcmathlaw.com>
Subject: RE: Rule 41B Notice: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. ADEM, Claim No. 16-0497-CC

Carter and Charles, how long do the parties anticipate will be needed for this hearing? The hearing letter will state that any motions must be filed in sufficient time for the motion(s) to be fully briefed by the prehearing material deadline.

Kathryn

From: Charles Lyford <charles.lyford@arkansasag.gov>
Sent: Thursday, August 3, 2023 3:52 PM
To: ASCC Pleadings <ASCCPleadings@arkansas.gov>; Carter Stein <Carter@mcmathlaw.com>; John Payne <john.payne@arkansasag.gov>
Cc: Katie Wilson <katie.wilson@arkansasag.gov>; Kathryn Irby <Kathryn.Irby@arkansas.gov>; Carpenter, Tom <TCarpenter@littlerock.gov>; Sabrina Marshall <Sabrina@mcmathlaw.com>
Subject: RE: Rule 41B Notice: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. ADEM, Claim No. 16-0497-CC

Director Irby,

This is Charles Lyford with the AG's Office. We will continue representing the Respondent in Claim No. 16-0497. When setting a hearing date, can the Commission issue a scheduling letter that allows for dispositive motions? I do not anticipate that discovery will be necessary, but essentially only a complaint and answer are on the docket for this claim. Counsel for the claimant does not oppose such a scheduling letter. Thank you.

Charles

From: Misty Scott <Misty.Scott@arkansas.gov> **On Behalf Of** ASCC Pleadings
Sent: Thursday, August 3, 2023 10:33 AM
To: Carter Stein <Carter@mcmathlaw.com>; ASCC Pleadings <ASCCPleadings@arkansas.gov>; John Payne <john.payne@arkansasag.gov>
Cc: Katie Wilson <katie.wilson@arkansasag.gov>; Kathryn Irby <Kathryn.Irby@arkansas.gov>; Charles Lyford <charles.lyford@arkansasag.gov>; Carpenter, Tom <TCarpenter@littlerock.gov>; Sabrina Marshall <Sabrina@mcmathlaw.com>
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Ms. Scott and Ms. Irby –

Please see the attached correspondence on behalf of the Claimant requesting a hearing date in this matter.

My cell is [REDACTED] .

Thanks.

Carter C. Stein

McMath Woods P.A.

(501) 396-5409 - Office

www.mcmathlaw.com

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Subject: Rule 41B Notice: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. ADEM, Claim No. 16-0497-CC

Mr. Stein and Mr. Payne:

Please see attached Rule 41B Notice entered by the Claims Commission. Contact Kathryn Irby with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

From: [Kathryn Irby](#)
To: [Charles Lyford](#); [Carter Stein](#); [John Payne](#)
Cc: [Katie Wilson](#); [Sabrina Marshall](#)
Subject: HEARING SCHEDULED: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. ADEM, Claim No. 16-0497-CC
Date: Tuesday, August 29, 2023 10:42:00 AM
Attachments: [Regions Bank \(Jinglei Yi\) v. ADEM -- 16-0497-CC -- hearing ltr.pdf](#)

Carter, Charles, and John, please see attached hearing letter and Zoom invitation.

Thanks,
Kathryn

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

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Looks like we had a half-day motions hearing in the Yang case back in 2020. I think two hours should be sufficient for the Regions Bank/Yi case.

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Subject: Rule 41B Notice: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. ADEM, Claim No. 16-0497-CC

Mr. Stein and Mr. Payne:

Please see attached Rule 41B Notice entered by the Claims Commission. Contact Kathryn Irby with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

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

August 29, 2023

Mr. Carter C. Stein
McMath Woods P.A.
711 West Third Street
Little Rock, Arkansas 72201

(via email)

Mr. Charles Lyford
Mr. John Payne
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201

(via email)

RE: ***Regions Bank Trust Department, as special administrator of the Estate of Jinglei Yi, deceased v. Arkansas Department of Emergency Management***
Claim No. 16-0497-CC

Dear Mr. Stein, Mr. Lyford, and Mr. Payne,

The Claims Commission has scheduled this claim for a two-hour hearing on **Friday, December 8, 2023**, beginning at 9:00 a.m. All parties will attend via Zoom. If either party objects to the Zoom format, a written objection must be submitted via email (kathryn.irby@arkansas.gov) or mail no later than September 5, 2023. The Zoom invitation is enclosed.

The following prehearing materials are due by November 10, 2023:

- Each party's list of witnesses who will testify live at the hearing or via deposition;
- Each party's list of exhibits that may be introduced at the hearing;
- Deposition transcripts if any deposition testimony will be submitted in lieu of live testimony;
- Prehearing briefs if either party would like to submit for Commission review; and
- Subpoena requests (absent a showing of good cause, the Commission will not issue subpoenas for requests received after the prehearing material deadline).

To the extent that either party intends to file a motion of any kind, absent a showing of good cause, the motion must be submitted in sufficient time to allow the motion to be fully briefed pursuant to the Arkansas Rules of Civil Procedure by November 10, 2023.

Please note that a copy of any filing must be served upon the opposing party in accordance with the Arkansas Rules of Civil Procedure.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: kmirby

The Claims Commission is inviting you to a scheduled Zoom meeting.

Topic: Claims Commission -- hearings

Time: Dec 8, 2023 09:00 AM Central Time (US and Canada)

Join Zoom Meeting

<https://us06web.zoom.us/j/85893882497?pwd=N2lIMzVUNFpSTXJ3NU1lR05tcDJ0dz09>

Meeting ID: 858 9388 2497

Passcode: 5EJeTg

One tap mobile

+13052241968,,85893882497#,,,,*758554# US

+13092053325,,85893882497#,,,,*758554# US

Dial by your location

- +1 305 224 1968 US

- +1 309 205 3325 US

- +1 312 626 6799 US (Chicago)

Meeting ID: 858 9388 2497

Passcode: 758554

Find your local number: <https://us06web.zoom.us/j/85893882497>

From: [Shannon Keele](#)
To: [ASCC Pleadings](#)
Cc: [Charles Lyford](#); [Trey Cooper](#); [Katie Wilson](#)
Subject: Regions Bank Trust Dept (Jinglei Yi Estate) v. SOA, ADEM - Claim No. 16-0497
Date: Friday, September 8, 2023 2:48:32 PM
Attachments: [image001.jpg](#)
[2023-09-08 - Notice of Appearance \(TC\) Yi Estate.pdf](#)
[2023-09-08 - MTN Withdraw Sub Counsel \(TC\) Yi Estate.pdf](#)

You don't often get email from shannon.keele@arkansasag.gov. [Learn why this is important](#)

Good afternoon.

Please find attached for filing Carl F. “Trey” Cooper III’s entry of appearance and the Motion to Withdraw Charles Lyford as counsel for the respondent in the above referenced claim.

Sincerely,

Shannon Keele
Paralegal – Civil Department

Office of Arkansas Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: (501) 682-2590 | Fax: (501) 682-2591
shannon.keele@arkansasag.gov | ArkansasAG.gov



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

REGIONS BANK TRUST DEPARTMENT
Administrator for the Estate of Jinglei Yi, deceased

CLAIMANT

v.

Claim No. 16-0497-CC

**STATE OF ARKANSAS,
ARKANSAS DEPARTMENT OF
EMERGENCY MANAGEMENT**

RESPONDENT

ENTRY OF APPEARANCE

Senior Assistant Attorney General Carl F. "Trey" Cooper III respectfully submits his Entry of Appearance on behalf of the Respondent, State of Arkansas, Arkansas Department of Emergency Management. Complete contact information for the undersigned counsel is included in the signature block below.

Respectfully submitted,

TIM GRIFFIN
Attorney General

By:



Carl F. "Trey" Cooper III
Ark Bar No. 2007294
Senior Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 682-3658
Fax: (501) 682-2591
Email: trey.cooper@arkansasag.gov

Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned certifies that on September 11, 2023, I caused a copy of the foregoing to be placed in the U.S. Mail, addressed to the following:

Carter C. Stein
McMATH WOODS
711 West Third Street
Little Rock, AR 72201



Carl F. "Trey" Cooper III

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

REGIONS BANK TRUST DEPARTMENT
Administrator for the Estate of Jinglei Yi, deceased

CLAIMANT

v. Claim No. 16-0497-CC

**STATE OF ARKANSAS,
ARKANSAS DEPARTMENT OF
EMERGENCY MANAGEMENT**

RESPONDENT


MOTION FOR WITHDRAWAL AND SUBSTITUTION OF COUNSEL

The Respondent, by and through its counsel, hereby moves the Commission to allow the withdrawal of Senior Assistant Attorney General Charles Lyford as counsel for the Respondent and to substitute Senior Assistant Attorney General Carl F. "Trey" Cooper III as counsel for the Respondent. Attached hereto is the Notice of Appearance for Senior Assistant Attorney General Carl F. "Trey" Cooper III.

WHEREFORE, the Respondent respectfully requests that the Commission grant the Motion for Withdrawal and Substitution of Counsel and that Senior Assistant Attorney General Carl F. "Trey" Cooper III be substituted as counsel of record for the Respondent.

Respectfully submitted,

TIM GRIFFIN
Attorney General

By: 
Carl F. "Trey" Cooper III
Ark Bar No. 2007294
Senior Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201

Phone: (501) 682-3658
Fax: (501) 682-2591
Email: trey.cooper@arkansasag.gov

Attorneys for Respondent

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Little Rock, AR 72201



Carl F. "Trey" Cooper III

From: [Shannon Keele](#)
To: [ASCC Pleadings](#)
Cc: [Brian Black](#); [Trey Cooper](#); carter@mcmathlaw.com
Subject: FOR FILING - RE: Regions Bank Trust c/o Jinglei Yi Estate v. ADEM 16-0497-CC
Date: Thursday, October 26, 2023 8:08:23 AM
Attachments: [image001.jpg](#)
[ADEM MTN Sub Atty & NOA \(BB\) final.pdf](#)

You don't often get email from shannon.keele@arkansasag.gov. [Learn why this is important](#)

Good morning.

Please find attached for filing: Brian D. Black's Entry of Appearance and Motion for Substitution of Counsel entering his appearance as counsel for the Respondent in the above-referenced claim.

Thank you,

Shannon Keele
Paralegal – Civil Department

Office of Arkansas Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Office: (501) 682-2590 | Fax: (501) 682-2591
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BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

**REGIONS BANK, TRUST DEPARTMENT,
ADMINISTRATOR FOR THE ESTATE OF
JINGLEI YI, DECEASED**

CLAIMANT

v.

CASE NO. 16-0497-CC

**ARKANSAS DEPARTMENT OF
EMERGENCY MANGAGEMENT**

RESPONDENT

ENTRY OF APPEARANCE AND MOTION FOR SUBSTITUTION OF COUNSEL

Respondent, Arkansas Department of Emergency Management (“ADEM”) by and through its attorneys, Attorney General Tim Griffin and Assistant Attorney General Brian D. Black, states and moves as follows:

1. I, Assistant Attorney General Brian D. Black, hereby enter my appearance as counsel of record for ADEM and request all future pleadings and correspondence from the Court and the parties be sent accordingly. I certify that I am admitted to practice in this Court.

2. Senior Assistant Attorney General Carl F. “Trey” Cooper, III who has served as counsel for the Respondent, is no longer handling the defense of this case as the matter has been reassigned.

3. Carl F. “Trey” Cooper, III should be relieved as counsel for the Respondent and Brian D. Black should be substituted as counsel in his place.

WHEREFORE, Respondent respectfully requests that the Claims Commission grant its Motion for Substitution of Counsel and that Brian D. Black be substituted as Respondents’ counsel of record.

Respectfully submitted,

TIM GRIFFIN
Attorney General

By: /s/ Brian D. Black
Brian D. Black
Ark Bar No. 2017-176
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 683-3296
Fax: (501) 682-2591
Email: brian.black@arkansasag.gov

Attorneys for Respondent

CERTIFICATE OF SERVICE

I, Brian D. Black, hereby certify that on October 26, 2023, I emailed the foregoing document to the following:

ASCCpleadings@arkansas.gov

Mr. Carter Stein
Carter@mcmathlaw.com

/s/Brian D. Black
Brian D. Black

From: [Carter Stein](#)
To: [Kathryn Irby](#); [Charles Lyford](#); [John Payne](#); [ASCC Pleadings](#)
Cc: [Katie Wilson](#); [Sabrina Marshall](#); [Charles Harrison](#); brian.black@arkansasag.gov
Subject: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. ADEM, Claim No. 16-0497-CC; Claimant's Pre-Hearing Submission
Date: Friday, November 10, 2023 1:56:13 PM
Attachments: [\(2023-11-10\) Pre-Hearing Submission.pdf](#)

Attached please find Regions Bank's *Pre- Hearing Submission*. At your convenience, please confirm the filing of this response.

I am copying defense counsel on this communication with the Claims Commission.

Thanks.

Carter C. Stein

McMath Woods P.A.

(501) 396-5409 - Office

www.mcmathlaw.com

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To: Carter Stein <Carter@mcmathlaw.com>; John Payne <john.payne@arkansasag.gov>

Cc: Katie Wilson <katie.wilson@arkansasag.gov>; ASCC Pleadings <ASCCPleadings@arkansas.gov>; Kathryn Irby <Kathryn.Irby@arkansas.gov>

Subject: Rule 41B Notice: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. ADEM, Claim No. 16-0497-CC

Mr. Stein and Mr. Payne:

Please see attached Rule 41B Notice entered by the Claims Commission. Contact Kathryn Irby with any questions.

Thank you,

Misty

Misty Scott
Arkansas State Claims Commission

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

**REGIONS BANK TRUST DEPARTMENT,
as Special Administrator of the Estate of
JINGLEI YI, deceased**

CLAIMANT

vs.

Claim No. 16-0497-CC

**ARKANSAS DEPARTMENT OF
EMERGENCY MANAGEMENT**

RESPONDENT

PRE-HEARING SUBMISSION

1. Witnesses

As this case involves a claim for indemnification, Regions Bank does not anticipate calling any witnesses. Counsel for Regions Bank will present a short argument.

2. Exhibits

Possible exhibits include:

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4. *Prehearing Brief*

This case, which is set for hearing December 8, 2023, is a companion case to *Dayong Yang, as Special Administrator of the Estate of Le Yang, deceased v. Arkansas Department of Emergency Management*, Arkansas State Claims Commission Claim No. 16-0496-CC.

In *Yang*, the claimant sought payment from the Arkansas Department of Emergency Management of a \$17,627,638.04 judgment entered against Candace Middleton, a 911 call taker. On September 15, 2020, the Arkansas State Claims Commission granted the Arkansas Department of Emergency Management's motion for judgment on the pleadings. Following an appeal to the Claims Subcommittee of the Joint Budget Committee, the Arkansas Legislature awarded \$100,000.00 to Le Yang's estate.

Here, Regions Bank seeks payment from the Arkansas Department of Emergency Management of a \$5,000,000.00 judgment entered against Candace Middleton. Upon entry of the judgment by the Circuit Court, Regions Bank requested this case be removed from abeyance and set for a hearing. Based on the result of the legislative appeal in *Yang*, Regions Bank has offered to resolve its indemnification claim for \$15,000.00.

5. *Subpoena Requests*

None.

Respectfully submitted,

By: /s/ Carter C. Stein
Carter C. Stein, AR Bar No. 2004049
McMATH WOODS P.A.
711 West Third Street
Little Rock, AR 72201
Telephone: (501) 396-5400
Email: carter@mcmathlaw.com

Attorney for Claimant
Regions Bank Trust Department,
as Special Administrator of the Estate of
Jinglei Yi, deceased; Claimant

CERTIFICATE OF SERVICE

I, Carter C. Stein, certify that on November 10, 2023, I sent this pre-hearing submission by email to asccpleadings@arkansas.gov for filing and am sending a copy by email to the following counsel of record:

Brian D. Black
323 Center Street, Suite 200
Little Rock, AR 72201
brian.black@arkansasag.gov

*Attorney for Respondent
State of Arkansas,
Arkansas Department of
Emergency Medicine*

/s/ Carter C. Stein
Carter C. Stein

From: [Brian Black](#)
To: [Kathryn Irby](#); [John Payne](#); [ASCC Pleadings](#)
Cc: [Katie Wilson](#); [Sabrina Marshall](#); [Charles Harrison](#); [Carter Stein](#); [Shannon Keele](#)
Subject: Claim No. 16-0497-CC; Respondent's Pre-Hearing Submission; Regions Bank Trust Department v. ADEM
Date: Friday, November 10, 2023 5:12:20 PM
Attachments: [image001.jpg](#)
[Pre-Hearing Submission.pdf](#)

Some people who received this message don't often get email from brian.black@arkansasag.gov. [Learn why this is important](#)

Ms. Irby,

Attached please find Respondent's Pre- Hearing Submission. At your convenience, please confirm the filing of this response.

I am copying claimant's counsel on this communication with the Claims Commission.

Sincerely,

Brian Black

Brian D. Black
Assistant Attorney General – Civil Litigation Division

Office of Attorney General Tim Griffin
323 Center Street, Suite 200 | Little Rock, Arkansas 72201
Office: (501) 683-3296 | Fax: (501) 682-2591
Email: brian.black@arkansasag.gov



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

**REGIONS BANK TRUST DEPARTMENT
Special Administrator of the Estate of
Jinglei Yi, deceased**

CLAIMANT

VS.

Claim No. 16-0497-CC

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ARKANSAS DEPARTMENT OF
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RESPONDENT

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This Claim also has a companion case in the Pulaski County Circuit Court—*Regions Bank Trust Department v. City of Little Rock, et al.*, Case No. 60CV-15-

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A. The State of Arkansas may not constitutionally pay the obligations of Candace Middleton or the City of Little Rock

Neither the claim in this case, nor the circuit court complaint, contend that the State of Arkansas or the Arkansas Department of Emergency Management is at fault for Ms. Li's death. Claimant simply contends that section 21-9-304 of the Arkansas Code requires the State to indemnify the City of Little Rock and its employees for their own liabilities. Even if the statute could be read this way, it cannot not impose an enforceable indemnity obligation because Article 16, section 1 of the Arkansas Constitution forbids the State from lending its credit for any purpose. Agreeing to pay the debt of another is, of course, a way to lend the State's credit. Consequently, Article 16, section 1 means that indemnity claims against the State are not enforceable. *Entergy Arkansas v. Arkansas Public Service Commission*, 2011 Ark. App. 453, 384 S.W.3d 674 (2011).

But the prohibition does not end there. The Arkansas Constitution also provides that "the State shall never assume, or pay the debt or liability of any ...

city ... or any party thereof ... unless such debt or liability .. shall have been created to repel invasion, suppress insurrection, or to provide for the public welfare and defense.” Ark. Const. Art. 12, § 12. A personal injury judgment can’t be fairly characterized as providing for the public welfare and defense.

Claimant’s assertion that Arkansas Code section 21-9-304 requires the State to pay a judgment against Middleton or the City of Little Rock, where the State had no involvement in the underlying incident, can’t be squared with these constitutional prohibitions. For this reason, Claimant’s claim fails to state a claim as a matter of law and should be dismissed.

b. Arkansas Code section 21-9-304 does not provide for payment of judgments against Middleton or other city employees

Acts of the General Assembly must be interpreted, whenever possible, to render them enforceable. *Robert D. Holloway, Inc. v. Pine Ridge Add. Residential Property Owners*, 332 Ark. 450, 453, 966 S.W.2d 241, 243 (1998). As demonstrated in this brief, Claimant’s interpretation of Arkansas Code section 21-9-304 would render the statute unenforceable. A careful reading of the law shows that the General Assembly only intended to obligate the State to pay for harm that results from acts taken under the direct supervision of the State’s officials and employees. In other words, for harm proximately caused by a state actor’s decisions – not for harm caused by the independent fault of others.

Interpreting section 21-9-304 requires examining the original act, because the codification dropped language that is important to interpretation.¹ Section 21-9-304 codified Act 711 of 1983, provides that:

When any city of the first class, city of the second class, incorporated town, county, and its employees are called upon to assist the State and its employees and, as a result *of assisting the State and its employees*, are sued for their actions performed under the supervision of State officials or employees such cities, towns, counties and their employees are sued for their actions performed under the supervision of State official and employees, the Attorney General shall defend such first class cities, incorporated towns, counties and their employees, and should a judgment be rendered against the same, the state shall pay actual, but not punitive, damages adjudged by a state or federal court, or entered by the court as a result of a compromise settlement approved and recommended by the Attorney General, based on an act or omission by the officer or employee while acting without malice and in good faith within the course and scope of his employment and in the performance of his official duties.

Act 711 of 1983 (italics added). The codification deleted the phrase “of assisting the State and its employees”, which appears above in italics. The codification also split this single sentence into two sections. The language deleted from the codification makes it clear that there must be a causal connection between assisting the State and the resulting liability.

Statutes must be interpreted in order to give effect to the intent of the legislature and where the language of the statute is plain and unambiguous, intent is gathered from the ordinary meaning of the language used. *Barclay v. First Paris*

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Holding Co., 344 Ark. 711, 718, 42 S.W.3d 496, 500 (2001). The act must be viewed as a whole, reconciling provisions to make them consistent, harmonious and sensible. *Id.* Legislative history and the subject matter involved may also be considered. *Id.*

Act 711 applies when a city is “called upon to assist the state and its employees.” The only lawsuits covered are those that “are a result of assisting the State and its employees.” And the only actions covered are those “performed under the supervision of State officials and employees.” Viewed in this way, the Act is consistent with the Constitution because it only obligates the State to pay for harm caused by actions directed by State officials. The independent fault of city officials and employees can’t impose liability on the State without running afoul of the Constitution’s prohibition against indemnification.²

Without stating any facts, Claimant concludes that the City of Little Rock was acting on behalf of the State and the Arkansas Department of Emergency Management, and that the State “called upon” the City of Little Rock to “operate a public service answering point in connection with the statewide 911 system.” Complaint “explanation” at ¶ 31. Claimant claims that everything from the hiring, training and supervision of Middleton down to the actual emergency response was “under the supervision of David Maxwell, the head of the Arkansas Department of Emergency Management ... and in furtherance of the State of Arkansas’ desire to

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operate a statewide 911 system.” Complaint explanation at ¶¶27, 32. But Claimant never alleges any *facts* that, if accepted as true, would evidence actual supervision of the events that led to Ms. Li’s death, or that would prove the attempt to rescue her was an event for which the State called on the City for assistance.

The claim in this case rests entirely on alleged acts of the City of Little Rock and its employees. The Circuit Court complaint sets out multiple counts alleging liability against the City of Little Rock, MEMs, and their employees, including that (1) the City negligently hired, trained, retained and supervised Middleton, (2) the City negligently maintained its computer aided dispatch system, (3) the City did not adequately staff its emergency call center, (4) Middleton failed to act promptly and correctly to notify all first responders, (5) two firefighters at the scene delayed taking action while waiting for a water rescue group, (6) MEMs failed to timely follow up on the 911 call, and the ambulance drivers were too slow to arrive, and (7) the Fire Department’s rescue policies delayed rescue efforts. Neither the circuit court complaint, nor the complaint filed with this Commission, identify a single act or omission of a state official that caused or contributed to Ms. Li’s injury or death.

Claimant essentially tries to turn legislation authorizing 911 systems into a call for assistance and supervision by the State. But the legislation makes it clear that 911 systems are optional for local governments. The decision whether to implement one is made by the chief executive officer of the local government, which may use an existing dispatch center or create a new one, or may designate the 911 center of another local government. Ark. Code Ann. §§ 12-10-304, 12-10-305. The

staff and supervisors are under the supervision of the local government's chief executive. Ark. Code Ann. § 12-10-306. Training is required, but the State doesn't dictate the training. *Id.* Other requirements, such as the ability to record calls, provide communication with the hearing impaired and choices of "response methods" are defined in broad strokes, but do not tell the city how to about processing and responding to calls. Ark. Code Ann. §§ 12-10-309-311.

There is a world of difference between authorizing local governments to establish emergency response systems, and providing services under the supervision of a state official or employee. Claimant's theory, if accepted, opens a Pandora's box of liability for the State – anytime the State authorizes or encourages an activity there is the potential for liability. For example, state law authorizes cities to establish police departments, and establishes a number of requirements for these departments. Ark. Code Ann. § 14-52-101, et seq. Accepting Claimant's interpretation of the law, the State could be obligated to pay the liabilities of local police departments when an officer is accused of using excessive force. This is obviously not what the law intended, and is not consistent with the Arkansas Constitution.

c. Conclusion

The Arkansas Constitution forbids the State from paying the judgment against Ms. Middleton. And it forbids the State from paying any liability of the City of Little Rock or its employees. But this does not necessarily leave Claimant without a remedy. Mr. Yang received an undisclosed settlement amount from

MEMS in the Circuit Court litigation corresponding to the Prior Claim – which could be as much as \$3,000,000 if the policy limits were paid. Likewise, we do not know what other benefits may have been paid under various automobile and personal insurance policies. What we do know is that the State of Arkansas had no fault whatsoever in the events at issue, and thus as a matter of constitutional law the State cannot be liable.

Respectfully submitted,

TIM GRIFFIN
Attorney General

By: /s/ Brian D. Black
Brian D. Black (2017-176)
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 683-3296
Fax: (501) 682-2591
Email: brian.black@arkansasag.gov

CERTIFICATE OF SERVICE

I, Brian D. Black, certify that on November 10, 2023, I sent this pre-hearing submission by email to ascpleadings@arkansas.gov for filing and sent a copy by email to the following counsel of record:

Carter C. Stein
McMATH WOODS
711 West Third Street
Little Rock, AR 72201

/s/ Brian D. Black
Brian D. Black

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Claimant essentially tries to turn legislation authorizing 911 systems into a call for assistance and supervision by the State. But the legislation makes it clear that 911 systems are optional for local governments. The decision whether to implement one is made by the chief executive officer of the local government, which may use an existing dispatch center or create a new one, or may designate the 911 center of another local government. Ark. Code Ann. §§ 12-10-304, 12-10-305. The

staff and supervisors are under the supervision of the local government's chief executive. Ark. Code Ann. § 12-10-306. Training is required, but the State doesn't dictate the training. *Id.* Other requirements, such as the ability to record calls, provide communication with the hearing impaired and choices of "response methods" are defined in broad strokes, but do not tell the city how to about processing and responding to calls. Ark. Code Ann. §§ 12-10-309-311.

There is a world of difference between authorizing local governments to establish emergency response systems, and providing services under the supervision of a state official or employee. Claimant's theory, if accepted, opens a Pandora's box of liability for the State – anytime the State authorizes or encourages an activity there is the potential for liability. For example, state law authorizes cities to establish police departments, and establishes a number of requirements for these departments. Ark. Code Ann. § 14-52-101, et seq. Accepting Claimant's interpretation of the law, the State could be obligated to pay the liabilities of local police departments when an officer is accused of using excessive force. This is obviously not what the law intended, and is not consistent with the Arkansas Constitution.

c. Conclusion

The Arkansas Constitution forbids the State from paying the judgment against Ms. Middleton. And it forbids the State from paying any liability of the City of Little Rock or its employees. But this does not necessarily leave Claimant without a remedy. Mr. Yang received an undisclosed settlement amount from

MEMS in the Circuit Court litigation corresponding to the Prior Claim – which could be as much as \$3,000,000 if the policy limits were paid. Likewise, we do not know what other benefits may have been paid under various automobile and personal insurance policies. What we do know is that the State of Arkansas had no fault whatsoever in the events at issue, and thus as a matter of constitutional law the State cannot be liable.

Respectfully submitted,

TIM GRIFFIN
Attorney General

By: /s/ Brian D. Black
Brian D. Black (2017-176)
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, AR 72201
Phone: (501) 683-3296
Fax: (501) 682-2591
Email: brian.black@arkansasag.gov

CERTIFICATE OF SERVICE

I, Brian D. Black, certify that on November 10, 2023, I sent this pre-hearing submission by email to ascpleadings@arkansas.gov for filing and sent a copy by email to the following counsel of record:

Carter C. Stein
McMATH WOODS
711 West Third Street
Little Rock, AR 72201

/s/ Brian D. Black
Brian D. Black

Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

Arkansas
State Claims Commission

JAN 13 2016

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

RECEIVED

- ☐ Mr.
☐ Mrs.
☐ Ms.
☐ Miss

Regions Bank Trust Department, as Special Administrator of the Estate of Jinglei Yi, deceased
vs.

State of Arkansas, Respondent AR Dept. of Emergency Management

Regions Bank Trust Department, as Special Administrator of the Estate

COMPLAINT

of Jinglei Yi, deceased, the above named Claimant, of 400 N. Capitol Ave. 7th Floor Little Rock
(Name) (Street or R.F.D. & No.) (City)
AR 72201 (501) 371-6719 County of Pulaski represented by Carter C. Stein, McMan Work P.A.
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)
of 711 W. 3rd St. Little Rock AR 72201 (501) 396-5409 (501) 374-5118, says:
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.)

State agency involved: Arkansas Department of Emergency Management Amount sought: Amount to be determined by jury.
Month, day, year and place of incident or service: January 14, 2013; Capitol Hill Blvd. & Rushmore Ave. Little Rock, AR
Explanation: This is an indemnification claim. Please see the attached typewritten explanation.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?
No; when? ; to whom? ; (Department)
(Yes or No) (Month) (Day) (Year)

and that \$ was paid thereon: (2) Has any third person or corporation an interest in this claim? Yes; if so, state name and address
City of Little Rock, 500 W. Markham St. Little Rock AR 72201
(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)
and that the nature thereof is as follows: City of Little Rock was called upon to assist State and ADEM
in provision of 911 services; and was acquired on January 14, 2013, in the following manner:
City of Little Rock has been sued for their actions performed at State and ADEM.

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.

Erm Behring, Regions Bank Trust Department
(Print Claimant/Representative Name)

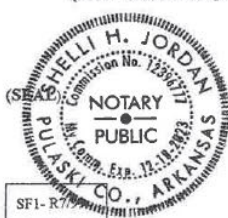
Signature of Claimant/Representative

SWORN TO and subscribed before me at Little Rock AR

on this 13th day of January, 2016
(Date) (Month) (Year)

Julie A. Jella
(Notary Public)

My Commission Expires: 12 18 2023
(Month) (Day) (Year)



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

SECTION I

CLAIMANT Regions Bank Trust Department, as Special Administrator of the estate of Jingle Yi, deceased ADDRESS 400 W. Capitol Ave., Ste. 700
CITY & STATE Little Rock, AR ZIP CODE 72201
DATE OF INCIDENT: January 14, 2013 TIME 7:55 a.m.

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

Jingle Yi suffered a drowning event in a submerged vehicle due to a delayed 911 response by the City of Little Rock. She was treated at the scene and at Baptist Hospital prior to her death that same day. She had medical

(If personal injury claim only, move on to Section IV) Expenses of over \$16,000.00

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	AMOUNT
1. _____	_____	\$ _____
2. _____	_____	\$ _____
3. _____	_____	\$ _____

SECTION III

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

NAME OF INSURANCE CARRIER ADDRESS

SECTION IV

Is injured covered by medical insurance? Yes (X) No () If yes, is medical insurance:
If yes, what is the deductible? \$ None

A. Job-based Yes (X) No ()
B. Uninsured Motorist Yes () No (X)
C. Private Pay Yes (X) No ()

NAME OF INSURANCE CARRIER 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: Scott Detmer, Stephanie Brithg, and Wayne Basky all of the Little Rock Police Department

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

Sworn to and subscribed before me at Little Rock AR
on this 12th day of Jan, 2013
day month year

My Commission Expires 12-18-2023

[Signature]
Signature of Notary Public

**BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas**

**DAYONG YANG,
as Special Administrator of the Estate of
LE YANG, deceased**

CLAIMANT

vs.

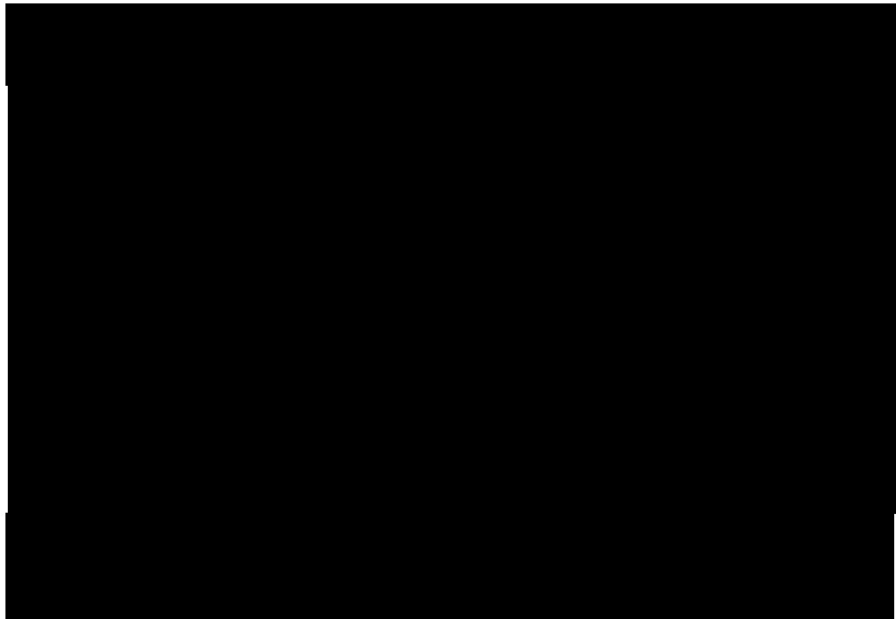
STATE OF ARKANSAS

RESPONDENT

Explanation (Continued from COMPLAINT form):

1. On the morning of January 14, 2013, Jinglei Yi and her then five year old son Le Yang were in a 2006 Ford Expedition headed east on Capitol Hill Boulevard.
2. Jinglei stopped at the stop sign at the intersection of Capitol Hill Boulevard and Pennsylvania Avenue/Rushmore Avenue.
3. As Jinglei proceeded through the intersection, she hit a patch of ice and lost control of her vehicle. Jinglei's vehicle continued east approximately 256 feet before going over the southbound curb line, leaving the roadway, striking a small tree, going down a hill, and entering a retaining pond on the south side of Capitol Hill Boulevard.
4. Jinglei used her cell phone to call Arkansas's 911 system at 7:55:25 a.m.
5. Jinglei's 911 call was answered by the Pulaski County Sheriff's 911 Communications Center. Jinglei told the female Pulaski County 911 call taker her vehicle had fallen in the water. She stated she was in the car with her child. The Pulaski County call taker asked Jinglei if she slid off into the pond and said "I see where you're at."
6. The Pulaski County call taker told Jinglei she was getting her to the correct agency to get its fire department to help Jinglei and Le. The Pulaski County call taker transferred Jinglei's 911 call to the Little Rock Police Department Communications Center because Jinglei and Yi were within the city limits.

7. The Pulaski County call taker, with Jinglei on the line, called Little Rock 911 at 7:56:03 a.m.
8. Candace Middleton, a Little Rock employee, answered the call.
9. The female Pulaski County 911 operator told Middleton that Jinglei and Le were in a pond just east of Rushmore Avenue on the south side of the road. The Pulaski County call taker told Jinglei she was letting her speak with Little Rock 911.
10. Jinglei told Middleton "I'm falling in a pond and I feel the water in my car right now." Jinglei told Middleton her location, confirmed Le was in the car with her, and spelled her name.
11. In response to Jinglei's 911 call about a vehicle sinking in a pond, Middleton failed to enter the call for police and fire dispatch.
12. Middleton did call MEMS to have an ambulance go to the scene.
13. MEMS personnel arrived at the scene at 8:20:18 a.m. but police and fire department personnel were not there.
14. MEMS personnel called MEMS dispatch to check status of police and fire units.
15. MEMS dispatch called Pulaski County Sheriff's 911 Communications Center to check status of police and fire units.
16. Pulaski County Sheriff's 911 Communications Center advised MEMS dispatch that the call in question was a Little Rock call.
17. MEMS dispatch called Little Rock 911 at 8:21 a.m. about the status of police and fire units. At this time it was discovered that the call had not been entered.
18. The call was entered by Little Rock 911 at 8:23:02 a.m.
19. Little Rock water rescue units arrived at 8:40:34 a.m.
20. Le Yang was extricated from the submerged vehicle at 8:50:25 a.m.



27. Le Yang's injuries and death were proximately caused by the negligence of the City of Little Rock who was acting on behalf of the State of Arkansas and the Arkansas Department of Emergency Management.

28. The City of Little Rock "shall be immune from liability and from suit for damages except to the extent that [it] may be covered by liability insurance." Ark. Code Ann. § 21-9-301(a).

29. However, an exception to the City of Little Rock's immunity exists when it is sued for actions it undertakes for the State of Arkansas. Ark. Code. Ann. § 21-9-304.

30. "When any city of the first class . . . and its employees are called upon to assist the state and its employees and, as a result, are sued for their actions performed under the supervision of a state official or employee, the Attorney General shall defend the city of the first class . . . and its employees." Ark. Code Ann. § 21-9-304(a).

31. Here, the City of Little Rock has been called upon by the State of Arkansas and the Arkansas Department of Emergency Management to operate a public service answering point in connection with the statewide 911 system. Ark. Code Ann. § 21-9-304(a); *See also* Ark. Code Ann. § 12-10-302.

32. Further, the actions of the City of Little Rock in hiring, training, supervising, and retaining Middleton, maintaining its computer aided dispatch system, adequately staffing its Communications Center, Middleton's response to Jinglei's 911 call, and the police and fire department's response were performed under the supervision of David Maxwell, the head of the Arkansas Department of Emergency Management who was appointed by the Governor of Arkansas as the State 911 Coordinator, and in furtherance of the State of Arkansas's desire to operate a statewide 911 system. Ark. Code Ann. § 21-9-304(a).

33. “*Should* a judgment be rendered against the city of the first class . . . or its employees, the *state shall pay* actual, but not punitive, damages adjudged by a state or federal court, or entered by the court as a result of a compromise settlement approved and recommended by the Attorney General, based on an act or omission by the officer or employee while acting without malice and in good faith within the course and scope of his or her employment and in performance of his or her official duties.” Ark. Code Ann. § 21-9-304(a) (emphasis added).

34. Accordingly, *if* a judgment is rendered for Dayong Yang, as special administrator of the estate of Le Yang, deceased, against the City of Little Rock or its employees, then the *state shall pay* actual damages awarded by the jury.

35. The case against the City of Little Rock and MEMS is presently before the Arkansas Supreme Court and is styled *City of Little Rock, et al. v. Dayong Yang, as Special Administrator of the estate of Le Yang, deceased*; Arkansas Supreme Court, Case No. CV-15-1057, an appeal

from *Dayong Yang, as Special Administrator of the estate of Le Yang, deceased v. City of Little Rock, Arkansas, et al.*, Pulaski County Circuit Court, 6th Division, Case No. 60CV-13-3115.

36. The Arkansas Attorney General's Office argued the following in a filing in the above referenced circuit court case:

Similarly, Arkansas Code section 21-9-304 provides a source or mechanism for payment if and when each of its conditions is met. It does not expressly or impliedly provide for circuit court jurisdiction to determine its application in a particular case, much less a court action by an injured party.

This does not mean there is no forum in which a proper claim may be determined under section 21-9-304. The Arkansas Constitution provides that the General Assembly, not the courts, shall provide for payment of all just and legal debts of the State. Ark. Const. Art. 16, Section 2. The General Assembly created the Arkansas Claims Commission for this purpose and granted it exclusive jurisdiction over virtually all claims against the State. *Fireman's Insurance Co.*, 301 Ark. at 456; *see also*, Ark. Code Ann. § 19-10-204. ***To the extent that a judgment in favor of the Plaintiff and against the City may be within the scope of section 21-9-304 the Claims Commission, not the courts, will have jurisdiction to determine the existence, nature and extent of the State's obligations.***

(emphasis added).


37. Yang is filing this indemnification claim now before the Arkansas State Claims Commission, prior to the running of the three year statute of limitations for negligence claims in Arkansas, so that if a judgment is rendered in his favor against the City of Little Rock and/or its employees he may then be able to present his indemnification claim to the Arkansas State Claims Commission for payment.

38. Additional pleadings and filings from the above referenced case, as well as other supporting documentation, will be provided to the Arkansas State Claims Commission.

Respectfully Submitted,

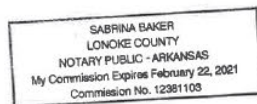
McMATH WOODS P.A.
711 West Third Street
Little Rock, AR 72201


By:


Carter C. Stein, AR Bar #2004049
Email: carter@mcmathlaw.com

*Attorney for Dayong Yang,
as special administrator of
the estate of Le Yang, deceased*

Sworn to and subscribed before me at Little Rock, Arkansas
on this 12th day of January, 2016.




Notary Public

My commission expires: 2/22/21

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

SECTION I

CLAIMANT

Regions Bank Trust Department, as Special Administrator of the estate of Jinglei Yi, deceased

ADDRESS

400 W. Capitol Ave., Ste. 700

CITY & STATE

Little Rock, AR

ZIP CODE

72201

DATE OF INCIDENT:

January 14, 2013

TIME

7:55 a.m.

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

Jinglei Yi suffered a drowning event in a submerged vehicle due to a delayed 911 response by the City of Little Rock. She was treated at the scene and at Baptist Hospital prior to her death that same day. She had medical

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

Expenses of over \$10,000.00

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	AMOUNT
1.		\$
2.		\$
3.		\$

SECTION III

Was property covered by insurance? Yes () No ()

If yes, what is the deductible? \$

NAME OF INSURANCE CARRIER

ADDRESS

SECTION IV

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

If yes, is medical insurance:

If yes, what is the deductible? \$ *None*

A. Job-based Yes (X) No ()

B. Uninsured Motorist Yes () No (X)

C. Private Pay Yes (X) No ()

NAME OF INSURANCE CARRIER

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: *Scott Detmer, Stephanie Brithig, and Wayne Bowley all of the Little Rock Police Department*

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

Little Rock AR

on this

12th

day of

Jan

19

2013

year

City & State

My Commission Expires

12-18-2023

Signature of Notary Public

**BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas**

**REGIONS BANK TRUST DEPARTMENT,
as Special Administrator of the Estate of
JINGLEI YI, deceased**

CLAIMANT

vs.


STATE OF ARKANSAS

RESPONDENT

Explanation (Continued from COMPLAINT form):

1. On the morning of January 14, 2013, Jinglei Yi and her then five year old son Le Yang were in a 2006 Ford Expedition headed east on Capitol Hill Boulevard.
2. Jinglei stopped at the stop sign at the intersection of Capitol Hill Boulevard and Pennsylvania Avenue/Rushmore Avenue.
3. As Jinglei proceeded through the intersection, she hit a patch of ice and lost control of her vehicle. Jinglei's vehicle continued east approximately 256 feet before going over the southbound curb line, leaving the roadway, striking a small tree, going down a hill, and entering a retaining pond on the south side of Capitol Hill Boulevard.
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6. The Pulaski County call taker told Jinglei she was getting her to the correct agency to get its fire department to help Jinglei and Le. The Pulaski County call taker transferred Jinglei's 911 call to the Little Rock Police Department Communications Center because Jinglei and Yi were within the city limits.

7. The Pulaski County call taker, with Jinglei on the line, called Little Rock 911 at 7:56:03 a.m.
8. Candace Middleton, a Little Rock employee, answered the call.
9. The female Pulaski County 911 operator told Middleton that Jinglei and Le were in a pond just east of Rushmore Avenue on the south side of the road. The Pulaski County call taker told Jinglei she was letting her speak with Little Rock 911.
10. Jinglei told Middleton "I'm falling in a pond and I feel the water in my car right now." Jinglei told Middleton her location, confirmed Le was in the car with her, and spelled her name.
11. In response to Jinglei's 911 call about a vehicle sinking in a pond, Middleton failed to enter the call for police and fire dispatch.
12. Middleton did call MEMS to have an ambulance go to the scene.
13. MEMS personnel arrived at the scene at 8:20:18 a.m. but police and fire department personnel were not there.
14. MEMS personnel called MEMS dispatch to check status of police and fire units.
15. MEMS dispatch called Pulaski County Sheriff's 911 Communications Center to check status of police and fire units.
16. Pulaski County Sheriff's 911 Communications Center advised MEMS dispatch that the call in question was a Little Rock call.
17. MEMS dispatch called Little Rock 911 at 8:21 a.m. about the status of police and fire units. At this time it was discovered that the call had not been entered.
18. The call was entered by Little Rock 911 at 8:23:02 a.m.
19. Little Rock water rescue units arrived at 8:40:34 a.m.
20. Jinglei Yi was extricated from the submerged vehicle at 8:48 a.m.



23. Jinglei Yi's injuries and death were proximately caused by the negligence of the City of Little Rock and its employees who were acting on behalf of the State of Arkansas and the Arkansas Department of Emergency Management.

24. The City of Little Rock "shall be immune from liability and from suit for damages except to the extent that [it] may be covered by liability insurance." Ark. Code Ann. § 21-9-301(a).

25. However, an exception to the City of Little Rock's immunity exists when it is sued for actions it undertakes for the State of Arkansas. Ark. Code. Ann. § 21-9-304.

26. "When any city of the first class . . . and its employees are called upon to assist the state and its employees and, as a result, are sued for their actions performed under the supervision of a state official or employee, the Attorney General shall defend the city of the first class . . . and its employees." Ark. Code Ann. § 21-9-304(a).

27. Here, the City of Little Rock has been called upon by the State of Arkansas and the Arkansas Department of Emergency Management to operate a public service answering point in connection with the statewide 911 system. Ark. Code Ann. § 21-9-304(a); *See also* Ark. Code Ann. § 12-10-302.

28. Further, the actions of the City of Little Rock in hiring, training, supervising, and retaining Middleton, maintaining its computer aided dispatch system, adequately staffing its Communications Center, Middleton's response to Jinglei's 911 call, and the police and fire department's response were performed under the supervision of David Maxwell, the head of the

Arkansas Department of Emergency Management who was appointed by the Governor of Arkansas as the State 911 Coordinator, and in furtherance of the State of Arkansas's desire to operate a statewide 911 system. Ark. Code Ann. § 21-9-304(a).

29. “***Should*** a judgment be rendered against the city of the first class . . . or its employees, the ***state shall pay*** actual, but not punitive, damages adjudged by a state or federal court, or entered by the court as a result of a compromise settlement approved and recommended by the Attorney General, based on an act or omission by the officer or employee while acting without malice and in good faith within the course and scope of his or her employment and in performance of his or her official duties.” Ark. Code Ann. § 21-9-304(a) (emphasis added).

30. Accordingly, ***if*** a judgment is rendered for Regions Bank Trust Department, as special administrator of the estate of Jinglei Yi, deceased, against the City of Little Rock or its employees, then the ***state shall pay*** actual damages awarded by the jury.

31. The case against the City of Little Rock and MEMS is presently pending in Arkansas circuit court in a case styled as *Regions Bank Trust Department, as Special Administrator of the estate of Jinglei Yi, deceased v. City of Little Rock, Arkansas, et al.*, Pulaski County Circuit Court, 16th Division, Case No. 60CV-15-4103.

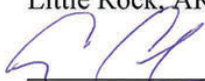
32. Regions Bank is filing this indemnification claim now before the Arkansas State Claims Commission, prior to the running of the three year statute of limitations for negligence claims in Arkansas, so that if a judgment is rendered in its favor against the City of Little Rock and/or its employees it may then be able to present its indemnification claim to the Arkansas State Claims Commission for payment.

33. Additional pleadings and filings from the above referenced case, as well as other supporting documentation, will be provided to the Arkansas State Claims Commission.

Respectfully Submitted,

McMATH WOODS P.A.
711 West Third Street
Little Rock, AR 72201

By:

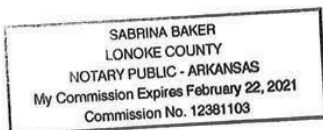



Carter C. Stein, AR Bar #2004049

Email: carter@mcmathlaw.com

*Attorney for Regions Bank Trust Department,
as special administrator of
the estate of Jinglei Yi, deceased*

Sworn to and subscribed before me at Little Rock, AR
on this 13th day of January, 2016.




Notary Public

My commission expires: Feb. 22, 2021

BEFORE THE STATE CLAIMS COMMISSION
OF THE STATE OF ARKANSAS

REGIONS BANK TRUST DEPARTMENT
administrator for the Estate of
Jinglei Yi, deceased

Arkansas Claims Commission

FEB 09 2016

RECEIVED

CLAIMANT

VS.

Claim No. 16-0497-CC

STATE OF ARKANSAS,
ARKANSAS DEPARTMENT OF
EMERGENCY MANAGEMENT

RESPONDENT

ANSWER

Comes the State of Arkansas, Arkansas Department of Emergency Management, through its attorney, Leslie Rutledge, Attorney General, and Patrick Hollingsworth, Assistant Attorney General, and for it answer states as follows:

1. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 1 of the Complaint.
2. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 2 of the Complaint.
3. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 3 of the Complaint.
4. The Respondent denies the allegations of paragraph 4 of the Complaint. The State of Arkansas has no 911 system. So-called 911 systems are owned, operated and managed by local entities.
5. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 5 of the Complaint.

6. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 6 of the Complaint.

7. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 7 of the Complaint.

8. The Respondent admits the allegations of paragraph 8 of the Complaint.

9. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 9 of the Complaint.

10. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 10 of the Complaint.

11. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 11 of the Complaint.

12. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 12 of the Complaint.

13. The Respondent admits that MEMS did arrive at the scene but does not have sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 13 of the Complaint.

14. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 14 of the Complaint.

15. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 15 of the Complaint.

16. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 16 of the Complaint.

17. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 17 of the Complaint.

18. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 18 of the Complaint.

19. The Respondent admits that Little Rock fire department employees designated for water rescue arrived, but does not have sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 19 of the Complaint.

20. The Respondent admits that the Jinglei Yi was removed from the vehicle. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 20 of the Complaint.

21. The Respondent does not have sufficient knowledge to form a belief as to the truth or falsity of paragraph 21 of the Complaint.

22. The Respondent admits that Jinglei Yi passed away, but does not have sufficient knowledge to form a belief as to the truth or falsity of the remaining allegations of paragraph 22 of the Complaint.

23. The Respondent does not have sufficient information or knowledge to form a belief as to the truth or falsity of the allegation that the death of Jinglei Yi was caused by negligence on the part of the City of Little Rock or its employees. The Respondent denies each and every other allegation of paragraph 23 of the Complaint. Neither the City of Little Rock, nor its employees, were acting on behalf of the State of Arkansas or any agency of the State of Arkansas.

24. The Respondent admits that paragraph 24 of the Complaint recites a portion of section 21-9-301(a) of the Arkansas Code.

25. The Respondent denies the allegations of paragraph 25 of the Amended Complaint.

26. The Respondent admits that paragraph 26 of the Complaint recites a portion of section 21-9-304(a) of the Arkansas Code.

27. The Respondent denies the allegations of paragraph 27 of the Complaint.

28. The Respondent denies the allegation of 28 of the Complaint.

29. The Respondent denies the allegations of paragraph 29 of the Complaint. The language recited is an excerpt from section 21-9-304(b) of the Arkansas Code.

30. The Respondent denies the allegations of paragraph 30 of the Complaint.

31. The Respondent does not have sufficient information or knowledge to admit or deny the allegations concerning the Claimant's reasons or intent for filing this claim.

32. The Respondent denies each and every other allegation of the Complaint not specifically admitted herein.

33. The Complaint fails to state facts upon which relief may be granted.

34. The Claimant is presently a plaintiff in the case of Regions Trust v. City of Little Rock, et al, pending in the Circuit Court of Pulaski County, Arkansas, asserting against the City of Little Rock and Little Rock Ambulance Authority D/B/A Metropolitan Emergency Medical Services ("MEMS") claims for recovery of damages related to the same events and circumstances alleged in this case. Upon information and belief, MEMS maintains insurance that, should liability attach, would provide a source of payment. The Claimant has further admitted that medical insurance paid for the costs of treatment of Jinglei Yi. The Claimant has failed to provide the affidavit required by Ark. Code Ann. § 19-10-302(b).

35. The Complaint fails to state the amount of damages sought, and therefore does not meet the requirements of rules 1.5(e) and 2.1 of the Rules of Practice and Procedure of the Arkansas Claims Commission.

36. The Claimant lacks standing to assert a claim under Ark. Code Ann. § 21-9-304.

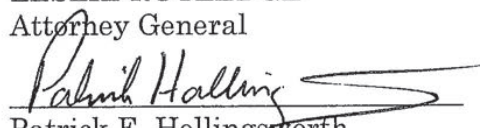
37. The Respondent cannot be liable for independent acts of individuals or entities who are not officers or employees of the State of Arkansas because any such liability would constitute an unconstitutional lending of the credit of the State of Arkansas.

38. The Respondent cannot be liable for independent acts of officers or employees of the City of Little Rock or MEMS because the State of Arkansas cannot constitutionally pay the debt or liability of any city that might arise from the circumstances at issue in this case.

Wherefore, the Respondent prays that the Complaint be dismissed, and for all other appropriate relief.

Respectfully submitted,
LESLIE RUTLEDGE
Attorney General

By:


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*Attorneys for Respondent State of Arkansas,
Department of Emergency Management*

CERTIFICATE OF SERVICE

I Patrick E. Hollingsworth, hereby certify that on February 9, 2016, I caused a copy of the forgoing to be placed in the U.S. Mail, with sufficient postage prepaid, addressed as follows:

Carter C. Stein
McMATH WOODS
711 West Third Street
Little Rock, AR 72201


Patrick E. Hollingsworth

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
____ DIVISION

**REGIONS BANK TRUST DEPARTMENT,
as Special Administrator of the Estate of
JINGLEI YI, deceased**

PLAINTIFF

VS. CASE NO. _____

**CITY OF LITTLE ROCK, ARKANSAS;
STUART THOMAS, individually and in his
official capacity as Chief of Police for the City of
Little Rock; WAYNE BEWLEY, individually and in
his official capacity as Assistant Chief of Police for
the City of Little Rock; LAURA MARTIN, individually
and in her official capacity as Communications
Center Manager for the City of Little Rock;
LINDA WILSON, individually and in her official
capacity as Communications Administrator for the
City of Little Rock; SHARON MARTIN,
in her official capacity as Communications Shift
Supervisor for the City of Little Rock; ALAN CATE,
individually and in his official capacity as
Communications Shift Supervisor for the City of
Little Rock; MARQUITA DOOLEY, individually and in
her official capacity as Emergency Communications
Trainer for the City of Little Rock;
CANDACE MIDDLETON, individually and in her
official capacity as Communications Call Taker for
the City of Little Rock; KAREN GRIMM, individually
and in her official capacity as Communications
Systems Specialist for the City of Little Rock;
GREGORY L. SUMMERS, individually and in his
official capacity as Fire Chief for the City of
Little Rock; ROBERT SHARP, individually and
in his official capacity as Fire Captain for
the City of Little Rock; and
LITTLE ROCK AMBULANCE AUTHORITY
d/b/a METROPOLITAN EMERGENCY MEDICAL
SERVICES**

DEFENDANTS

COMPLAINT

For its Complaint, Regions Bank Trust Department states:

NATURE AND PURPOSE OF THE ACTION

1. This case results from the mishandling of Jinglei Yi's 911 call seeking rescue services. Regions Bank Trust Department, as special administrator of Jinglei's estate, sues on behalf of the heirs of Jinglei's estate and wrongful death statutory beneficiaries and alleges negligence causes of action arising under Arkansas common law and civil rights violations actionable under 42 U.S.C. § 1983, the Fourteenth Amendment to the United States Constitution, and the laws of Arkansas. Regions seeks to recover money damages, both compensatory and punitive, from defendants for the injuries and death of Jinglei.

JURISDICTION AND VENUE

2. Jurisdiction of this court is based on Ark. Code Ann. § 16-13-201. Jinglei's estate and wrongful death beneficiaries have suffered losses and damages over the amount required for federal court diversity jurisdiction.

3. Venue is proper under Ark. Code Ann. § 16-60-102(b) because this complaint alleges causes of actions against public officials regarding events occurring in Pulaski County, Arkansas.

PARTIES

4. Regions Bank Trust Department is the special administrator of Jinglei's estate having been duly appointed by the Pulaski County Circuit Court. Regions Bank Trust Department is a division of Regions Bank, an Alabama corporation doing business in Arkansas.

5. Regions brings this action on behalf of Jinglei's estate, its heirs, and all her wrongful death statutory beneficiaries.

6. The file-marked Pulaski County Circuit Court order appointing Regions special administrator is attached as Exhibit 1. The attached order affirms that Regions is the special administrator of Jinglei's estate and is the real party in interest entitled to pursue this action under Ark. R. Civ. P. 17(a) and all other applicable law.

7. Letters of Administration issued by the Pulaski County Circuit Court on January 29, 2015 are attached as Exhibit 2.

8. The City of Little Rock, Arkansas is a political subdivision of the State of Arkansas and employed Stuart Thomas, Wayne Bewley, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, Marquita Dooley, Candace Middleton, Karen Grimm, Gregory L. Summers, and Robert Sharp. The city is an individual defendant on Regions' claims under the city's hiring, training, supervision, and retention of Middleton and unconstitutional policies, customs and practices of the city, the Little Rock Police Department, and Little Rock Fire Department, which policies, customs, and practices caused Jinglei's injuries. Upon Regions' information and belief, the Chief of Police, Assistant Chief of Police, Communications Center Manager, Communications Administrator, Communications Shift Supervisors, and Emergency Communications Trainer are policymakers for the city with authority to dictate hiring, training, supervision, and retention policies which constitute the official policy of the city and police department. Upon Regions' information and belief, the Chief of Police and the Fire Chief are policymakers for the city with authority to dictate the policy of handling 911 calls and water rescues which constitute the official policy of the city, the police department, and fire department.

9. Thomas was the Chief of Police and an employee of the city. Acting under the color of state law and under policies, customs and practices of the city and police department, he

was the commanding officer of Bewley, Laura Martin, Wilson, Sharon Martin, Cate, Dooley, Middleton, and Grimm. Thomas was responsible for hiring, training, supervision, and retention policies of the police department; for hiring, training, supervision, and retention decisions of the police department; for water rescue and scene security policies of the police department; for enforcing the policies, customs, and practices of the police department; and for ensuring police department personnel obeyed the laws and Constitutions of Arkansas and the United States.

10. Bewley was the Assistant Chief of Police and an employee of the city. Acting under the color of state law and under policies, customs and practices of the city and police department, he was a commanding officer of Laura Martin, Wilson, Sharon Martin, Cate, Dooley, Middleton, and Grimm. Bewley was responsible for hiring, training, supervision, and retention policies of the police department; for hiring, training, supervision, and retention decisions of the police department; for enforcing the policies, customs, and practices of the police department; and for ensuring police department personnel obeyed the laws and Constitutions of Arkansas and the United States.

11. Laura Martin was the Communications Center Manager and an employee of the city. Acting under the color of state law and under policies, customs, and practices of the city and police department, she was a commanding officer of Middleton. Martin was responsible for hiring, training, supervision, and retention policies of the police department; for hiring, training, supervision, and retention decisions of the police department; for enforcing the policies, customs, and practices of the police department; and for ensuring police department personnel obeyed the laws and Constitutions of Arkansas and the United States.

12. Wilson was the Communications Administrator and an employee of the city. Acting under the color of state law and under policies, customs, and practices of the city and

police department, she was a commanding officer of Middleton. Wilson was responsible for hiring, training, supervision, and retention policies of the police department; for hiring, training, supervision, and retention decisions of the police department; for enforcing the policies, customs, and practices of the police department; and for ensuring police department personnel obeyed the laws and Constitutions of Arkansas and the United States.

13. Sharon Martin was a Communications Shift Supervisor and an employee of the city. Acting under the color of state law and under policies, customs, and practices of the city and police department, she was a commanding officer of Middleton. Sharon Martin was responsible for hiring, training, supervision, and retention policies of the police department; for hiring, training, supervision, and retention decisions of the police department; for enforcing the policies, customs, and practices of the police department; and for ensuring police department personnel obeyed the laws and Constitutions of Arkansas and the United States.

14. Cate was a Communications Shift Supervisor and an employee of the city. Acting under the color of state law and under policies, customs, and practices of the city and police department, he was a commanding officer of Middleton. Cate was responsible for hiring, training, supervision, and retention policies of the police department; for hiring, training, supervision, and retention decisions of the police department; for enforcing the policies, customs, and practices of the police department; and for ensuring police department personnel obeyed the laws and Constitutions of Arkansas and the United States.

15. Dooley was the Emergency Communications Trainer and an employee of the city. Acting under the color of state law and under policies, customs, and practices of the city and police department, she was a commanding officer of Middleton. Dooley was responsible for training, supervision, and retention policies of the police department; for training, supervision,

and retention decisions of the police department; for enforcing the policies, customs, and practices of the police department; and for ensuring police department personnel obeyed the laws and Constitutions of Arkansas and the United States.

16. Middleton was a Communications Call Taker employed by the city and was acting under color of state law and under policies, customs, and practices of the city and police department.

17. Grimm was a Communications System Specialist employed by the city and was acting under color of state law and under policies, customs, and practices of the city and police department.

18. Summers was the Fire Chief and an employee of the city. Acting under the color of state law and under policies, customs, and practices of the city and fire department, he was the commanding officer of Sharp. Summers was responsible for water rescue policies and scene security policies of the fire department; for enforcing the policies, customs, and practices of the fire department; and for ensuring fire department personnel obeyed the laws and Constitutions of Arkansas and the United States.

19. Sharp was a Fire Captain employed by the city and was acting under color of state law and under policies, customs, and practices of the city and fire department.

20. Metropolitan Emergency Medical Services is the business name for the Little Rock Ambulance Authority, a component unit of the City of Little Rock, Arkansas. MEMS employed Patrick Harwell, Anthony Williams, Brandi Johnson, and Tarynn Reilly. MEMS is an individual defendant on Regions' claims alleging negligence by Harwell, Williams, and Johnson, and Reilly.

21. Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, Dooley, Middleton, and Grimm were police officers and employees of the city and as such each was the agent, servant, and employee of the city, and these defendants were acting within the course and scope of said agency and employment with knowledge and consent of said employer and principal.

22. Summers and Sharp were firemen of the city and as such each was the agent, servant, and employee of the city, and these defendants were acting within the course and scope of said agency and employment with knowledge and consent of said employer and principal.

23. Harwell, Williams, Johnson, and Reilly were paramedics and emergency medical technicians of MEMS and each was the agent, servant, and employee of a component unit of the city and were acting within the course and scope of their agency and employment, and with the knowledge and consent of the employer and principal.

STATEMENT OF THE CASE

State of Arkansas's 911 System

24. In 1985, the State of Arkansas established a 911 emergency call system. The Arkansas legislature determined it to be in the public interest of its citizens “to shorten the time and simplify the method required for a citizen to request and receive emergency aid.” Ark. Code Ann. § 12-10-302(a). The 911 system provides the citizens of Arkansas with a single, primary three digit emergency number through which fire, rescue, emergency medical, and law enforcement services may be quickly and efficiently obtained. *Id.* at 302(b). The Arkansas legislature found and declared it necessary to (1) establish 911 “as the primary emergency telephone number for use in participating political subdivisions” of the state. (2) Authorize county judges, mayors, city managers, or city administrators “to direct establishment and operation of 911 public safety communications centers in their political subdivisions and to designate the location of a 911 public safety communications center and agency which is to

operate the center.” (3) “Encourage the political subdivisions to implement 911 public safety communications centers.” (4) “Provide a method of funding for the political subdivisions which will allow them to implement, operate, and maintain a 911 public safety communications center.” *Id.* at 302(e)(1)(2)(3) and (4).

25. Under the statutory scheme, each political subdivision determines whether to afford 911 services but if it does so elect, then the political subdivision must designate the operating agency, which, “shall be the public safety answering point for the political subdivision...” *See* Ark. Code Ann. § 12-10-304.

26. Arkansas law requires the staff and supervisors of 911 communications centers to be paid employees and trained as necessary. Ark. Code Ann. § 12-10-306(a)(1) and (3). Arkansas law recommends staffing plans for 911 communications centers. Ark. Code Ann. § 12-10-306(b)(1).

27. Arkansas law requires 911 communication centers to be capable of transmitting requests for emergency services to the proper agency for providing the requested services. Ark. Code Ann. § 12-10-307.

28. Arkansas law requires 911 communications centers to respond to emergency requests in one of four defined methods. Ark. Code Ann. § 12-10-308.

29. The Arkansas Emergency Telephone Service Board (“AETSB”) was created by the state legislature to manage and disburse revenues from 911 service charges collected by telephone and cellular phone service suppliers. Ark. Code Ann. § 12-10-318(c). The AETSB distributes a percentage of the revenues to the political subdivisions for expenses incurred in implementing, operating, and maintaining 911 communications centers. Ark. Code Ann. § 12-

10-318(c)(2)(B)(i). Funds received by 911 communications centers from the AETSB must be spent in direct connection with the provision of 911 services. Ark. Code Ann. § 12-10-323(a)(1).

30. Arkansas law requires the Arkansas Law Enforcement Training Academy “to develop training standards for 911 dispatchers and instructors in Arkansas in consultation with the Association of Public-Safety-Communications Officials-International, Inc.” Ark. Code Ann. § 12-10-325.

31. In 2009, federal grant money was made available to the fifty states under the ENHANCE 911 (“E-911”) Act. *See* 47 U.S.C. 942.

32. On behalf of the State of Arkansas, David Maxwell, the Director and State Homeland Security Adviser of the Arkansas Department of Emergency Management (“ADEM”) completed the initial certification as Arkansas’ applicant and stated: “Arkansas does not have an officer or coordinator with the authority to manage E-911 services implementation and the Governor of Arkansas has designated . . . me as the State’s single officer to serve as the E-911 Coordinator of E-911 services implementation[.]” *See* Initial Certification attached as Exhibit 3 and July 23, 2009 letter from Governor Beebe attached as Exhibit 4.

33. Additionally, Maxwell stated:

The State has coordinated the application with local governments . . . and PSAPs within the state.

The State has established a State 911 Plan, consistent with the implementing regulations, for the coordination and implementation of E-911 services or for migration to an IP-enabled emergency network.

The State has integrated telecommunications services involved in the implementation and delivery of Phase II E-911 services or migration to an IP-enabled emergency network.

See Exhibit 3. See also excerpts of State Wireless E911 Plan attached as Exhibit 5.

34. The State of Arkansas was awarded an E-911 grant of \$594,060.05. See September 25, 2009 letter from NHTSA to Governor Beebe attached as Exhibit 6.

35. With Act 213 of 2012, Arkansas legislators approved and appropriated \$1,000,000.00 towards a statewide supplemental database service called Smart911. Arkansas was the first state to adopt the Smart911 system for its citizens.

City of Little Rock's 911 Communications Center and Emergency Services

36. Acting as an agent of the state to simplify the means of procuring emergency services for Arkansans, the city established and designated the City Office of Emergency Services as the entity charged with the operation of its 911 communications center. Little Rock City Code § 11-13 (1996). The center is funded in part by revenues collected from Arkansans and distributed to the city by the AETSB.

37. The city established a fire department, which is charged with providing emergency rescue services, and is funded by property taxes and other tax revenues. See Ark. Code Ann. § 14-53-101(a) ("The city council shall establish fire departments and provide them with proper engines and such other equipment as shall be necessary to extinguish fires and preserve the property of the city and of the inhabitants from conflagration.")

38. The city established an emergency medical response service, MEMS, which provides city wide ambulance and emergency medical services, and is funded by fees charged for such services. Little Rock City Code § 5-58 (1996).

39. As a consequence of the city's actions as an agent of the state, there are no private ambulance or rescue services offered within the city limits and citizens have been intentionally directed and educated to rely upon and use the state's 911 system as the one and only means of

obtaining help in the event of a full range of emergency situations, all of which are paid for by fees and taxes levied expressly to provide the noted services.

40. Having overtly and intentionally assumed to itself the role of emergency responder and coordinator through the entire spectrum of emergency response services, the city, acting as agent of the state, has assumed a special relationship with its citizens regarding such services and has an obvious duty to operate that system and to extend those services in a competent fashion. It is evident and foreseeable that failure to perform the assumed responsibilities with due care can occasion grave consequences involving the unnecessary loss of liberty, life, and property of citizens who may find themselves dependent upon those services.

City of Little Rock's Computer Aided Dispatch System and Call-Taker Procedures

41. The city uses the "direct dispatch method" for responding to emergency calls. The direct dispatch method is "a telephone service to a 911 public safety communications center and, upon receipt of a 911 telephone request for service, a decision as to the proper action to be taken shall be made and the appropriate emergency responder dispatched." Ark. Code Ann. § 12-10-311(1).

42. Communications Call Takers receive incoming 911 calls for the city. Call takers must enter emergency call information into the computer aided dispatch system or CAD. Little Rock Police Department Divisional Operating Procedure No. 5700-9, I.B., June 19, 2006.

43. When a 911 call is received, the call taker is automatically provided the phone number and location of the caller on a computer monitor. Call takers must verify that the phone number and location are correct when entering the call into the CAD. *Id.* at I.C. & D. Call takers must enter a call type and all pertinent information for the call. *Id.* at I.C. & E. As the call is entered in the CAD, it will appear in the calls pending drop-down box. After completing call

entry in the CAD, the call taker clicks a green illuminated “OK” button which sends the call to dispatch. *Id.* at I.F. The “OK” button will not illuminate until a call type and location have been entered. Once the call has been sent to dispatch, the call will be displayed in the dispatched calls drop-down box.

44. Call takers will attempt to keep a 911 caller on the line for all in progress calls. *Id.* at I.G. Call takers must advise the 911 caller that the call has been sent to dispatch and continue to gather additional information on in progress calls until an officer arrives on the scene. *Id.* at I.I. & J. When a call for an ambulance is received, the call taker transfers the call to MEMS and advises the caller that rescue is responding. Little Rock Police Department Divisional Operating Procedure No. 5700-39, I.B., May 30, 2011.

45. If a call taker receives a call where the street, address, or intersection does not verify because it has not been entered and/or updated in the CAD system, then the call taker must perform a mandatory location verification override or manual override of the CAD to dispatch police, fire, or both. *Id.* at I.M.

46. To perform a manual override, call takers “must use their own discretion and inventiveness, to determine the location of the event and invoke location verification override”. Altaris, Computer Aided Dispatch System, PRC Public Sector, Inc. 4.6.4, July 1998. The call taker must click the “manual combined/override” button and choose a location near the incident location to learn the appropriate police and fire units. The call taker must then manually enter the proper unit numbers before clicking the green illuminated “OK” button to send the call to dispatch.

47. Call takers **will** advise their shift supervisors any time they must override a street address. Divisional Operating Procedure No. 5700-9, I.N. (emphasis added).

Maintenance of the City of Little Rock's Computer Aided Dispatch System

48. The city's CAD system does not automatically update newly constructed or annexed city streets, addresses, or intersections. As streets and intersections are added to the master street address guide or city master street plan, the police and fire department are required to manually enter the street names, address ranges, and intersections for each street into the CAD. The police and fire department determine which units will respond to the newly added locations and enter those units into the CAD. Upon entry in the CAD system of a previously entered and updated street, address, or intersection, the proper police and fire units will automatically be assigned to the call.

49. Beginning in 1996, Grimm was responsible for entering and updating new streets, intersections, and address ranges and "pushing" this data onto the city's CAD system.

50. In June 2006, Grimm and the city had a backlog of streets, intersections, and address ranges to be entered and "pushed" onto the city's CAD system.

51. Due to the backlog, Laura Martin sent an email to "resolve issues with streets being entered into the CAD." *See* June 29, 2006 email from Laura Martin attached as Exhibit 7. In her email Laura Martin stated Chief Thomas "indicated [Grimm] will train [Sharp] to enter addresses for the Fire Department only in the CAD system. This training is not the complete training that a person needs, but if [he] can learn to enter streets and the Fire Department assumes responsibility for what he enters this will be a short-term fix until funding is available for formal training." *Id.*

52. Approximately seven months later, Wilson sent a CAD mail message stating "[Sharp] has a CAD now and is entering streets if you come across a street that is not in the CAD

please send him a CAD message.” See February 20, 2007 message from Wilson attached as Exhibit 8.

53. Beginning February 2007, Sharp entered and updated new streets, intersections, and address ranges while Grimm remained responsible for “pushing” this data onto the city’s CAD system.

Chronic Understaffing of the City of Little Rock’s Communications Center

54. On January 11, 2005, Interim Police Chief Carlos Corbin, in a memorandum to City Manager Bruce Moore, wrote:

The [Communications Center] staffing is always in a ***constant state of fluctuation*** and we are constantly in a state of trying to fill call taker and dispatcher positions. We have 15 vacancies at the present time including the five mandated vacancies. It is essential that we try to ***keep these critical positions filled***. The hiring process is lengthy and the qualified applicant pool is limited. I believe that an exemption to the hiring freeze is appropriate for these positions.

Exhibit 9 (emphasis added). Moore approved the request. *Id.*

55. In a February 2, 2006 memorandum addressed to Moore, Thomas advised “[w]e ***are constantly faced with high employee turnover*** in the [Communications Center] and ***maintaining adequate staffing remains a critical concern***. I continue to believe it is essential that we try to keep these positions filled and believe an exemption to the hiring freeze is necessary for these positions.” Exhibit 10 (emphasis added). Moore approved the request. *Id.*

56. On December 13, 2006, the Communications Center had 51 employees, 14 unfilled positions, and a 21% vacancy rate.

57. In a December 14, 2006 email, Laura Martin wrote “we will need more Calltaker Positions filled to cover the 3-1-1 calls that we expect to increase in the coming months.” Exhibit 11.

58. In a January 2, 2007 memorandum to Moore, Thomas requested an exemption to the hiring freeze to allow the hiring of call takers and dispatchers and wrote: “*We are constantly faced with a high employee turnover* in the [Communications Center] and *maintaining adequate staffing remains a critical concern*. I continue to believe that it is essential that we try to keep these positions filled and believe that an exemption to the hiring freeze is necessary for these positions.” Exhibit 12 (emphasis added). Moore approved Thomas’ request. *Id.*

59. In a July 2007 survey of turnover in other cities’ dispatch services, the city noted its Communications Center had a turnover problem and stated in the section for suggestions and comments: “Maintain a full staff. Little Rock has suffered staff reductions and hiring freezes. In addition, half of new hires leave within a month of their hire date. This makes it hard on the dispatchers.” Exhibit 13.

60. On December 31, 2007, the Communications Center had 57 employees, 15 unfilled positions, and a 20% vacancy rate.

61. In a January 14, 2008 memorandum to Moore, Thomas noted the Communications Center had 15 vacancies and requested “permission to initiate the hiring process for [call takers] and authority to continue this process as needed to maintain optimum staffing in the Communications Center throughout 2008.” Exhibit 14. Moore approved Thomas’ request. *Id.*

62. On September 17, 2008, Thomas wrote the following in a memorandum to Moore: “The Communications Division, even with [the five 911 Call Taker positions in “Do Not Fill” status] held, has *never been fully staffed* and given the turnover rate of new employees during the probationary period, the five “Do Not Fill” positions places an *artificially low ceiling*

on staffing. Exhibit 15 (emphasis added). Moore approved Thomas' request to remove the five "Do Not Fill" positions. *Id.*

63. On December 31, 2008, the Communications Center had 57 employees, 15 unfilled positions (including 11 unfilled calltaker positions), and a 20% vacancy rate. Exhibit 16.

64. In a February 3, 2009 memorandum to Moore, Thomas noted the Communications Center had 13 vacancies and requested "permission to initiate the hiring process for [call takers] and authority to continue this process as needed to maintain optimum staffing in the Communications Center throughout 2009." Exhibit 17. Moore approved Thomas' request. *Id.*

65. On December 31, 2009, the Communications Center had 58 employees, 14 unfilled positions (including 9 unfilled call taker positions), and a 19% vacancy rate. Exhibit 18.

66. On February 5, 2010, Thomas, in a memorandum to Moore, noted the Communications Center had 15 vacancies and requested permission to "continue the hiring process . . . throughout 2010 as needed to maintain optimum staffing in the Communications Center." Exhibit 19. Moore approved the request. *Id.*

67. On December 31, 2010, the Communications Center had 57 employees, 15 unfilled positions (including 9 unfilled call taker positions), and a 20% vacancy rate. Exhibit 20.

68. On April 4, 2011, Thomas, in a memorandum to Moore, noted the Communications Center had 20 vacancies and requested permission to "continue the hiring process . . . throughout 2011 as needed to maintain optimum staffing in the Communications Center." Exhibit 21. Moore approved the request. *Id.*

69. On December 31, 2011, the Communications Center had 63 employees, 9 unfilled positions (including 7 unfilled calltaker positions), and a 12% vacancy rate. Exhibit 22.

70. On May 24, 2012, Thomas, in a memorandum to Moore, noted the Communications Center had 23 vacancies and requested permission to “continue the hiring process . . . throughout 2012 as needed to maintain optimum staffing in the Communications Center.” Exhibit 23. Moore approved the request and noted that incentives might be needed for filling these vacancies.

71. On August 12, 2012, the city posted a job opening for calltakers. Exhibit 24. The posting indicated 25 positions were open with starting salaries of \$26,487.00. *Id.*

72. On December 31, 2012, the Communications Center was authorized to employ 84 employees. Exhibit 25. Of the 84 positions, 60 were filled and 24 were vacant creating a vacancy rate of 28%. *Id.* There were 26 unfilled calltaker positions. *Id.* (There were 24 vacancies because 23 of the 49 calltaker positions were filled and 25 employees filled the 23 dispatcher positions, a surplus of two. *Id.*)

Middleton’s Employment with the City of Benton

73. Middleton was hired by the City of Benton, Arkansas as a 911 Dispatcher on August 4, 1999.

74. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Middleton's Hiring by the City of Little Rock

97. On December 14, 2011, Middleton completed an online application for a call taker position with the city through the website NEOGOV. In her application, Middleton stated she was previously employed by Benton as a 911 Operator/Dispatcher from August 1999 to February 2011. Middleton stated she was terminated by Benton. Middleton granted permission to the city to contact Benton.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

99. On January 23, 2012, Middleton signed an Authorization to Release Information for the city. The authorization read :

I, Candace Middleton, have applied with the City of Little Rock, Arkansas, for the position of Communications Call Taker with the Little Rock Office of Emergency Services. In this position, I will be responsible for the dispatch of Police, Fire, and other Emergency Department equipment as well as doing responsible work to

assist the citizens of Little Rock in the protection of their lives and property. I have been made aware that employees in this position are State Statute Sworn Public Safety Officers for the purposes of Public Safety Communications. I have also been advised that employees in this position must meet certain requirements in order to be certified to receive confidential Arkansas Crime Information Center and National Crime Information Center criminal history information for dissemination to law enforcement agencies. This requires a search of my criminal history/conviction information as well as a background check with former and present employers.

I understand the responsibilities of this position, and I am aware of the reason for the release of information of a personal and private nature concerning my employment history, criminal/conviction information and personal references.

I hereby authorize the release of any of the above described information to the City of Little Rock Office of Emergency Services or to any duly authorized representative of that agency.

100. According to Middleton's NEOGOV Applicant Master Record, on January 26, 2012 she received a job referral for the call taker position. The job referral was made by Cate, who previously supervised Middleton while working for Benton.

101. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

102. On February 16, 2012, Martin prepared and initialed a memorandum addressed to Bewley recommending the hiring of Middleton as a call taker. Martin stated she had received Middleton's referral information in January 2012 and had interviewed Middleton.

103. On February 16, 2012 at 4:32 p.m., the communications department sent a fax to Benton Human Resources regarding Middleton. The fax included the Authorization to Release Information signed by Middleton and an employment reference form.

104. On February 17, 2012, Bewley handwrote on the Memorandum prepared by Martin that he recommended Thomas approve Martin's request to hire Middleton.

105. On February 17, 2012 at 5:15 p.m., Crystal Burton, Laura Martin's secretary, faxed Benton a cover letter signed by Martin accompanied by the Authorization to Release Information requesting Benton to complete the enclosed employment reference for Middleton.

106. On February 21, 2012, Kathy Kirk with Benton Police Communications completed and signed the employment reference form. Where asked whether Middleton was eligible for rehire with Benton, Kirk checked the line for "no" and wrote "(policy)." The Benton policy in effect when the employment reference form was completed stated "[f]ormer employees, whose performance while a City of Benton employee was at least satisfactory, are eligible to be considered for re-employment with the City of Benton."

107. The completed and signed employment reference form was returned to Laura Martin. Laura Martin did not contact Benton to follow up on Middleton's termination or why she was ineligible for rehire.

108. Middleton was hired as a call taker by the city on March 12, 2012. Thomas signed for his approval of Middleton's hire on March 14, 2012.

Middleton's Probationary Training Period

109. From March 12, 2012 to April 20, 2012, Middleton participated in the city's Communications Training Academy.

110. On March 19, 2012, Middleton was issued a copy of the police department's General Orders, Rules and Regulations, and Code of Conduct for Civilian Employees. She also received the communication department's Divisional Operating Procedure, Training Manual, a

City of Little Rock Geography Self-Study Guide, CAD Call Types & Priorities, Police Codes, and an Altaris CAD Manual.

111. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

113. A trainee’s monthly evaluations are to be completed by her trainer and sent to the shift supervisors, the communications administrator, the communications center manager, and the office of the police chief.

114. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

118. A daily report comprises two pages. The first page has three categories – attitude, knowledge, and telephone skills – where numeric ratings are assigned. Within the knowledge category, a rating for “CAD/Phone System” is to be assigned. Within the telephone skills

119. After a report is completed by the trainer, it is presented to the trainee and the on duty shift supervisor for review and signature. After the on duty shift supervisor reviews and signs the report, it is returned to the emergency communications trainer to include in the trainee's training manual. The shift supervisors, the communications administrator, and the communications center manager have access to a trainee's training manual.

[illegible]

[REDACTED]

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133. For the sign off of a call taker on probation, the city requires completing the Little Rock Communications Center Trainee Sign-Off Form. The form has sections to be completed by the trainer, shift supervisors, and the emergency communications trainer.

134. The trainer's section of the sign off form states: "It is my opinion, the trainee has consistently demonstrated the ability to meet or exceed performance standards at the position noted above." The trainer's signature is required.

135. The shift supervisors' section states: "With this request, [we] agree with the position trainer that the trainee has consistently demonstrated the ability to meet or exceed performance standards at the position noted above." The shift supervisors' signatures are required.

136. The emergency communications trainer must state in her section that she has evaluated the trainee at the call taker position on certain dates and recommends the trainee: 1) "should be signed off at this position"; 2) "should continue training at this position and be re-evaluated later"; or 3) "should be [called] in for a conference regarding [her] performance." The emergency communications trainer must choose one of the three options and sign the form. The communication center administrator's signature is also required on this section .

137. A sign off form was never completed for Middleton.

138. Upon Regions' information and belief, Middleton completed probation and became a full time permanent employee of the city on September 12, 2012.

Middleton's Work after Probation

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

[illegible]

147. In 2004, the initial construction of the intersection of Cooper Orbit and Rushmore was completed and the intersection was added to the city's street inventory.

148. By 2005, all of the streets making up Capitol Lakes Estates subdivision – Cooper Orbit Road, Capitol Hill Boulevard, Rushmore Avenue, and Hartford Street – had been platted and constructed.

149. On February 22, 2007, just two days after he received his CAD, Sharp entered the street information and address range for Rushmore Avenue. However, he did not enter the intersection of Cooper Orbit and Rushmore. Grimm “pushed” the street name and address range for Rushmore onto the city's CAD system.

150. On June 29, 2010, a 911 call was placed for the intersection of Cooper Orbit and Rushmore. As the intersection was not entered in the city's CAD system, Alan Cate who answered the 911 call had to manually override the location to facilitate a response by the city's fire department. *See* Exhibit 26.

151. On July 11, 2011, a 911 call was placed for the intersection of Cooper Orbit and Rushmore. As the intersection was not entered in the city's CAD system, the 911 call taker had to manually override the location to facilitate a response by the city's police department. *See* Exhibit 27.

152. On July 18, 2012, a 911 call was placed for the intersection of Cooper Orbit and Rushmore. As the intersection was not entered in the city's CAD system, the 911 call taker had to manually override the location to facilitate a response by the city's police department and MEMS. *See* Exhibit 28.

153. Upon Regions' information and belief, neither Cate, who answered the June 29, 2010 call, nor the call takers who answered the July 11, 2011 or July 18, 2012 calls notified a

shift supervisor that they had to manually override the intersection of Cooper Orbit and Rushmore.

Jinglei Yi and Her Family

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

157. In December 2011, Jinglei earned a nursing degree at the University of Arkansas at Little Rock.

158. In May 2012, Jinglei began working as a nurse at Baptist Health Medical Center in Little Rock.

Jinglei Yi's 911 Call

159. On the cold Monday morning of January 14, 2013, Jinglei placed Le in his car seat in the backseat of her 2006 Ford Expedition. She planned to take Le to school and then go to work. Jinglei backed out of her driveway and headed south on Hartford Street. She stopped at the stop sign and made a left to proceed eastward on Capitol Hill Boulevard. Shortly thereafter, Jinglei stopped at the stop sign at the intersection of Capitol Hill Boulevard and Pennsylvania Avenue/Rushmore Avenue.

160. As Jinglei proceeded through the intersection of Capitol Hill Boulevard and Pennsylvania Avenue/Rushmore Avenue, she hit a patch of ice and lost control of her vehicle.

Jinglei's vehicle continued east approximately 256 feet before going over the southbound curb line, leaving the roadway, striking a small tree, going down a hill, and entering a retaining pond on the south side of Capitol Hill Boulevard.

161. Jinglei used her cell phone to call Arkansas's 911 system at 7:55:25 a.m.¹

162. Jinglei's 911 call was answered by the Pulaski County Sheriff's 911 Communications Center. Jinglei told the female Pulaski County 911 call taker her vehicle had fallen in the water. She stated she was in the car with her child. The Pulaski County call taker asked Jinglei if she slid off into the pond and said "I see where you're at."

163. The Pulaski County call taker told Jinglei she was getting her to the correct agency to get its fire department to help Jinglei and Le. The Pulaski County call taker transferred Jinglei's 911 call to the Little Rock Police Department Communications Center because Jinglei and Yi were within the city limits.

164. The Pulaski County call taker, with Jinglei on the line, called Little Rock 911 at 7:56:03 a.m.²

165. Middleton answered the call.

166. The female Pulaski County 911 operator told Middleton that Jinglei and Le were in a pond just east of Rushmore Avenue on the south side of the road. The Pulaski County call taker told Jinglei she was letting her speak with Little Rock 911.

167. Jinglei told Middleton "I'm falling in a pond and I feel the water in my car right now." Jinglei told Middleton her location, confirmed Le was in the car with her, and spelled her name.

¹ Pulaski County 911 call time stamp. Jinglei's AT&T cell phone records indicate this call was placed at 7:59 a.m.

² Pulaski County 911 call time stamp. Little Rock 911 call time stamp for this call is 7:57:37 a.m.

168. Middleton attempted to enter Jinglei's 911 call into the city's CAD system. Middleton attempted to enter Jinglei's location of Cooper Orbit and Rushmore into the CAD system. Upon Regions' information and belief the city's CAD system did not verify the intersection of Cooper Orbit and Rushmore.

169. With Jinglei on the line, Middleton said "[w]hy is this not taking it, this Cooper Orbit and Rushmore?" Upon Regions' information and belief, Middleton made this statement to Communications Call Taker Thomas Keeler, who was seated at the console next to her.

170. Keeler told Middleton she would have to manually override the location of Cooper Orbit and Rushmore. Middleton asked Keeler how she would know which police and fire units would respond to the call. Keeler told Middleton to input the location of Cooper Orbit and Kanis as the units listed to respond to that location would also respond to Cooper Orbit and Rushmore. Middleton entered the address of Cooper Orbit and Kanis, hand wrote down the police and fire units listed for Cooper Orbit and Kanis, and attempted the CAD combined/manual override of entering the location of Cooper Orbit and Rushmore and the appropriate unit numbers.

171. Middleton told Jinglei "Okay, ma'am, we're going to get some help on the way for you, okay?" The call was disconnected at 7:59:42 a.m.³

172. Middleton hung up the phone without asking Jinglei if she was still on the line.

173. Middleton did not re-call Jinglei.

174. Middleton did not transfer Jinglei to MEMS.

175. Middleton called MEMS at 8:01:24 a.m.⁴ Middleton advised Brandi Johnson, the MEMS operator, that she had "a report of a vehicle off in a pond occupied by a female and a

³ Little Rock 911 call time stamp.

child at Cooper Orbit and Rushmore . . . in a pond just off Rushmore.” Middleton told Johnson that “[Jinglei’s] still in the car and the water was coming in.” Middleton Johnson said “[a]ll right we’ve got them on the way.” Johnson entered the call at 8:04:20 a.m.⁵

176. Middleton completed her entry of Jinglei’s call after disconnecting with Johnson.

177. At 8:05 a.m. and 8:06 a.m.⁶, Jinglei called Dayong and told him her vehicle was in the water and that she could feel water on her legs. Dayong was scrubbing into surgery at St. Vincent in Sherwood. Dayong left work immediately to come to Jinglei and Le’s aid.

178. At 8:06:11 a.m.⁷, MEMS ambulance unit 227, manned by Harwell and Williams, was enroute from Maumelle Boulevard and Counts Massie Road in Maumelle to aid Jinglei and Le. MEMS dispatch provided Harwell and Williams with the scene location - Cooper Orbit and Rushmore.

179. At 8:07 a.m.⁸, Johnson called Jinglei’s cell phone. Johnson spoke to Jinglei for the next thirteen and a half minutes.⁹ Twenty seconds into the phone conversation, Jinglei told Johnson the water was inside the car but below the seats of the car. Approximately one minute into the conversation, Jinglei told Johnson that Le was five years old and “he was crying but he’s okay.” Johnson advised Jinglei to take Le out of his car seat. Jinglei replied that Le had unlocked himself from the car seat. Jinglei told Johnson she and Le could not swim.

⁴ *Id.*

⁵ MEMS CAD time stamp.

⁶ Jinglei’s AT&T cell phone records.

⁷ MEMS CAD time stamp.

⁸ MEMS call time stamp and MEMS timeline of events.

⁹ MEMS call time stamp. Jinglei’s AT&T cell phone records indicate this call lasted fifteen minutes.

Approximately two and half minutes into the conversation, Jinglei said the water had risen to the level of the seats. Johnson asked Jinglei to “try to comfort [Le] and calm him down.” Jinglei said she was trying to calm him down. Approximately three and half minutes into the conversation, Johnson asked Jinglei to “talk to her son, try to comfort him.” Johnson told Jinglei “tell him to calm (sic) the ambulance is on the way.” Le screamed louder. The water was almost above the seats. Approximately five and a half minutes into the conversation, Jinglei told Johnson the water level was to the windows of the car. Johnson asked Jinglei if Le knew how to hold his breath. Johnson wanted Jinglei and Le to take a deep breath just before the car filled with water, hold their breath once the car was completely filled with water, open a car door, and then swim to the surface. Approximately nine minutes into the conversation, Jinglei told Johnson the car was almost filled with water. Le was frantic. Approximately eleven minutes into the conversation, Jinglei told Johnson the water was to her neck. Twelve minutes into the conversation, Johnson told Jinglei “tell your son to take a deep breath when [the water] covers his face.” Approximately twelve and a half minutes into the conversation, a siren was heard. Jinglei told Johnson she could hear the ambulance. Johnson told Jinglei to keep Le calm. Jinglei said he was okay. Johnson told Jinglei to keep Le’s head above water. Thirteen minutes into the conversation, Le’s screams became muffled. Then, Le’s screams could no longer be heard. Johnson asked Jinglei: “Are you there? Hello?” The line was silent. It was 8:21 a.m.¹⁰

180. During the thirteen and a half minutes Johnson was on the phone with Jinglei, neither Johnson nor Reilly, who was handling MEMS radio traffic, or any other MEMS dispatchers called Little Rock 911 to check the status of police and fire rescue.

¹⁰ MEMS call time stamp.

181. At 8:08 a.m.¹¹, when Johnson was on the phone with Jinglei, Wilson went to Middleton's console to check on a problem reported about the desk. Middleton never mentioned Jinglei's call to Wilson.

182. Despite being provided the intersection of Cooper Orbit and Rushmore by MEMS dispatch, Harwell and Williams drove past the intersection and the pond off Rushmore without stopping the ambulance or exiting the ambulance to look for a vehicle in the pond.

183. Harwell and Williams continued to drive down Cooper Orbit to see if they could find the vehicle in a different pond. After not finding the vehicle, they turned around and drove back to Cooper Orbit and Rushmore where they were stopped by a bystander advising of the vehicle in the pond.

184. Harwell and Williams checked in at the scene at 8:20:18 a.m.¹² Approximately five to ten minutes elapsed from when Harwell and Williams drove by the scene initially until they returned to the scene and stopped.

185. After checking in at the scene, Harwell and Williams called MEMS dispatch to check status of police and fire rescue.

186. At 8:21 a.m.¹³, Reilly, a MEMS supervisor, called Little Rock 911. Keeler answered the call. Reilly asked Keeler if Little Rock was handling the car in the water at Cooper Orbit and Rushmore. Keeler checked the CAD and said, "I'm not seeing it." Reilly replied, "Are you kidding me?" Keeler confirmed that neither a rescue call nor a police call had been

¹¹ According to Linda Wilson's Memorandum.

¹² MEMS CAD time stamp.

¹³ MEMS call time stamp and MEMS timeline of events. Little Rock 911 call time stamp for this call is 8:17:28. a.m.

placed. Keeler stated, “I’ll get a call put in.” Reilly said: “We just checked on scene and (sic) we’re not going to be able to get them out without help.”

187. Keeler asked Middleton if she had entered the water rescue call from earlier. Middleton told Keeler she thought she had. Middleton checked the dispatched calls drop-down box on her console for the first time since she ended the call with Jinglei. She couldn’t find the call.

188. Middleton said nothing to fire or police dispatch or to her supervisors.

189. Keeler entered calls in the CAD for fire and police at 8:23:02 a.m.¹⁴ Keeler also sent an administrative message to police and fire dispatch notifying them of MEMS’ claim of a delayed response.

190. Operator Sheryl Dykes responded to the fire dispatch call for an “accident vehicle in water.” Dykes called MEMS to verify the type of water the vehicle was in. Dykes dispatched Engine 20, Battalion Chief 9, Water Rescue 2, and Rescue 2.

191. Engine 20 was dispatched at 8:23:31 a.m., was enroute at 8:25:51 a.m., and arrived at the scene at 8:28:45 a.m.¹⁵ Firefighter Frank Scott was on board Engine 20.

192. Battalion Chief 9 was dispatched at 8:23:31 a.m., was enroute at 8:25:08 a.m., and arrived at the scene at 8:35:43 a.m.¹⁶ Firefighter Eddie Rhine was on board Battalion Chief 9.

193. Water Rescue 2 was dispatched at 8:24:57 a.m. and was enroute at 8:28:21 a.m.¹⁷

194. Rescue 2 was dispatched at 8:28:29 a.m. and was enroute at 8:28:36 a.m.¹⁸

¹⁴ Little Rock 911 CAD time stamp.

¹⁵ LRFD event report.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

195. At 8:25:03 a.m.¹⁹, MEMS Supervisor Robert Darr was enroute to the scene. Darr arrived at the scene at 8:33:26 a.m.²⁰

196. At 8:27:55 a.m.²¹, MEMS ambulance unit 517 was enroute from Pleasant Valley Living Center to the scene. MEMS ambulance unit 517 arrived at the scene at 8:37:19 a.m.²²

197. Ficklin responded to the police dispatch call and dispatched police units at 8:27:50 a.m.²³ Officers Steve McGuire and Peter Whaley arrived on the scene at 8:35:30 a.m.²⁴ Officer Ronnie Carr arrived at the scene at 8:37:00 a.m.²⁵ Officer James Nellis arrived at the scene at 8:37:45 a.m.²⁶ Officers Troy Dillard and Anthony Moore arrived at the scene at 8:39:47 a.m.²⁷

198. McGuire and Whaley secured the scene upon their arrival. Whaley noticed Jinglei's vehicle was almost on the opposite side of the pond by the location of the air bubbles floating to the surface.

199. Upon Regions' information and belief, city, police, and fire policies, customs and regulations existed which required vehicles responding to a request for emergency services to turn on their sirens and lights and for emergency response personnel to secure the scene.

¹⁹ MEMS CAD time stamp.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ LRPD event report.

²⁴ *Id.*

²⁵ LRPD MVR time stamp.

²⁶ *Id.*

²⁷ LRPD event report.

200. Dayong arrived at the scene at 8:37:38 a.m.²⁸ McGuire, Whaley and Carr contacted Dayong at 8:38:05 a.m.²⁹ At 8:39:34 a.m.³⁰, McGuire, Whaley and Carr confirmed to Dayong that Jinglei's vehicle remained submerged.

201. Scott briefed Rhine regarding the situation. Engine 20's crew was prepared to enter the water when they heard Rescue 2 approaching the scene. Rhine advised Engine 20's crew to stand by to assist Rescue 2 when it arrived. Rhine advised Captain John Hogue of Rescue 2 by radio that Jinglei's submerged vehicle was thirty feet out in the pond and that he could see the top of the vehicle just below the surface. Rescue 2 arrived at the scene at 8:40:34 a.m.³¹

202. Fire department guidelines required every fire company, including Engine 20, to have water rescue equipment. Little Rock Fire Department Standard Operating Guideline Number 11650, Section IV.1. December 8, 2011.

203. Fire department guidelines prevented Scott, Rhine, and Engine 20's crew from entering the water to assist Jinglei and Le. *Id.* at Section IV.5.f)(iii).

204. Fire department policy required Rhine and Scott to keep all non-fire department personnel at least ten feet away from the water. *Id.* at Section IV.2.

205. Hogue and Firefighter Jesse Clark entered the water to rescue Jinglei and Le. Clark broke out the driver's side rear window and found Jinglei in the back of the vehicle. Hogue swam Jinglei to shore. Darr saw Hogue pull Jinglei out of the water at 8:48 a.m.³² Hogue

²⁸ LRPD MVR time stamp.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² MEMS timeline of events.

turned Jinglei's care over to MEMS. At 9:04:04 a.m.³³, Jinglei was taken by MEMS ambulance unit 517 from the scene enroute to Baptist Medical Center in Little Rock. She was unconscious.

206. Jinglei was pronounced dead at Baptist Medical Center at 11:44 a.m. Drowning was listed as her cause of death on her death certificate.

207. At 8:38 a.m.³⁴, Sharon Martin called MEMS and spoke to Chris. Chris complained to Sharon Martin about rescue's delayed response time. Sharon Martin explained that calls for police and fire were entered at 8:23:02 a.m. Chris responded that MEMS received a call from Little Rock 911 at 8:04 a.m. Sharon Martin stated she would go back and "check the tapes." Chris detailed how MEMS ambulance arrived at the scene at 8:20 a.m. which was three minutes before police and fire calls were entered. Chris told Sharon Martin that MEMS units "are not supposed to enter the water." Sharon Martin agreed MEMS was not to enter the water.

208. Sharon Martin informed Wilson of MEMS' claim of a delayed response. Sharon Martin and Wilson reviewed the 911 audio tapes and discovered the delay in the 911 call being entered and dispatched. Wilson alerted Laura Martin to the delayed response. Laura Martin and Wilson discussed the delayed response with Middleton. Middleton was subsequently relieved of her duties.

209. At 12:30 p.m., the water temperature in the pond was 47 degrees Fahrenheit per measurements by the Arkansas Department of Environmental Quality.

210. On the day of the incident, the Communications Center was authorized to employ 84 employees. Exhibit 29. Of the 84 positions, 67 were filled and 17 were vacant creating a vacancy rate of 20%. *Id.* There were 19 unfilled calltaker positions. *Id.* (There were 17

³³ MEMS CAD time stamp.

³⁴ MEMS call time stamp.

vacancies because 30 of the 49 calltaker positions were filled and 25 employees filled the 23 dispatcher positions, a surplus of two. *Id.*)

211. On the day of the incident, there was a backlog of streets, intersections, and address ranges to be entered and updated in the city's CAD system.

Post-Incident

212. On January 24, 2013, Captain Bob Sharp of the fire department entered the intersection of Cooper Orbit Road and Rushmore Avenue into the CAD.

213. On April 12, 2013, Sharp sent an email stating he was "no longer assisting with CAD issues such as streets missing or address [ranges] not being in the CAD." *See* April 12, 2013 email from Sharp attached as Exhibit 30.

214. In response to Sharp's email, Laura Martin stated she would "need to inform [Grimm] that she will have the [task] of entering streets until we can hire additional staff." *Id.*

215. On April 17, 2013, Kathleen Walker, Employment Services Manager for the City of Little Rock issued a memorandum on Communications Center call takers and dispatchers. *See* Exhibit 31. She noted on April 10, 2013, the Communications Center had twenty-one vacancies and a vacancy rate of 29%. *Id.*

216. In her memorandum, Walker discussed current recruitment and selection of call taker and dispatcher applicants and noted that "the current cut-off scores are low in an attempt to produce larger applicant pools." *Id.* Further, "[a]ddressing recruiting and quality of referred candidates [in the call taker position] is meaningless if the retention issue is not addressed." *Id.*

217. Walker also noted the current hiring salary of call takers was \$27,265, the minimum allowed for the position as graded by the city, and all call takers were making less than \$28,815, regardless of the length of their tenure and despite \$41,988 being the maximum

allowable salary. *Id.* Stated a different way, all call takers were paid in the bottom 11% of the salary range as designated by the city. By comparison, all calltakers were being paid less than the lowest paid Little Rock Police Department secretary. *Id.*

218. Walker stated in her recommendations that “[t]he goal of improving retention and hire rates, would decrease the vacancy rates and improve the overall efficiency of the Communications Call Center.” *Id.*

COUNT I: Negligent Hiring of Candace Middleton by the City of Little Rock, Stuart Thomas, Wayne Bewley, Laura Martin, Linda Wilson, and Alan Cate

219. All allegations are incorporated in this count.

220. Thomas, Bewley, Laura Martin, Wilson, and Cate owed a duty of reasonable care to the citizens of Arkansas and Jinglei to properly, diligently, and adequately screen Middleton to determine her qualifications and employment history before hiring her as a call taker.

221. Thomas, Bewley, Laura Martin, Wilson, and Cate breached their duty to the citizens of Arkansas and Jinglei by hiring Middleton as evidenced by Laura Martin’s failure to follow up with Benton despite Benton’s statement that Middleton was not eligible for rehire for the same position the city was seeking to hire Middleton; allowing Cate, a former supervisor and personal reference of Middleton, to serve on Middleton’s interview panel; and the failure of Laura Martin, Wilson, and Cate to ascertain Middleton’s employment history of substandard and dangerous work performance with Benton during her interview.

222. Thomas, Bewley, Laura Martin, Wilson, and Cate knew, or in exercising reasonable care should have known, that employing Middleton as a call taker subjected the citizens of Arkansas and Jinglei to an unreasonable risk of harm.

223. The negligent acts of Thomas, Bewley, Laura Martin, Wilson, and Cate in hiring Middleton as a call taker were a proximate cause of Jinglei’s injuries.

224. At the time of the hiring of Middleton, Thomas, Bewley, Laura Martin, Wilson, and Cate were acting within the scope of their employment with the city and the police department, subject to its control, and in furtherance of its interests.

225. Under the doctrine of *respondeat superior* and Arkansas law, the city is vicariously liable for the conduct of Thomas, Bewley, Laura Martin, Wilson, and Cate and all damages and consequences of their conduct.

COUNT II: Negligent Training of Candace Middleton by the City of Little Rock, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, and Marquita Dooley

226. All allegations are incorporated in this count.

227. Laura Martin, Wilson, Sharon Martin, Cate, and Dooley owed a duty of reasonable care to the citizens of Arkansas and Jinglei to properly, diligently, and adequately train Middleton as a call taker.

228. Laura Martin, Wilson, Sharon Martin, Cate, and Dooley breached their duty to the citizens of Arkansas and Jinglei by failing to properly train Middleton as evidenced by the lack of progress or improvement in her daily observation reports and monthly evaluations.

229. Laura Martin, Wilson, Sharon Martin, Cate, and Dooley knew, or in exercising reasonable care should have known, that Middleton subjected the citizens of Arkansas and Jinglei to an unreasonable risk of harm as it was foreseeable her inability to perform critical tasks as a call taker in a high stress environment would cause bodily harm to those seeking aid.

230. The negligent acts of Laura Martin, Wilson, Sharon Martin, Cate, and Dooley in failing to properly train Middleton were a proximate cause of Jinglei's injuries.

231. At the time of Middleton's training, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley were acting within the scope of their employment with the city and the police department, subject to its control, and in furtherance of its interests.

232. Under the doctrine of *respondeat superior* and Arkansas law, the city is vicariously liable for the conduct of Laura Martin, Wilson, Sharon Martin, Cate, and Dooley and all damages and consequences of their conduct.

COUNT III: Negligent Supervision of Candace Middleton by the City of Little Rock, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, and Marquita Dooley

233. All allegations are incorporated in this count.

234. Laura Martin, Wilson, Sharon Martin, Cate, and Dooley owed a duty of reasonable care to the citizens of Arkansas and Jinglei to properly, diligently, and adequately supervise Middleton.

235. Laura Martin, Wilson, Sharon Martin, Cate, and Dooley breached their duty to the citizens of Arkansas and Jinglei by failing to properly supervise Middleton as evidenced by the absence of any shift supervisor comments on her daily observation reports; the absence of shift supervisor signatures on sixteen of the sixty-six daily observation reports; Middleton's completion of probation and move to full-time call taker employment despite the failure of Wilson, Sharon Martin, Cate, Dooley, and Norman to complete and sign the sign off form; Middleton's completion of probation and move to full-time call taker employment despite the reports and evaluations indicating she was not ready to work on her own; Middleton's release from probation at the earliest possible date despite her lack of readiness; and the four counselings Middleton received post-probation for errors similar to errors she made during her probation.

236. Laura Martin, Wilson, Sharon Martin, Cate, and Dooley knew, or in exercising reasonable care should have known, that Middleton subjected the citizens of Arkansas and Jinglei to an unreasonable risk of harm as it was foreseeable her inability to perform critical tasks as a call taker in a high stress environment would cause bodily harm to those seeking aid.

237. The negligent acts of Laura Martin, Wilson, Sharon Martin, Cate, and Dooley in failing to properly supervise Middleton were a proximate cause of Jinglei's injuries.

238. Middleton was supervised by Laura Martin, Wilson, Sharon Martin, Cate, and Dooley, who were acting within the scope of their employment with the city and the police department, subject to its control, and in furtherance of its interests.

239. Under the doctrine of *respondeat superior* and Arkansas law, the city is vicariously liable for the conduct of Laura Martin, Wilson, Sharon Martin, Cate, and Dooley and all damages and consequences of their conduct.

COUNT IV: Negligent Retention of Candace Middleton by the City of Little Rock, Stuart Thomas, Wayne Bewley, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, and Marquita Dooley

240. All allegations are incorporated in this count.

241. Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley owed a duty of reasonable care to the citizens of Arkansas and Jinglei to retain Middleton only if she was capable of properly, diligently, and adequately performing her duties as a call taker.

242. Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley breached their duty to the citizens of Arkansas and Jinglei by retaining Middleton despite her lack of progress or improvement in her call taker performance as noted in her daily observation reports, monthly evaluations, and the counselings she received after her probationary period ended.

243. Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley knew, or in exercising reasonable care should have known, that retaining Middleton subjected the citizens of Arkansas and Jinglei to an unreasonable risk of harm as it was foreseeable her

inability to perform critical tasks as a call taker in a high stress environment would cause bodily harm to those seeking aid.

244. The negligent acts of Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley in retaining Middleton were a proximate cause of Jinglei's injuries.

245. Middleton was retained by Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley, who were acting within the scope of their employment with the city and the police department, subject to its control, and in furtherance of its interests.

246. Under the doctrine of *respondeat superior* and Arkansas law, the city is vicariously liable for the conduct of Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley and all damages and consequences of their conduct.

COUNT V: City of Little Rock, Little Rock Police Department, Little Rock Fire Department, Karen Grimm, and Bob Sharp's Negligent Maintenance of the CAD System

247. All allegations are incorporated in this count.

248. The city, police department, fire department, Grimm, and Sharp owed a duty to the citizens of Arkansas and Jinglei to keep the CAD system updated and current.

249. The city, police department, fire department, Grimm, and Sharp breached their duty to the citizens of Arkansas and Jinglei by failing to update the CAD system with the location of Cooper Orbit Road and Rushmore Avenue for over seven years after the streets were constructed or annexed.

250. The city, police department, fire department, Grimm, and Sharp knew, or in exercising reasonable care should have known, that not keeping the CAD system current would force call takers to perform manual location overrides which would increase the chances of calls not being entered, or entered correctly, into the CAD system making it foreseeable that individuals seeking emergency rescue services would suffer bodily harm.

251. The city, police department, fire department, Grimm, and Sharp's negligent maintenance of the CAD system was a proximate cause of Jinglei's injuries and death.

252. In maintaining the city's CAD system, Grimm and Sharp were acting within the scope of their employment with the city, police department (Grimm), and fire department (Sharp), subject to its control, and in furtherance of its interests.

253. Under the doctrine of *respondeat superior* and Arkansas law, the city is vicariously liable for the conduct of Grimm and Sharp and all damages and consequences of their conduct.

COUNT VI: Inadequate Staffing of the Little Rock Police Department's Communications Center by the City of Little Rock, Little Rock Police Department, Stuart Thomas, Wayne Bewley, and Laura Martin

254. All allegations are incorporated in this count.

255. The city, police department, Thomas, Bewley, and Laura Martin owed a duty to the citizens of Arkansas and Jinglei to adequately staff the Communications Center.

256. The city, police department, Thomas, Bewley, and Laura Martin breached their duty to the citizens of Arkansas and Jinglei by chronically understaffing the Communications Center despite written acknowledgement that the Communications Center was understaffed for years prior to this incident; written acknowledgement that proper staffing levels were critical to the Communication Center's performance; and acknowledgement that the calltaker positions involved high stresses; odd, long hours; and inadequate pay which created high calltaker turnover.

257. The city, police department, Thomas, Bewley, and Laura Martin knew, or in exercising reasonable care should have known, that not keeping the Communications Center adequately staffed would force the available call takers to work more shifts and to answer more emergency calls which would increase the chances of calls not being handled properly making it

foreseeable that individuals seeking emergency rescue services would suffer bodily harm or death.

258. The city, police department, Thomas, Bewley, and Laura Martin's inadequate staffing of the Communications Center was a proximate cause of Jinglei's injuries and death.

259. In staffing the Communications Center, Thomas, Bewley, and Laura Martin were acting within the scope of their employment with the city and the police department, subject to its control, and in furtherance of its interests.

260. Under the doctrine of *respondeat superior* and Arkansas law, the city is vicariously liable for the conduct of Thomas, Bewley, and Laura Martin and all damages and consequences of their conduct.

COUNT VII: Middleton's Negligent Performance of Undertaking to Render Rescue Services

261. All allegations are incorporated in this count.

262. Middleton, through her employment with the city, undertook the duty to render rescue services to Jinglei upon Jinglei's request for rescue services.

263. Middleton should have recognized rescue services were necessary to protect the life and liberty of Jinglei.

264. Jinglei relied upon Middleton providing rescue services.

265. Middleton failed to exercise reasonable care in securing rescue services for Jinglei by not entering Jinglei's call into the CAD, by not notifying other call takers or dispatchers of her difficulty in entering the call, by ending Jinglei's phone call, by not remaining on the line with Jinglei, by not transferring Jinglei to MEMS, by not checking her calls pending or dispatched calls screen, by not notifying her supervisors of Jinglei's high priority call, and by not

advising other call takers, dispatchers, or supervisors of the delay in dispatch after MEMS called and spoke to Keeler.

266. Middleton's negligent performance of undertaking to render rescue services was a proximate cause of Jinglei's injuries and death.

267. When Middleton received the 911 call from Jinglei, she was acting within the course and scope of her employment with the city, subject to its control and in furtherance of its interests.

268. Under the doctrine of *respondeat superior* and Arkansas law, the city is vicariously liable for the conduct of Middleton and all damages and consequences of her conduct.

COUNT VIII: Little Rock Fire Department's Negligent Performance of Undertaking to Render Rescue Services

269. All allegations are incorporated in this count.

270. Scott and Rhine, through their employment with the city and the fire department, undertook the duty to render rescue services to Jinglei and Le.

271. Scott and Rhine's failure to exercise reasonable care in performing rescue services increased the risk of harm to Jinglei. Scott arrived at 8:28:45 a.m. Rhine arrived at 8:35:43 a.m. Scott briefed Rhine on the situation. Engine 20 had water rescue capabilities. Rhine advised Engine 20's crew to stand by and assist Rescue 2 which arrived at 8:40:34 a.m. Jinglei was underwater in a submerged vehicle for a critical eleven minutes and forty-nine seconds during the inaction of Scott and Rhine. Scott and Rhine knew timely rescue services were necessary to protect Jinglei.

272. Scott and Rhine's failure to exercise reasonable care in performing rescue services was a proximate cause of Jinglei's injuries and death.

273. When Scott and Rhine were performing rescue services, they were acting within the course and scope of their employment with the city and fire department, subject to its control and in furtherance of its interests.

274. Under the doctrine of *respondeat superior* and Arkansas law, the city is vicariously liable for the conduct of Scott and Rhine and all damages and consequences of their conduct.

COUNT IX: MEMS' Negligent Performance of Undertaking to Render Rescue Services

275. All allegations are incorporated in this count.

276. Johnson, Reilly, Harwell, and Williams, through their employment with MEMS, undertook the duty to render rescue services to Jinglei.

277. Johnson's failure to exercise reasonable care in performing rescue services increased the risk of harm to Jinglei. Johnson was on the phone with Jinglei from 8:07 a.m. until 8:21 a.m. Except for the last few seconds of the thirteen and a half minute phone call, Jinglei was not completely submerged. At no point during the call did Johnson call Little Rock 911 to check the status of police and fire rescue. At no point during the call did Johnson advise another MEMS dispatcher to call Little Rock 911 to check the status of police and fire rescue. Johnson's failure to check the status of police and fire rescue, or to have another MEMS dispatcher check for her, resulted in additional time elapsing prior to the dispatching of police and fire rescue. Johnson knew timely rescue services were necessary to protect Jinglei.

278. Reilly's failure to exercise reasonable care in performing rescue services increased the risk of harm to Jinglei. Reilly was handling MEMS radio traffic during the time Johnson was on the phone with Jinglei. At no point prior to hearing from Harwell and Williams did Reilly call Little Rock 911 to check the status of police and fire rescue. Reilly's failure to

check the status of police and fire rescue, or to have another MEMS dispatcher check for her, resulted in additional time elapsing prior to the dispatching of police and fire rescue. Reilly knew timely rescue services were necessary to protect the life of Jinglei.

279. Harwell and Williams' failure to exercise reasonable care in performing rescue services increased the risk of harm to Jinglei. Despite being provided the scene location by MEMS dispatch, Harwell and Williams drove past the intersection and the pond off Rushmore without stopping the ambulance or exiting the ambulance to look for a vehicle in the pond before returning to the scene. Harwell and Williams' initial failure to inspect the scene resulted in an approximate five to ten minute delay in arriving at the scene which in turn caused a delay in contacting MEMS dispatch to check status of police and fire rescue. Harwell and Williams knew timely rescue services were necessary to protect Jinglei.

280. Johnson, Reilly, Harwell, and Williams' failure to exercise reasonable care in performing rescue services were proximate causes of Jinglei's injuries and death.

281. When Johnson, Reilly, Harwell, and Williams were performing rescue services, they were acting within the course and scope of their employment with MEMS, subject to its control, and in furtherance of its interests.

282. Under the doctrine of *respondeat superior* and Arkansas law, MEMS is vicariously liable for the conduct of Johnson, Reilly, Harwell, and Williams and all damages and consequences of their conduct.

The State of Arkansas Shall Indemnify the City of Little Rock for its Negligent Acts

283. All allegations are incorporated in this count.

284. Ark. Code Ann. § 21-9-301(a) states: “It is declared to be the public policy of the State of Arkansas that all . . . political subdivisions of the state . . . shall be immune from liability and from suit for damages except to the extent that they may be covered by liability insurance.”

285. However, an exception to a city’s immunity exists when sued for actions it undertakes for the state. Ark. Code. Ann. § 21-9-304.

286. “When any city of the first class . . . and its employees are called upon to assist the state and its employees and, as a result, are sued for their actions performed under the supervision of a state official or employee, the Attorney General shall defend the city of the first class . . . and its employees.” Ark. Code Ann. § 21-9-304(a).

287. The city has been called upon by the state to operate a public service answering point in connection with the statewide 911 system.

288. The actions of the city in hiring, training, supervising, and retaining Middleton (Counts I – IV), maintaining its CAD system (Count V), adequately staffing its Communications Center (Count VI), Middleton’s response to Jinglei’s 911 call (Count VII), the fire department’s response (Count VIII), and MEMS’ response (Count IX) were performed under the supervision of the State 911 Coordinator and in furtherance of the state’s desire to operate a statewide 911 system.

289. “Should a judgment be rendered against the city of the first class . . . or its employees, the *state shall pay* actual, but not punitive, damages adjudged by a state or federal court, or entered by the court as a result of a compromise settlement approved and recommended by the Attorney General, based on an act or omission by the officer or employee while acting without malice and in good faith within the course and scope of his or her employment and in performance of his or her official duties.” Ark. Code Ann. § 21-9-304(b)(emphasis added).

290. An Arkansas statute requires the state to indemnify the city if a judgment for compensatory damages is entered by this Court against the city or any of its employees.

Ark. Code Ann. § 21-9-301 is Unconstitutional

291. All allegations are incorporated in this count.

292. Ark. Constitution Article 2 § 7 states: “The right of trial by jury shall remain inviolate, and shall extend to all cases at law, without regard to the amount in controversy; . . .”

293. Ark. Constitution Article 2 § 8 states: “No person shall be . . . deprived of life, liberty or property, without due process of law.”

294. Ark. Constitution Article 2 § 13 states: “Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, . . .; he ought to obtain justice freely, and without purchase; completely, and without denial; promptly and without delay; conformably to the laws.”

295. Ark. Constitution Article 5 § 32 provides: “. . . no law shall be enacted limiting the amount to be recovered for . . . injuries to persons . . .,”

296. Ark. Constitution Amendment 80 § 3 provides: “The Supreme Court shall prescribe the rules of pleading, practice and procedure for all courts; provided these rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as declared in this Constitution.”

297. To the extent Ark. Code Ann. § 21-9-301 prevents a remedy of Regions’ negligence counts not covered by Ark. Code Ann. § 21-9-304 for which the state must indemnify the city, Ark. Code Ann. § 21-9-301 is an unconstitutional violation of Ark. Constitution Article 2 §§ 7, 8, and 13; Ark. Constitution Article 5 § 32; and Ark. Constitution Amendment 80 § 3.

COUNT X: Deliberate Indifference by the City of Little Rock, Little Rock Police Department, Stuart Thomas, Wayne Bewley, Laura Martin, Linda Wilson, and Alan Cate in the Hiring Decision of Candace Middleton

298. All allegations are incorporated in this count.

299. Middleton was hired as a call taker by the city and police department.

300. Middleton received a personal reference from Cate. She was interviewed by Laura Martin, Wilson, and Cate. Her hiring was recommended by Bewley, Laura Martin, Wilson, and Cate, and approved by Thomas.

301. The city, police department, Thomas, Bewley, Laura Martin, Wilson, and Cate owed a duty to the citizens of Arkansas and Jinglei to hire capable and qualified individuals as call takers and to adequately scrutinize Middleton's employment background. The hiring of Middleton in light of her prior employment record with Benton evidences either a policy of indifference to the qualifications of call takers or a conscious decision by Thomas, Bewley, Laura Martin, Wilson, and Cate to execute policy.

302. The obvious consequence of the decision of the city, police department, Thomas, Bewley, Laura Martin, Wilson, and Cate to hire Middleton was that eventually and inevitably one or more citizens of Arkansas would be deprived of his or her federally protected right to life, liberty, and property.

303. The actions of the city, the police department, Thomas, Bewley, Laura Martin, Wilson, and Cate in hiring Middleton, in light of her termination from a substantially similar call taker position with Benton for unacceptable work performance, constitutes such a deliberate indifference to the safety and welfare of the citizens of Arkansas, Jinglei, and others similarly situated as to constitute a deprivation of Jinglei's constitutional right to life, liberty, and property and is actionable by Regions under 42 U.S.C. § 1983.

304. The deliberate indifference of the city, the police department, Thomas, Bewley, Laura Martin, Wilson, and Cate evidenced in hiring Middleton was a proximate cause of Jinglei's loss of life and liberty.

COUNT XI: Deliberate Indifference by the City of Little Rock, Little Rock Police Department, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, and Marquita Dooley in the Training of Candace Middleton

305. All allegations are incorporated in this count.

306. Middleton was trained as a call taker by the city and police department.

307. Middleton's individual trainer was Norman. Norman's supervisor was Dooley, the emergency communications trainer. Middleton's shift supervisors were Sharon Martin and Cate. Wilson was communications administrator and Laura Martin was the communications center manager. Laura Martin, Wilson, Sharon Martin, Cate, Dooley, and Norman.

308. The city, police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley owed a duty to the citizens of Arkansas and Jinglei to train call takers to handle high stress emergency calls involving the potential for loss of life, liberty, and property. Middleton's lack of progress or improvement as a call taker as noted in her daily observation reports and monthly evaluations, evidences either a policy of indifference to the training process or a conscious decision by Laura Martin, Wilson, Sharon Martin, Cate, and Dooley to execute policy.

309. The obvious consequence of the decision of the city, police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley to not adequately train Middleton was that eventually and inevitably one or more citizens of Arkansas would be deprived of his or her federally protected right to life, liberty, and property.

310. The actions of the city, the police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley in failing to adequately train Middleton as a call taker constitutes such

a deliberate indifference to the safety and welfare of the citizens of Arkansas, Jinglei, and others similarly situated as to constitute a deprivation of Jinglei's constitutional right to life, liberty, and property and is actionable by Regions under 42 U.S.C. § 1983.

311. The deliberate indifference of the city, the police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley evidenced in the training of Middleton was a proximate cause of Jinglei's loss of life and liberty.

COUNT XII: Deliberate Indifference by the City of Little Rock, Little Rock Police Department, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, and Marquita Dooley in the Supervision of Candace Middleton

312. All allegations are incorporated in this count.

313. Middleton was supervised as a call taker by the city and police department.

314. Laura Martin, Wilson, Sharon Martin, Cate, Dooley, and Norman supervised Middleton.

315. The city, police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley owed a duty to the citizens of Arkansas and Jinglei to supervise call takers to insure that high stress emergency calls involving the potential for loss of life, liberty, and property were handled appropriately. The absence of any shift supervisor comments on Middleton's daily observation reports; the absence of shift supervisor signatures on sixteen of the sixty-six daily observation reports; Middleton's completion of probation and move to full-time call taker employment despite the failure of Wilson, Sharon Martin, Cate, Dooley, and Norman to complete and sign the sign off form; Middleton's completion of probation and move to full-time call taker employment despite the reports and evaluations indicating she was not ready to work on her own; Middleton's release from probation at the earliest possible date despite her lack of readiness; and the four counselings Middleton received post-probation for errors similar to errors

she made during her probation, evidence either a policy of indifference to supervising call takers or a conscious decision by Laura Martin, Wilson, Sharon Martin, Cate, and Dooley to execute policy.

316. The obvious consequence of the city, police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley's failure to supervise Middleton was that eventually and inevitably one or more citizens of Arkansas would be deprived of his or her federally protected right to life, liberty, and property.

317. The actions of the city, the police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley in failing to supervise Middleton constitutes such a deliberate indifference to the safety and welfare of the citizens of Arkansas, Jinglei, and others similarly situated as to constitute a deprivation of Jinglei's constitutional right to life, liberty, and property and is actionable by Regions under 42 U.S.C. § 1983.

318. The deliberate indifference of the city, the police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley evidenced in failing to adequately supervise Middleton was a proximate cause of Jinglei's loss of life and liberty.

COUNT XIII: Deliberate Indifference by the City of Little Rock, Little Rock Police Department, Stuart Thomas, Wayne Bewley, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, and Marquita Dooley in the Retention of Candace Middleton

319. All allegations are incorporated in this count.

320. Middleton was retained as a call taker by the city and police department.

321. Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley retained Middleton.

322. The city, police department, Thomas, Bewley, Laura Martin, Wilson, Cate, and Dooley owed a duty to the citizens of Arkansas and Jinglei to retain and employ call takers

capable of handling high stress emergency calls involving the potential for loss of life, liberty, and property. The retention of Middleton despite her prior employment record at Benton, her lack of progress or improvement in her call taker performance as noted in her daily observation reports, monthly evaluations, and the counselings evidence either a policy of indifference to retaining call takers or a conscious decision by Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley to execute policy.

323. The obvious consequence of the decision by the city, police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley to retain Middleton was that eventually and inevitably one or more citizens of Arkansas would be deprived of his or her federally protected right to life, liberty, and property.

324. The actions of the city, the police department, Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley in retaining Middleton constitutes such a deliberate indifference to the safety and welfare of the citizens of Arkansas, Jinglei, and others similarly situated as to constitute a deprivation of Jinglei's constitutional right to life, liberty, and property and is actionable by Regions under 42 U.S.C. § 1983.

325. The deliberate indifference of the city, the police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley in retaining Middleton was a proximate cause of Jinglei's loss of life and liberty.

COUNT XIV: Deliberate Indifference by the City of Little Rock, Little Rock Police Department, Little Rock Fire Department, Grimm and Bob Sharp in Maintaining the CAD System

326. All allegations are incorporated in this count.

327. The city and police department, as a public service answering point for the state, operated a CAD system.

328. Grimm and Sharp were responsible for keeping the CAD system updated and current.

329. The city, police department, fire department, Grimm, and Sharp owed a duty to the citizens of Arkansas and Jinglei to enter the location of Cooper Orbit Road and Rushmore Avenue into the CAD system. The failure of the city, police department, fire department, Grimm, and Sharp to update the CAD system with this intersection over seven years after it was constructed or annexed by the city evidences either a policy of indifference to keep the CAD system current or a conscious decision by Grimm and Sharp to execute policy.

330. The obvious consequence of the decision by the city, police department, fire department, Grimm, and Sharp to not keep the CAD system updated was that eventually and inevitably one or more citizens of Arkansas would be deprived of his or her federally protected right to life, liberty, and property.

331. The actions of the city, police department, fire department, Grimm, and Sharp to not keep the CAD system current constitutes such a deliberate indifference to the safety and welfare of the citizens of Arkansas, Jinglei, and others similarly situated as to constitute a deprivation of Jinglei's constitutional right to life, liberty, and property and is actionable by Regions under 42 U.S.C. § 1983.

332. The deliberate indifference of the city, police department, fire department, Grimm, and Sharp in failing to keep the CAD system current was a proximate cause of Jinglei's loss of life and liberty.

COUNT XV: Deliberate Indifference by the City of Little Rock, Little Rock Police Department, Stuart Thomas, Wayne Bewley, and Laura Martin in Staffing the City of Little Rock's Communications Center

333. All allegations are incorporated in this count.

334. Thomas, Bewley, and Laura Martin were responsible for keeping the Communications Center adequately staffed.

335. The city, police department, Thomas, Bewley, and Laura Martin owed a duty to the citizens of Arkansas and Jinglei to adequately staff the Communications Center. The failure of the city, police department, Thomas, Bewley, and Laura Martin to adequately staff the Communications Center despite written acknowledgement that the Communications Center was understaffed for years prior to this incident; written acknowledgement that proper staffing levels were critical to the Communication Center's performance; and acknowledgement that the calltaker positions involved high stresses; odd, long hours; and inadequate pay which created high calltaker turnover, evidences either a policy of indifference to keep the Communications Center adequately staffed or a conscious decision by the city, police department, Thomas, Bewley, and Laura Martin to execute policy.

336. The obvious consequence of the decision by the city, police department, Thomas, Bewley, and Laura Martin to not keeping the Communications Center adequately staffed was that eventually and inevitably one or more citizens of Arkansas would be deprived of his or her federally protected right to life, liberty, and property.

337. The actions of the city, police department, Thomas, Bewley, and Laura Martin in not keeping the Communications Center adequately staffed constitutes such a deliberate indifference to the safety and welfare of the citizens of Arkansas, Jinglei, and others similarly situated as to constitute a deprivation of Jinglei's constitutional right to life, liberty, and property and is actionable by Regions under 42 U.S.C. § 1983.

338. The deliberate indifference of the city, the police department, Thomas, Bewley, and Laura Martin in failing to keep the Communications Center adequately staffed was a proximate cause of Jinglei's loss of life and liberty.

COUNT XVI: Deliberate Indifference by the City of Little Rock, Little Rock Police Department, and Candace Middleton in Handling Jinglei Yi's 911 Call

339. All allegations are incorporated in this count.

340. Middleton received Jinglei's cell phone 911 call. Forty-three minutes elapsed before water rescue arrived to assist Jinglei.

341. It was foreseeable that a delayed and inappropriate rescue response would cause serious injuries to Jinglei.

342. The delayed and inappropriate response evidenced a willful disregard of Jinglei's safety by the city, police department, and Middleton.

343. Jinglei advised Middleton that she was in a car in the water. As Middleton knew of Jinglei's predicament, a special relationship existed between the city, the police department, and Middleton with Jinglei.

344. Middleton told Jinglei, ". . . we're going to get some help on the way for you, okay?" However, upon Regions' information and belief Middleton did not enter a call into the CAD system as was the custom or policy of the city and police department. By promising help was on the way, Middleton exercised authority over Jinglei and left her with a sense of security calculated to foreclose recourse to other potential rescue resources or self help.

345. Having represented appropriate help was on the way, the conscious failure to then provide such assistance represents an affirmative act proximately causing the injuries sustained by Jinglei for which Middleton is liable under 42 U.S.C. § 1983. Given Middleton's established history of failing to properly respond to emergency calls as an employee of Benton and as a

probationary trainee and permanent employee of the city, the city, police department, Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley adopted Middleton's actions as custom and practice for which the city, police department, Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley may be held liable under 42 U.S.C. § 1983.

346. The obvious consequence of the decisions made by the city, police department, and Middleton in handling Jinglei's 911 call was that eventually and inevitably one or more citizens of Arkansas would be deprived of his or her federally protected right to life, liberty, and property.

347. The actions of the city, police department, and Middleton in responding to Jinglei's 911 call constitutes such a deliberate indifference to the safety and welfare of the citizens of Arkansas, Jinglei, and others similarly situated as to constitute a deprivation of Jinglei's constitutional right to life, liberty, and property and is actionable by Dayong under 42 U.S.C. § 1983.

348. The city, police department, and Middleton's deliberate indifference in responding to Jinglei's 911 call was a proximate cause of Jinglei's loss of life.

COUNT XVII: Water Rescue Policies, Customs and Regulations of the City of Little Rock Deprived Jinglei Yi of Her Life and Liberty

349. All allegations are incorporated in this count.

350. The water rescue policies, customs and regulations of the city, including Little Rock Fire Department Standard Operating Guideline Number 11650, Section IV.5.f)(iii), created a situation whereby MEMS ambulance unit 227 and Harwell and Williams (arrived at the scene at 8:20:18 a.m.), Engine 20 and Scott (arrived at 8:28:45 a.m.), Darr (arrived at 8:33:26 a.m.), McGuire and Whaley (arrived at 8:35:30 a.m.), Rhine (arrived at 8:35:43 a.m.), Carr (arrived at 8:37:00 a.m.), MEMS ambulance unit 517 (arrived at 8:37:19 a.m.), Nellis (arrived at 8:37:45

a.m.), and Dillard and Moore (arrived at 8:39:47 a.m.) could not enter the water for rescue efforts and were forced to await Rescue 2 with Hogue and Clark (arrived at 8:40:34 a.m.).

351. But for the water rescue policies, customs and regulations of the city, including Little Rock Fire Department Standard Operating Guideline Number 11650, Section IV.5.f)(iii), Jinglei's death would have been prevented or her chance of death significantly reduced.

352. City policies, customs, and regulations, including Little Rock Fire Department Standard Operating Guideline Number 11650, Section IV.5.f)(iii), deprived Jinglei of her liberty and life in violation of her rights granted by the Fourteenth Amendment to the United States Constitution and said violation is actionable under 42 U.S.C. § 1983.

COUNT XVIII: Scene Security Policies, Customs and Regulations of the City of Little Rock Cut Off Potential Sources of Private Aid and Failed to Provide Adequate Replacement Protection

353. All allegations are incorporated in this count.

354. The policies, customs, and regulations of the city requiring vehicles responding to a request for emergency services to turn on their sirens and lights created a situation whereby MEMS ambulance unit 227 and Harwell and Williams (arrived at the scene at 8:20:18 a.m.), Engine 20 and Scott (arrived at 8:28:45 a.m.), Darr (arrived at 8:33:26 a.m.), McGuire and Whaley (arrived at 8:35:30 a.m.), Rhine (arrived at 8:35:43 a.m.), Carr (arrived at 8:37:00 a.m.), MEMS ambulance unit 517 (arrived at 8:37:19 a.m.), Nellis (arrived at 8:37:45 a.m.), and Dillard and Moore (arrived at 8:39:47 a.m.) were at the scene with their sirens and lights on.

355. The policies, customs, and regulations of the city requiring emergency response personnel to secure the scene caused McGuire and Whaley to secure the scene upon their arrival.

356. The multiple emergency response vehicles with sirens and lights on and police officers securing the scene indicated to passing motorists and potential sources of private rescue

that the rescue effort of Jinglei was being adequately handled by the city, police, fire, and MEMS. Jinglei was denied potential self help from private citizens from 8:20:18 a.m., the time when the first ambulance arrived, until 8:40:34 a.m., the time when the authorized water rescue unit arrived.

357. But for the policies, customs, and regulations of the city to turn on their sirens and lights and secure the scene resulting in a time of twenty minutes and sixteen seconds where Jinglei's access to self help from private citizens was cut off, Jinglei's death would have been prevented or the chances of her death significantly reduced.

358. City policies, customs, and regulations deprived Jinglei of her life and liberty in violation of her rights under the Fourteenth Amendment and said violations are actionable under 42 U.S.C. § 1983.

COUNT XIX: Civil Rights Offenses under the Arkansas Civil Rights Act

359. All allegations are incorporated in this count.

360. Each defendant is a "person" subject to liability, as that term is used within Ark. Code Ann. §16-123-105.

361. Defendants acted under "color of state law," as that term is used within Ark. Code Ann. § 16-123-105.

362. Defendants "subjected" Jinglei to a "deprivation" of his Arkansas constitutional rights and resulting damages, as those terms are used within Ark. Code Ann. §16-123-105.

363. Defendants actually and proximately caused Jinglei to suffer a deprivation of his Arkansas constitutional rights and resulting damages.

364. Defendants acted under a custom or policy of the city, police department, or fire department.

365. Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley were designated decision-makers with policy-making authority for the city and police department.

366. Summers was a designated decision-maker with policy-making authority for the city and fire department.

367. Defendants caused Jinglei to suffer an unlawful and unreasonable loss of liberty and life as protected by the Arkansas Constitution, without substantive and procedural due process of law, resulting in Jinglei's significant injuries, conscious pain and suffering, and death.

368. Under the Arkansas Civil Rights Act, Regions is entitled to legal and equitable relief. Ark. Code Ann. §16-123-105.

369. Under the Arkansas Civil Rights Act, Regions is entitled to recover compensatory and punitive damages, and the costs of litigation and a reasonable attorney's fee.

DAMAGES

370. All allegations herein are incorporated in this damages count.

Survival Action

371. Regions brings this action pursuant to the Arkansas Survival Act and Arkansas law governing the survival of actions. Due to the actions of the defendants as previously alleged in this Complaint, Regions, as special administrator of Jinglei's estate, and on behalf of Jinglei's estate and its heirs, is entitled to significant damages for:

- a. Jinglei's conscious pain and suffering and mental anguish prior to her death;
- b. Jinglei's funeral expenses;
- c. Jinglei's loss of life;
- d. Jinglei's medical expenses attributable to the fatal injury; and

- e. All other damages which Jinglei would have been able to recover had she lived.

Wrongful Death Action

372. Regions brings this action pursuant to the Arkansas Wrongful Death Act and Arkansas law governing wrongful death actions. Due to the actions of the defendants as previously alleged in this Complaint, Regions, as special administrator of Jinglei's estate, and Jinglei's statutory beneficiaries, are entitled to significant damages. The statutory beneficiaries, under the Arkansas Wrongful Death Act and Arkansas law governing wrongful death actions, known to Regions are:

- a. Dayong Yang, surviving spouse of Jinglei;
- b. Jian Yi, surviving father of Jinglei;
- c. Keqin Zhao, surviving mother of Jinglei; and
- d. Jingyan Yi, surviving brother of Jinglei.

373. Regions, as special administrator of Jinglei's estate, on behalf of the statutory beneficiaries, is entitled to significant damages for:

- a. Mental anguish suffered and reasonably probable to be suffered in the future by Dayong Yang, Jian Yi, Keqin Zhao, Jingyan Yi, and all other statutory beneficiaries from the death of Jinglei;
- b. Pecuniary injuries on behalf of Dayong Yang;
- c. Dayong Yang's loss of consortium claim; and
- d. All other damages allowable under the Arkansas Wrongful Death Act or Arkansas law governing wrongful death actions.

PUNITIVE DAMAGES

374. Defendants knew or ought to have known, in the light of the surrounding circumstances, their conduct described would naturally and probably result in injury and damage, and defendants continued such conduct in reckless disregard of the consequences, from which malice may be inferred.

375. Punitive damages should be imposed to punish defendants and to deter defendants and others from similar conduct.

ATTORNEY FEES AND COSTS

376. Regions seeks an award of costs and attorney fees under 42 U.S.C. § 1988 and the Arkansas Civil Rights Act.

DEMAND FOR JURY TRIAL

377. Regions requests a trial by jury.

WHEREFORE, the plaintiff, Regions Bank Trust Department, as special administrator of the estate of Jinglei Yi, deceased, prays for compensatory and punitive damages, attorney fees and costs, and for all other relief as it may be entitled, as cited above, against defendants, jointly and severally, and for a ruling that Ark. Code Ann. § 21-9-301 is unconstitutional.

Respectfully submitted,

/s/ Carter C. Stein

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CERTIFICATE OF SERVICE

On August 30, 2015, I emailed this Complaint to:

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Candace Middleton


/s/ Carter C. Stein_____

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTH DIVISION**

**DAYONG YANG,
as Special Administrator of the estate of
LE YANG, deceased**

PLAINTIFF

VS. CASE NO. 60-CV-13-3115

**CITY OF LITTLE ROCK, ARKANSAS;
STUART THOMAS, individually and in his
official capacity as Chief of Police for the City of
Little Rock; WAYNE BEWLEY, individually and in
his official capacity as Assistant Chief of Police for
the City of Little Rock; LAURA MARTIN, individually
and in her official capacity as Communications
Center Manager for the City of Little Rock;
LINDA WILSON, individually and in her official
capacity as Communications Administrator for the
City of Little Rock; SHARON MARTIN,
in her official capacity as Communications Shift
Supervisor for the City of Little Rock; ALAN CATE,
individually and in his official capacity as
Communications Shift Supervisor for the City of
Little Rock; MARQUITA DOOLEY, individually and in
her official capacity as Emergency Communications
Trainer for the City of Little Rock;
CANDACE MIDDLETON, individually and in her
official capacity as Communications Call Taker for
the City of Little Rock; KAREN GRIMM, individually
and in her official capacity as Communications
Systems Specialist for the City of Little Rock;
GREGORY L. SUMMERS, individually and in his
official capacity as Fire Chief for the City of
Little Rock; ROBERT SHARP, individually and
in his official capacity as Fire Captain for
the City of Little Rock; FRANK SCOTT and EDDIE RHINE,
individually and in their official capacities as
Firefighters for the City of Little Rock; and
LITTLE ROCK AMBULANCE AUTHORITY
d/b/a METROPOLITAN EMERGENCY MEDICAL
SERVICES**

DEFENDANTS

DAYONG YANG,
as Special Administrator of the estate of
LE YANG, deceased

PETITIONER

v.

STATE OF ARKANSAS; ARKANSAS
DEPARTMENT OF EMERGENCY MANAGEMENT;
WILLIAM ASA HUTCHINSON, in his official
capacity as Governor of Arkansas;
LESLIE RUTLEDGE, in her official capacity
as Arkansas Attorney General; DAVID MAXWELL,
in his official capacity as Director of Arkansas
Department of Emergency Management and
State 911 Coordinator; and
CITY OF LITTLE ROCK, ARKANSAS;
STUART THOMAS, in his official capacity as
Chief of Police for the City of Little Rock;
WAYNE BEWLEY, in his official capacity
as Assistant Chief of Police for the City of Little Rock;
LAURA MARTIN, in her official capacity as
Communications Center Manager for the City of Little Rock;
LINDA WILSON, in her official capacity as
Communications Administrator for the
City of Little Rock; SHARON MARTIN,
in her official capacity as Communications Shift
Supervisor for the City of Little Rock; ALAN CATE,
in his official capacity as Communications Shift Supervisor
for the City of Little Rock; MARQUITA DOOLEY, in
her official capacity as Emergency Communications
Trainer for the City of Little Rock;
CANDACE MIDDLETON, in her official capacity as
Communications Call Taker for the City of Little Rock;
KAREN GRIMM, in her official capacity as Communications
Systems Specialist for the City of Little Rock;
GREGORY L. SUMMERS, in his official capacity as Fire Chief
for the City of Little Rock; ROBERT SHARP, in his official
capacity as Fire Captain for the City of Little Rock; and
FRANK SCOTT and EDDIE RHINE,
in their official capacities as Firefighters for the City of Little Rock

RESPONDENTS

**THIRD AMENDED COMPLAINT AND
PETITION FOR DECLARATORY JUDGMENT**

THIRD AMENDED COMPLAINT

NATURE AND PURPOSE OF THE COMPLAINT

1. This case results from the mishandling of Jinglei Yi's 911 call seeking rescue services. Dayong sues for Le Yang, a minor, and alleges negligence causes of action arising under Arkansas common law and civil rights violations actionable under 42 U.S.C. § 1983, the Fourteenth Amendment to the United States Constitution and the laws of Arkansas. Dayong seeks to recover money damages, both compensatory and punitive, from the defendants for the serious and permanent bodily injuries suffered by Le.

JURISDICTION AND VENUE

2. Jurisdiction of this court is based on Ark. Code Ann. § 16-13-201. Dayong has suffered losses and damages over the amount required for federal court diversity jurisdiction.

3. Venue is proper under Ark. Code Ann. § 16-60-102(b) because this complaint alleges causes of actions against public officials regarding events occurring in Pulaski County, Arkansas.

PARTIES

4. Dayong is the special administrator of Le Yang's estate having been duly appointed by the Pulaski County Circuit Court.

5. Dayong brings this action on behalf of Le's estate, its heirs, and all his wrongful death statutory beneficiaries.

6. The file-marked Pulaski County Circuit Court order appointing Dayong special administrator is attached as Exhibit 1. The attached order affirms Dayong is the special

administrator of Le's estate and is the real party in interest entitled to pursue this action under Ark. R. Civ. P. 17(a) and all other applicable law.

7. Letters of Administration issued by the Pulaski County Circuit Court on February 5, 2015 are attached as Exhibit 2.

8. The City of Little Rock, Arkansas is a political subdivision of the State of Arkansas and employed Stuart Thomas, Wayne Bewley, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, Marquita Dooley, Candace Middleton, Karen Grimm, Gregory L. Summers, Robert Sharp, Frank Scott, and Eddie Rhine. The city is an individual defendant on Dayong's claims under the city's hiring, training, supervision, and retention of Middleton and unconstitutional policies, customs and practices of the city, the Little Rock Police Department, and Little Rock Fire Department, which policies, customs, and practices caused Le's injuries. Upon Dayong's information and belief, the Chief of Police, Assistant Chief of Police, Communications Center Manager, Communications Administrator, Communications Shift Supervisors, and Emergency Communications Trainer are policymakers for the city with authority to dictate hiring, training, supervision, and retention policies which constitute the official policy of the city and police department. Upon Dayong's information and belief, the Chief of Police and the Fire Chief are policymakers for the city with authority to dictate the policy of handling 911 calls and water rescues which constitute the official policy of the city, the police department, and fire department.

9. Thomas was the Chief of Police and an employee of the city. Acting under the color of state law and under policies, customs, and practices of the city and police department, he was the commanding officer of Bewley, Laura Martin, Wilson, Sharon Martin, Cate, Dooley, Middleton, and Grimm. Thomas was responsible for hiring, training, supervision, and retention

policies of the police department; for hiring, training, supervision, and retention decisions of the police department; for water rescue and scene security policies of the police department; for enforcing the policies, customs, and practices of the police department; and for ensuring police department personnel obeyed the laws and Constitutions of Arkansas and the United States.

10. Bewley was the Assistant Chief of Police and an employee of the city. Acting under the color of state law and under policies, customs, and practices of the city and police department, he was a commanding officer of Laura Martin, Wilson, Sharon Martin, Cate, Dooley, Middleton, and Grimm. Bewley was responsible for hiring, training, supervision, and retention policies of the police department; for hiring, training, supervision, and retention decisions of the police department; for enforcing the policies, customs, and practices of the police department; and for ensuring police department personnel obeyed the laws and Constitutions of Arkansas and the United States.

11. Laura Martin was the Communications Center Manager and an employee of the city. Acting under the color of state law and under policies, customs, and practices of the city and police department, she was a commanding officer of Wilson, Sharon Martin, Cate, Dooley, Middleton, and Grimm. Martin was responsible for hiring, training, supervision, and retention policies of the police department; for hiring, training, supervision, and retention decisions of the police department; for enforcing the policies, customs, and practices of the police department; and for ensuring police department personnel obeyed the laws and Constitutions of Arkansas and the United States.

12. Wilson was the Communications Administrator and an employee of the city. Acting under the color of state law and under policies, customs, and practices of the city and police department, she was a commanding officer of Sharon Martin, Cate, Dooley, and

Middleton. Wilson was responsible for hiring, training, supervision, and retention policies of the police department; for hiring, training, supervision, and retention decisions of the police department; for enforcing the policies, customs, and practices of the police department; and for ensuring police department personnel obeyed the laws and Constitutions of Arkansas and the United States.

13. Sharon Martin was a Communications Shift Supervisor and an employee of the city. Acting under the color of state law and under policies, customs, and practices of the city and police department, she was a commanding officer of Middleton. Sharon Martin was responsible for hiring, training, supervision, and retention policies of the police department; for hiring, training, supervision, and retention decisions of the police department; for enforcing the policies, customs, and practices of the police department; and for ensuring police department personnel obeyed the laws and Constitutions of Arkansas and the United States.

14. Cate was a Communications Shift Supervisor and an employee of the city. Acting under the color of state law and under policies, customs, and practices of the city and police department, he was a commanding officer of Middleton. Cate was responsible for hiring, training, supervision, and retention policies of the police department; for hiring, training, supervision, and retention decisions of the police department; for enforcing the policies, customs, and practices of the police department; and for ensuring police department personnel obeyed the laws and Constitutions of Arkansas and the United States.

15. Dooley was the Emergency Communications Trainer and an employee of the city. Acting under the color of state law and under policies, customs, and practices of the city and police department, she was a commanding officer of Middleton. Dooley was responsible for training, supervision, and retention policies of the police department; for training, supervision,

and retention decisions of the police department; for enforcing the policies, customs, and practices of the police department; and for ensuring police department personnel obeyed the laws and Constitutions of Arkansas and the United States.

16. Middleton was a Communications Call Taker employed by the city and was acting under color of state law and under policies, customs, and practices of the city and police department.

17. Grimm was a Communications System Specialist employed by the city and was acting under color of state law and under policies, customs, and practices of the city and police department.

18. Summers was the Fire Chief and an employee of the city. Acting under the color of state law and under policies, customs, and practices of the city and fire department, he was the commanding officer of Sharp, Scott, and Rhine. Summers was responsible for water rescue and scene security policies of the fire department; for enforcing the policies, customs, and practices of the fire department; and for ensuring fire department personnel obeyed the laws and Constitutions of Arkansas and the United States.

19. Sharp was a Fire Captain employed by the city and was acting under color of state law and under policies, customs, and practices of the city and fire department.

20. Scott and Rhine were Firefighters employed by the city and were acting under color of state law and under policies, customs, and practices of the city and fire department.

21. Metropolitan Emergency Medical Services is the business name for the Little Rock Ambulance Authority, a component unit of the City of Little Rock, Arkansas. MEMS employed Patrick Harwell, Anthony Williams, Brandi Johnson, and Tarynn Reilly. MEMS is an

individual defendant on Dayong's claims alleging negligence by Harwell, Williams, Johnson, and Reilly.

22. Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, Dooley, Middleton, and Grimm were police officers and employees of the city and as such each was the agent, servant, and employee of the city, and these defendants were acting within the course and scope of said agency and employment with knowledge and consent of said employer and principal.

23. Summers, Sharp, Scott, and Rhine were firemen of the city and as such each was the agent, servant, and employee of the city, and these defendants were acting within the course and scope of said agency and employment with knowledge and consent of said employer and principal.

24. Harwell, Williams, Johnson, and Reilly were paramedics and emergency medical technicians of MEMS and each was the agent, servant, and employee of a component unit of the city and were acting within the course and scope of their agency and employment, and with the knowledge and consent of the employer and principal.

STATEMENT OF THE CASE

State of Arkansas's 911 System

25. The State of Arkansas established a 911 emergency call system. The Arkansas legislature determined it to be in the public interest of its citizens "to shorten the time and simplify the method required for a citizen to request and receive emergency aid." Ark. Code Ann. § 12-10-302(a). The 911 system provides the citizens of Arkansas with a single, primary three digit emergency number through which fire, rescue, emergency medical, and law enforcement services may be quickly and efficiently obtained. *Id.* at 302(b). The Arkansas legislature found and declared it necessary to (1) establish 911 "as the primary emergency telephone number for use in participating political subdivisions" of the state. (2) Authorize

county judges, mayors, city managers, or city administrators “to direct establishment and operation of 911 public safety communications centers in their political subdivisions and to designate the location of a 911 public safety communications center and agency which is to operate the center.” (3) “Encourage the political subdivisions to implement 911 public safety communications centers.” (4) “Provide a method of funding for the political subdivisions which will allow them to implement, operate, and maintain a 911 public safety communications center.” *Id.* at 302(e)(1)(2)(3) and (4).

26. Under the statutory scheme, each political subdivision determines whether to afford 911 services but if it does so elect, then the political subdivision must designate the operating agency, which, “shall be the public safety answering point for the political subdivision...” *See* Ark. Code Ann. § 12-10-304.

27. Arkansas law requires the staff and supervisors of 911 communications centers to be paid employees and trained as necessary. Ark. Code Ann. § 12-10-306(a)(1) and (3). Arkansas law recommends staffing plans for 911 communications centers. Ark. Code Ann. § 12-10-306(b)(1).

28. Arkansas law requires 911 communication centers to be capable of transmitting requests for emergency services to the proper agency for providing the requested services. Ark. Code Ann. § 12-10-307.

29. Arkansas law requires 911 communications centers to respond to emergency requests in one of four defined methods. Ark. Code Ann. § 12-10-308.

30. The Arkansas Emergency Telephone Service Board (“AETSB”) was created by the state legislature to manage and disburse revenues from 911 service charges collected by telephone and cellular phone service suppliers. Ark. Code Ann. § 12-10-318(c). The AETSB

distributes a percentage of the revenues to the political subdivisions for expenses incurred in implementing, operating, and maintaining 911 communications centers. Ark. Code Ann. § 12-10-318(c)(2)(B)(i). Funds received by 911 communications centers from the AETSB must be spent in direct connection with the provision of 911 services. Ark. Code Ann. § 12-10-323(a)(1).

31. Arkansas law requires the Arkansas Law Enforcement Training Academy “to develop training standards for 911 dispatchers and instructors in Arkansas in consultation with the Association of Public-Safety-Communications Officials-International, Inc.” Ark. Code Ann. § 12-10-325.

32. In 2009, federal grant money was made available to the fifty states under the ENHANCE 911 (“E-911”) Act. *See* 47 U.S.C. 942.

33. On behalf of the State of Arkansas, David Maxwell, the Director and State Homeland Security Adviser of the Arkansas Department of Emergency Management (“ADEM”) completed the initial certification as Arkansas’s applicant and stated: “Arkansas does not have an officer or coordinator with the authority to manage E-911 services implementation and the Governor of Arkansas has designated . . . me as the State’s single officer to serve as the E-911 Coordinator of E-911 services implementation[.]” *See* Initial Certification attached as Exhibit 3 and July 23, 2009 letter from Governor Beebe attached as Exhibit 4.

34. Additionally, Maxwell stated:

The State has coordinated the application with local governments . . . and PSAPs within the state.

The State has established a State 911 Plan, consistent with the implementing regulations, for the coordination and implementation of E-911 services or for migration to an IP-enabled emergency network.

The State has integrated telecommunications services involved in the implementation and delivery of Phase II E-911 services or migration to an IP-enabled emergency network.

See Exhibit 3. See also excerpts of State Wireless E911 Plan attached as Exhibit 5.

35. The State of Arkansas was awarded an E-911 grant of \$594,060.05. See September 25, 2009 letter from NHTSA to Governor Beebe attached as Exhibit 6.

36. With Act 213 of 2012, Arkansas legislators approved and appropriated \$1,000,000.00 towards a statewide supplemental database service called Smart911. Arkansas was the first state to adopt the Smart911 system for its citizens.

City of Little Rock's 911 Communications Center and Emergency Services

37. Acting as an agent of the state to simplify the means of procuring emergency services for Arkansans, the city established and designated the City Office of Emergency Services as the entity charged with the operation of its 911 communications center. Little Rock City Code § 11-13 (1996). The center is funded in part by revenues collected from Arkansans and distributed to the city by the AETSB.

38. The city established a fire department, which is charged with providing emergency rescue services, and is funded by property taxes and other tax revenues. See Ark. Code Ann. § 14-53-101(a) ("The city council shall establish fire departments and provide them with proper engines and such other equipment as shall be necessary to extinguish fires and preserve the property of the city and of the inhabitants from conflagration.")

39. The city established an emergency medical response service, MEMS, which provides city wide ambulance and emergency medical services, and is funded by fees charged for such services. Little Rock City Code § 5-58 (1996).

40. As a consequence of the city's actions as an agent of the state, there are no private ambulance or rescue services offered within the city limits and citizens have been intentionally directed and educated to rely upon and use the state's 911 system as the one and only means of obtaining help in the event of a full range of emergency situations, all of which are paid for by fees and taxes levied expressly to provide the noted services.

41. Having overtly and intentionally assumed to itself the role of emergency responder and coordinator through the entire spectrum of emergency response services, the city acting as agent of the state has assumed a special relationship with its citizens regarding such services and has an obvious duty to operate that system and to extend those services in a competent fashion. It is evident and foreseeable that failure to perform the assumed responsibilities with due care can occasion grave consequences involving the unnecessary loss of life and property of citizens who may find themselves dependent upon those services.

City of Little Rock's Computer Aided Dispatch System and Call-Taker Procedures

42. The city uses the "direct dispatch method" for responding to emergency calls. The direct dispatch method is "a telephone service to a 911 public safety communications center and, upon receipt of a 911 telephone request for service, a decision as to the proper action to be taken shall be made and the appropriate emergency responder dispatched." Ark. Code Ann. § 12-10-311(1).

43. Communications Call Takers receive incoming 911 calls for the city. Call takers must enter emergency call information into the computer aided dispatch system or CAD. Little Rock Police Department Divisional Operating Procedure No. 5700-9, I.B., June 19, 2006.

44. When a 911 call is received, the call taker is automatically provided the phone number and location of the caller on a computer monitor. Call takers must verify that the phone

number and location are correct when entering the call into the CAD. *Id.* at I.C. & D. Call takers must enter a call type and all pertinent information for the call. *Id.* at I.C. & E. As the call is entered in the CAD, it will appear in the calls pending drop-down box. After completing call entry in the CAD, the call taker clicks a green illuminated “OK” button which sends the call to dispatch. *Id.* at I.F. The “OK” button will not illuminate until a call type and location have been entered. Once the call has been sent to dispatch, the call will be displayed in the dispatched calls drop-down box.

45. Call takers will attempt to keep a 911 caller on the line for all in progress calls. *Id.* at I.G. Call takers must advise the 911 caller that the call has been sent to dispatch and continue to gather additional information on in progress calls until an officer arrives on the scene. *Id.* at I.I. & J. When a call for an ambulance is received, the call taker transfers the call to MEMS and advises the caller that rescue is responding. Little Rock Police Department Divisional Operating Procedure No. 5700-39, I.B., May 30, 2011.

46. If a call taker receives a call where the street address does not verify because it has not been entered and updated in the CAD system, then the call taker must perform a mandatory location verification override or manual override of the CAD to dispatch police, fire, or both. *Id.* at I.M.

47. To perform a manual override, call takers “must use their own discretion and inventiveness, to determine the location of the event and invoke location verification override”. Altaris, Computer Aided Dispatch System, PRC Public Sector, Inc. 4.6.4, July 1998. The call taker must click the “manual combined/override” button and choose a location near the incident location to learn the appropriate police and fire units. The call taker must then manually enter

the proper unit numbers before clicking the green illuminated “OK” button to send the call to dispatch.

48. Call takers *will* advise their shift supervisors any time they must override a street address. Divisional Operating Procedure No. 5700-9, I.N. (emphasis added).

Maintenance of the City of Little Rock’s Computer Aided Dispatch System

49. The city’s CAD system does not automatically update newly constructed or annexed city streets, addresses, or intersections. As streets and intersections are added to the master street address guide or city master street plan, the police and fire department are required to manually enter the street names, address ranges, and intersections for each street into the CAD. The police and fire department determine which units will respond to the newly added locations and enter those units into the CAD. Upon entry in the CAD system of a previously entered and updated street, address, or intersection, the proper police and fire units will automatically be assigned to the call.

50. Beginning in 1996, Grimm was responsible for entering and updating new streets, intersections, and address ranges and “pushing” this data onto the city’s CAD system.

51. In June 2006, Grimm and the city had a backlog of streets, intersections, and address ranges to be entered and “pushed” onto the city’s CAD system.

52. Due to the backlog, Laura Martin sent an email to “resolve issues with streets being entered into the CAD.” See June 29, 2006 email from Laura Martin attached as Exhibit 7. In her email, Laura Martin stated Chief Thomas “indicated that [Grimm] will train [Sharp] to enter addresses for the Fire Department only in the CAD system. This training is not the complete training that a person needs, but if [he] can learn to enter streets and the Fire

Department assumes responsibility for what he enters this will be a short-term fix until funding is available for formal training.” *Id.*

53. Approximately seven months later, Wilson sent a CAD mail message stating “[Sharp] has a CAD now and is entering streets if you come across a street that is not in the CAD please send him a CAD message.” *See* February 20, 2007 message from Wilson attached as Exhibit 8.

54. Beginning February 2007, Sharp entered and updated new streets, intersections, and address ranges while Grimm remained responsible for “pushing” this data onto the city’s CAD system.

Chronic Understaffing of the City of Little Rock’s Communications Center

55. On January 11, 2005, Interim Police Chief Carlos Corbin, in a memorandum to City Manager Bruce Moore, wrote:

The [Communications Center] staffing is always in a ***constant state of fluctuation*** and we are constantly in a state of trying to fill call taker and dispatcher positions. We have 15 vacancies at the present time including the five mandated vacancies. It is essential that we try to ***keep these critical positions filled***. The hiring process is lengthy and the qualified applicant pool is limited. I believe that an exemption to the hiring freeze is appropriate for these positions.

Exhibit 9 (emphasis added). Moore approved the request. *Id.*

56. In a February 2, 2006 memorandum addressed to Moore, Thomas advised “[w]e ***are constantly faced with high employee turnover*** in the [Communications Center] and ***maintaining adequate staffing remains a critical concern***. I continue to believe it is essential that we try to keep these positions filled and believe an exemption to the hiring freeze is necessary for these positions.” Exhibit 10 (emphasis added). Moore approved the request. *Id.*

57. On December 13, 2006, the Communications Center had 51 employees, 14 unfilled positions, and a 21% vacancy rate.

58. In a December 14, 2006 email, Laura Martin wrote “we will need more Calltaker Positions filled to cover the 3-1-1 calls that we expect to increase in the coming months.” Exhibit 11.

59. In a January 2, 2007 memorandum to Moore, Thomas requested an exemption to the hiring freeze to allow the hiring of call takers and dispatchers and wrote: “*We are constantly faced with a high employee turnover* in the [Communications Center] and *maintaining adequate staffing remains a critical concern*. I continue to believe that it is essential that we try to keep these positions filled and believe that an exemption to the hiring freeze is necessary for these positions.” Exhibit 12 (emphasis added). Moore approved Thomas’ request. *Id.*

60. In a July 2007 survey of turnover in other cities’ dispatch services, the city noted its Communications Center had a turnover problem and stated in the section for suggestions and comments: “Maintain a full staff. Little Rock has suffered staff reductions and hiring freezes. In addition, half of new hires leave within a month of their hire date. This makes it hard on the dispatchers.” Exhibit 13.

61. On December 31, 2007, the Communications Center had 57 employees, 15 unfilled positions, and a 20% vacancy rate.

62. In a January 14, 2008 memorandum to Moore, Thomas noted the Communications Center had 15 vacancies and requested “permission to initiate the hiring process for [call takers] and authority to continue this process as needed to maintain optimum staffing in the Communications Center throughout 2008.” Exhibit 14. Moore approved Thomas’ request. *Id.*

63. On September 17, 2008, Thomas wrote the following in a memorandum to Moore: “The Communications Division, even with [the five 911 Call Taker positions in “Do Not Fill” status] held, has *never been fully staffed* and given the turnover rate of new employees during the probationary period, the five “Do Not Fill” positions places an *artificially low ceiling on staffing*. Exhibit 15 (emphasis added). Moore approved Thomas’ request to remove the five “Do Not Fill” positions. *Id.*

64. On December 31, 2008, the Communications Center had 57 employees, 15 unfilled positions (including 11 unfilled call taker positions), and a 20% vacancy rate. Exhibit 16.

65. In a February 3, 2009 memorandum to Moore, Thomas noted the Communications Center had 13 vacancies and requested “permission to initiate the hiring process for [call takers] and authority to continue this process as needed to maintain optimum staffing in the Communications Center throughout 2009.” Exhibit 17. Moore approved Thomas’ request. *Id.*

66. On December 31, 2009, the Communications Center had 58 employees, 14 unfilled positions (including 9 unfilled call taker positions), and a 19% vacancy rate. Exhibit 18.

67. On February 5, 2010, Thomas, in a memorandum to Moore, noted the Communications Center had 15 vacancies and requested permission to “continue the hiring process . . . throughout 2010 as needed to maintain optimum staffing in the Communications Center.” Exhibit 19. Moore approved the request. *Id.*

68. On December 31, 2010, the Communications Center had 57 employees, 15 unfilled positions (including 9 unfilled call taker positions), and a 20% vacancy rate. Exhibit 20.

69. On April 4, 2011, Thomas, in a memorandum to Moore, noted the Communications Center had 20 vacancies and requested permission to “continue the hiring process . . . throughout 2011 as needed to maintain optimum staffing in the Communications Center.” Exhibit 21. Moore approved the request. *Id.*

70. On December 31, 2011, the Communications Center had 63 employees, 9 unfilled positions (including 7 unfilled call taker positions), and a 12% vacancy rate. Exhibit 22.

71. On May 24, 2012, Thomas, in a memorandum to Moore, noted the Communications Center had 23 vacancies and requested permission to “continue the hiring process . . . throughout 2012 as needed to maintain optimum staffing in the Communications Center.” Exhibit 23. Moore approved the request and noted that incentives might be needed for filling these vacancies.

72. On August 21, 2012, the city posted a job opening for call takers. Exhibit 24. The posting indicated 25 positions were open with starting salaries of \$26,487.00. *Id.*

73. On December 31, 2012, the Communications Center was authorized to employ 84 employees. Exhibit 25. Of the 84 positions, 60 were filled and 24 were vacant creating a vacancy rate of 28%. *Id.* There were 26 unfilled call taker positions. *Id.* (There were 24 vacancies because 23 of the 49 call taker positions were filled and 25 employees filled the 23 dispatcher positions, a surplus of two. *Id.*)

Middleton’s Employment with the City of Benton

74. Middleton was hired by the City of Benton, Arkansas as a 911 Dispatcher on August 4, 1999.

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Middleton's Hiring by the City of Little Rock

98. On December 14, 2011, Middleton completed an online application for a call taker position with the city through the website NEOGOV. In her application, Middleton stated she was previously employed by Benton as a 911 Operator/Dispatcher from August 1999 to February 2011. Middleton stated she was terminated by Benton. Middleton granted permission to the city to contact Benton.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

100. On January 23, 2012, Middleton signed an Authorization to Release Information for the city. The authorization read :

I, Candace Middleton, have applied with the City of Little Rock, Arkansas, for the position of Communications Call Taker with the Little Rock Office of Emergency Services. In this position, I will be responsible for the dispatch of Police, Fire, and other Emergency Department equipment as well as doing responsible work to assist the citizens of Little Rock in the protection of their lives and property. I have been made aware that employees in this position are State Statute Sworn Public Safety Officers for the purposes of Public Safety Communications. I have also been advised that employees in this position must meet certain requirements in order to be certified to receive confidential Arkansas Crime Information Center and National Crime Information Center criminal history information for dissemination to law enforcement agencies. This requires a search of my criminal history/conviction information as well as a background check with former and present employers.

I understand the responsibilities of this position, and I am aware of the reason for the release of information of a personal and private nature concerning my employment history, criminal/conviction information and personal references.

I hereby authorize the release of any of the above described information to the City of Little Rock Office of Emergency Services or to any duly authorized representative of that agency.

101. According to Middleton's NEOGOV Applicant Master Record, on January 26, 2012 she received a job referral for the call taker position. The job referral was made by Cate, who previously supervised Middleton while working for Benton.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

103. On February 16, 2012, Martin prepared and initialed a memorandum addressed to Bewley recommending the hiring of Middleton as a call taker. Martin stated she had received Middleton's referral information in January 2012 and had interviewed Middleton.

104. On February 16, 2012 at 4:32 p.m., the communications department sent a fax to Benton Human Resources regarding Middleton. The fax included the Authorization to Release Information signed by Middleton and an employment reference form.

105. On February 17, 2012, Bewley handwrote on the Memorandum prepared by Martin that he recommended Thomas approve Martin's request to hire Middleton.

106. On February 17, 2012 at 5:15 p.m., Crystal Burton, Laura Martin's secretary, faxed Benton a cover letter signed by Martin accompanied by the Authorization to Release Information requesting Benton to complete the enclosed employment reference for Middleton.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

108. The completed and signed employment reference form was returned to Laura Martin. Laura Martin did not contact Benton to follow up on Middleton's termination or why she was ineligible for rehire.

109. Middleton was hired as a call taker by the city on March 12, 2012. Thomas signed for his approval of Middleton's hire on March 14, 2012.

Middleton's Probationary Training Period

110. From March 12, 2012 to April 20, 2012, Middleton participated in the city's Communications Training Academy.

111. On March 19, 2012, Middleton was issued a copy of the police department's General Orders, Rules and Regulations, and Code of Conduct for Civilian Employees. She also received the communication department's Divisional Operating Procedure, Training Manual, a City of Little Rock Geography Self-Study Guide, CAD Call Types & Priorities, Police Codes, and an Altaris CAD Manual.

112. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

114. A trainee's monthly evaluations are to be completed by her trainer and sent to the shift supervisors, the communications administrator, the communications center manager, and the office of the police chief.

115. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

117. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

119. A daily report comprises two pages. The first page has three categories – attitude, knowledge, and telephone skills – where numeric ratings are assigned. Within the knowledge category, a rating for “CAD/Phone System” is to be assigned. Within the telephone skills category, ratings for “CAD Skills: Normal/High Stress”, “Ability to Research Call Entries”, and “Update/Supplement Calls” are to be assigned. The rating scale is from 1 to 7 with 1 as not acceptable, 4 as acceptable, and 7 as superior. The second page has space for trainer comments on the most satisfactory and least satisfactory part of the trainee’s performance, supervisor comments, and trainee comments. The second page also has signature lines for the trainee, the trainer, and the shift supervisor.

120. After a report is completed by the trainer, it is presented to the trainee and the on duty shift supervisor for review and signature. After the on duty shift supervisor reviews and signs the report, it is returned to the emergency communications trainer to include in the trainee’s training manual. The shift supervisors, the communications administrator, and the communications center manager have access to a trainee’s training manual.

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[REDACTED]

132. Upon Dayong's information and belief, six months is the minimum probationary period for city communications employees.

[REDACTED]

134. For the sign off of a call taker on probation, the city requires completing the Little Rock Communications Center Trainee Sign-Off Form. The form has sections to be completed by the trainer, shift supervisors, and the emergency communications trainer.

135. The trainer's section of the sign off form states: "It is my opinion, the trainee has consistently demonstrated the ability to meet or exceed performance standards at the position noted above." The trainer's signature is required.

136. The shift supervisors' section states: "With this request, [we] agree with the position trainer that the trainee has consistently demonstrated the ability to meet or exceed performance standards at the position noted above." The shift supervisors' signatures are required.

137. The emergency communications trainer must state in her section that she has evaluated the trainee at the call taker position on certain dates and recommends one of the three following options for the trainee: 1) "should be signed off at this position"; 2) "should continue training at this position and be re-evaluated later"; or 3) "should be [called] in for a conference

138. A sign off form was never completed for Middleton.

139. Upon Dayong's information and belief, Middleton completed probation and became a full time permanent employee of the city on September 12, 2012.

[illegible]

■ [REDACTED]

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The Intersection of Cooper Orbit and Rushmore

146. In November 1996, the intersection of Cooper Orbit and Rushmore, located just prior to the entry of Capitol Lakes Estates, was annexed into the city. Little Rock, Ark., Ordinance No. 17,314 (November 7, 1996).

147. In 2000, the intersection of Cooper Orbit and Rushmore was added to the city's Master Street Plan. Little Rock, Ark., Ordinance No. 18,364 (October 3, 2000).

148. In 2004, the initial construction of the intersection of Cooper Orbit and Rushmore was completed and the intersection was added to the city's street inventory.

149. By 2005, all of the streets making up Capitol Lakes Estates subdivision – Cooper Orbit Road, Capitol Hill Boulevard, Rushmore Avenue, and Hartford Street – had been platted and constructed.

150. On February 22, 2007, just two days after he received his CAD, Sharp entered the street information and address range for Rushmore Avenue. However, he did not enter the intersection of Cooper Orbit and Rushmore. Grimm “pushed” the street name and address range for Rushmore onto the city's CAD system.

151. On June 29, 2010, a 911 call was placed for the intersection of Cooper Orbit and Rushmore. As the intersection was not entered in the city's CAD system, Cate, who answered the 911 call, had to manually override the location to facilitate a response by the city's fire department. *See Exhibit 26.*

152. On July 11, 2011, a 911 call was placed for the intersection of Cooper Orbit and Rushmore. As the intersection was not entered in the city's CAD system, the 911 call taker had to manually override the location to facilitate a response by the city's police department. See Exhibit 27.

153. On July 18, 2012, a 911 call was placed for the intersection of Cooper Orbit and Rushmore. As the intersection was not entered in the city's CAD system, the 911 call taker had to manually override the location to facilitate a response by the city's police department and MEMS. See Exhibit 28.

154. Upon Dayong's information and belief, neither Cate, who answered the June 29, 2010 call, nor the call takers who answered the July 11, 2011 or July 18, 2012 calls notified a shift supervisor that they had to manually override the intersection of Cooper Orbit and Rushmore.

Dayong Yang, Jinglei Yi, and Le Yang

155. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

158. Dayong began work as a surgical technician at St. Vincent Medical Center in Sherwood in July 2009. Jinglei earned a nursing degree at the University of Arkansas at Little

Rock in December 2011 and began work as a nurse at Baptist Health Medical Center in Little Rock in May 2012.

Jinglei Yi's 911 Call

161. On the cold Monday morning of January 14, 2013, Jinglei placed Le in his car seat in the backseat of her 2006 Ford Expedition. She planned to take Le to school and then go to work. Jinglei backed out of her driveway and headed south on Hartford Street. She stopped at the stop sign and made a left to proceed eastward on Capitol Hill Boulevard. Jinglei stopped at the stop sign at the intersection of Capitol Hill Boulevard and Pennsylvania Avenue/Rushmore Avenue.

162. As Jinglei proceeded through the intersection, she hit a patch of ice and lost control of her vehicle. Jinglei's vehicle continued east approximately 256 feet before going over the southbound curb line, leaving the roadway, striking a small tree, going down a hill, and entering a retaining pond on the south side of Capitol Hill Boulevard.

163. Jinglei used her cell phone to call Arkansas's 911 system at 7:55:25 a.m.¹

164. Jinglei's 911 call was answered by the Pulaski County Sheriff's 911 Communications Center. Jinglei told the female Pulaski County 911 call taker her vehicle had

¹ Pulaski County 911 call time stamp. Jinglei's AT&T cell phone records indicate this call was placed at 7:59 a.m.

fallen in the water. She stated she was in the car with her child. The Pulaski County call taker asked Jinglei if she slid off into the pond and said “I see where you’re at.”

165. The Pulaski County call taker told Jinglei she was getting her to the correct agency to get its fire department to help Jinglei and Le. The Pulaski County call taker transferred Jinglei’s 911 call to the Little Rock Police Department Communications Center because Jinglei and Yi were within the city limits.

166. The Pulaski County call taker, with Jinglei on the line, called Little Rock 911 at 7:56:03 a.m.²

167. Middleton answered the call.

168. The female Pulaski County 911 operator told Middleton that Jinglei and Le were in a pond just east of Rushmore Avenue on the south side of the road. The Pulaski County call taker told Jinglei she was letting her speak with Little Rock 911.

169. Jinglei told Middleton “I’m falling in a pond and I feel the water in my car right now.” Jinglei told Middleton her location, confirmed Le was in the car with her, and spelled her name.

170. Middleton attempted to enter Jinglei’s 911 call into the city’s CAD system by inputting the intersection of Cooper Orbit and Rushmore.

171. The city’s CAD system did not verify the intersection of Cooper Orbit and Rushmore.

172. With Jinglei on the line, Middleton said “[w]hy is this not taking it, this Cooper Orbit and Rushmore?” Upon Dayong’s information and belief, Middleton made this statement to Communications Call Taker Thomas Keeler, who was seated at the console next to her.

² Pulaski County 911 call time stamp. Little Rock 911 call time stamp for this call is 7:57:37 a.m.

173. Keeler told Middleton she would have to manually override the location of Cooper Orbit and Rushmore. Middleton asked Keeler how she would know which police and fire units would respond to the call. Keeler told Middleton to input the location of Cooper Orbit and Kanis as the units listed to respond to that location would also respond to Cooper Orbit and Rushmore. Middleton entered the address of Cooper Orbit and Kanis, hand wrote down the police and fire units listed for Cooper Orbit and Kanis, and attempted the CAD combined/manual override of entering the location of Cooper Orbit and Rushmore and the appropriate unit numbers.

174. Middleton told Jinglei “Okay, ma’am, we’re going to get some help on the way for you, okay?” The call was disconnected at 7:59:42 a.m.³

175. Middleton hung up the phone without asking Jinglei if she was still on the line.

176. Middleton did not re-call Jinglei.

177. Middleton did not transfer Jinglei to MEMS.

178. Middleton called MEMS at 8:01:24 a.m.⁴ Middleton advised Brandi Johnson, the MEMS operator, that she had “a report of a vehicle off in a pond occupied by a female and a child at Cooper Orbit and Rushmore . . . in a pond just off Rushmore.” Middleton told Johnson that “[Jinglei’s] still in the car and the water was coming in.” Johnson said “[a]ll right we’ve got them on the way.” Johnson entered the call at 8:04:20 a.m.⁵

179. Middleton completed her entry of Jinglei’s call after disconnecting with Johnson.

³ Little Rock 911 call time stamp.

⁴ *Id.*

⁵ MEMS CAD time stamp.

180. At 8:05 a.m. and 8:06 a.m.,⁶ Jinglei called Dayong and told him her vehicle was in the water and that she could feel water on her legs. Dayong was scrubbing into surgery at St. Vincent in Sherwood. Dayong left work immediately to come to Jinglei and Le's aid.

181. At 8:06:11 a.m.,⁷ MEMS ambulance unit 227, manned by Harwell and Williams, was enroute from Maumelle Boulevard and Counts Massie Road in Maumelle to aid Jinglei and Le. MEMS dispatch provided Harwell and Williams the location of Cooper Orbit and Rushmore.

182. At 8:07 a.m.,⁸ Johnson called Jinglei's cell phone. Johnson spoke to Jinglei for the next thirteen and a half minutes.⁹ Twenty seconds into the phone conversation, Jinglei told Johnson the water was inside the car but below the seats of the car. Approximately one minute into the conversation, Jinglei told Johnson that Le was five years old and "he was crying but he's okay." Johnson advised Jinglei to take Le out of his car seat. Jinglei replied that Le had unlocked himself from the car seat. Jinglei told Johnson she and Le could not swim. Approximately two and half minutes into the conversation, Jinglei said the water had risen to the level of the seats. Johnson asked Jinglei to "try to comfort [Le] and calm him down." Jinglei said she was trying to calm him down. Approximately three and half minutes into the conversation, Johnson asked Jinglei to "talk to her son, try to comfort him." Johnson told Jinglei "tell him to calm (sic) the ambulance is on the way." Le screamed louder. The water was almost above the seats. Approximately five and a half minutes into the conversation, Jinglei told

⁶ Jinglei's AT&T cell phone records.

⁷ MEMS CAD time stamp.

⁸ MEMS call time stamp and MEMS timeline of events.

⁹ MEMS call time stamp. Jinglei's AT&T cell phone records indicate this call lasted fifteen minutes.

Johnson the water level was to the windows of the car. Johnson asked Jinglei if Le knew how to hold his breath. Johnson wanted Jinglei and Le to take a deep breath just before the car filled with water, hold their breath once the car was completely filled with water, open a car door, and then swim to the surface. Approximately nine minutes into the conversation, Jinglei told Johnson the car was almost filled with water. Le was frantic. Approximately eleven minutes into the conversation, Jinglei told Johnson the water was to her neck. Twelve minutes into the conversation, Johnson told Jinglei “tell your son to take a deep breath when [the water] covers his face.” Approximately twelve and a half minutes into the conversation, a siren was heard. Jinglei told Johnson she could hear the ambulance. Johnson told Jinglei to keep Le calm. Jinglei said he was okay. Johnson told Jinglei to keep Le’s head above water. Thirteen minutes into the conversation, Le’s screams became muffled. Then, Le’s screams could no longer be heard. Johnson asked Jinglei: “Are you there? Hello?” The line was silent. It was 8:21 a.m.¹⁰

183. During the thirteen and a half minutes Johnson was on the phone with Jinglei, neither Johnson nor Reilly, who was handling MEMS radio traffic, or any other MEMS dispatchers called Little Rock 911 to check the status of police and fire rescue.

184. At 8:08 a.m.¹¹, when Johnson was on the phone with Jinglei, Wilson went to Middleton’s console to check on a problem reported about the desk. Middleton never mentioned Jinglei’s call to Wilson.

185. Despite being provided the intersection of Cooper Orbit and Rushmore by MEMS dispatch, Harwell and Williams drove past the intersection and the pond off Rushmore without stopping the ambulance or exiting the ambulance to look for a vehicle in the pond.

¹⁰ MEMS call time stamp.

¹¹ According to Linda Wilson’s Memorandum.

186. Harwell and Williams continued to drive down Cooper Orbit to see if they could find the vehicle in a different pond. After not finding the vehicle, they turned around and drove back to Cooper Orbit and Rushmore where they were stopped by a bystander advising of the vehicle in the pond.

187. Harwell and Williams checked in at the scene at 8:20:18 a.m.¹² Approximately five to ten minutes elapsed from when Harwell and Williams drove by the scene initially until they returned to the scene and stopped.

188. After checking in at the scene, Harwell and Williams called MEMS dispatch to check status of police and fire rescue.

189. At 8:21 a.m.¹³, Reilly, a MEMS supervisor, called Little Rock 911. Keeler answered the call. Reilly asked Keeler if Little Rock was handling the car in the water at Cooper Orbit and Rushmore. Keeler checked the CAD and said, “I’m not seeing it.” Reilly replied, “Are you kidding me?” Keeler confirmed that neither a rescue call nor a police call had been placed. Keeler stated, “I’ll get a call put in.” Reilly said: “We just checked on scene and (sic) we’re not going to be able to get them out without help.”

190. Keeler asked Middleton if she had entered the water rescue call from earlier. Middleton told Keeler she thought she had. Middleton checked the dispatched calls drop-down box on her console for the first time since she ended the call with Jinglei. She couldn’t find the call.

191. Middleton said nothing to fire or police dispatch or to her supervisors.

¹² MEMS CAD time stamp.

¹³ MEMS call time stamp and MEMS timeline of events. Little Rock 911 call time stamp for this call is 8:17:28. a.m.

192. Keeler entered calls in the CAD for fire and police at 8:23:02 a.m.¹⁴ Keeler also sent an administrative message to police and fire dispatch notifying them of MEMS' claim of a delayed response.

193. Operator Sheryl Dykes responded to the fire dispatch call for an "accident vehicle in water." Dykes called MEMS to verify the type of water the vehicle was in. Dykes dispatched Engine 20, Battalion Chief 9, Water Rescue 2, and Rescue 2.

194. Engine 20 was dispatched at 8:23:31 a.m., was enroute at 8:25:51 a.m., and arrived at the scene at 8:28:45 a.m.¹⁵ Scott was on board Engine 20.

195. Battalion Chief 9 was dispatched at 8:23:31 a.m., was enroute at 8:25:08 a.m., and arrived at the scene at 8:35:43 a.m.¹⁶ Rhine was on board Battalion Chief 9.

196. Water Rescue 2 was dispatched at 8:24:57 a.m. and was enroute at 8:28:21 a.m.¹⁷

197. Rescue 2 was dispatched at 8:28:29 a.m. and was enroute at 8:28:36 a.m.¹⁸

198. At 8:25:03 a.m.¹⁹, MEMS Supervisor Robert Darr was enroute to the scene. Darr arrived at the scene at 8:33:26 a.m.²⁰

199. At 8:27:55 a.m.²¹, MEMS ambulance unit 517 was enroute from Pleasant Valley Living Center to the scene. MEMS ambulance unit 517 arrived at the scene at 8:37:19 a.m.²²

¹⁴ Little Rock 911 CAD time stamp.

¹⁵ LRFD event report.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ MEMS CAD time stamp.

²⁰ *Id.*

²¹ *Id.*

200. Ficklin responded to the police dispatch call and dispatched police units at 8:27:50 a.m.²³ Officers Steve McGuire and Peter Whaley arrived on the scene at 8:35:30 a.m.²⁴ Officer Ronnie Carr arrived at the scene at 8:37:00 a.m.²⁵ Officer James Nellis arrived at the scene at 8:37:45 a.m.²⁶ Officers Troy Dillard and Anthony Moore arrived at the scene at 8:39:47 a.m.²⁷

201. McGuire and Whaley secured the scene upon their arrival. Whaley noticed Jinglei's vehicle was almost on the opposite side of the pond by the location of the air bubbles floating to the surface.

202. Upon Dayong's information and belief, city, police, and fire policies, customs and regulations existed which required vehicles responding to a request for emergency services to turn on their sirens and lights and for emergency response personnel to secure the scene.

203. Dayong arrived at the scene at 8:37:38 a.m.²⁸ McGuire, Whaley and Carr contacted Dayong at 8:38:05 a.m.²⁹ At 8:39:34 a.m.³⁰, McGuire, Whaley and Carr confirmed to Dayong that Jinglei's vehicle remained submerged.

²² *Id.*

²³ LRPD event report.

²⁴ *Id.*

²⁵ LRPD MVR time stamp.

²⁶ *Id.*

²⁷ LRPD event report.

²⁸ LRPD MVR time stamp.

²⁹ *Id.*

³⁰ *Id.*

204. Scott briefed Rhine regarding the situation. Engine 20's crew was prepared to enter the water when they heard Rescue 2 approaching the scene. Rhine advised Engine 20's crew to stand by to assist Rescue 2 when it arrived. Rhine advised Captain John Hogue of Rescue 2 by radio that Jinglei's submerged vehicle was thirty feet out in the pond and that he could see the top of the vehicle just below the surface. Rescue 2 arrived at the scene at 8:40:34 a.m.³¹

205. Fire department guidelines required every fire company, including Engine 20, to have water rescue equipment. Little Rock Fire Department Standard Operating Guideline Number 11650, Section IV.1. December 8, 2011.

206. Fire department guidelines prevented Scott, Rhine, and Engine 20's crew from entering the water to assist Jinglei and Le. *Id.* at Section IV.5.f)(iii).

207. At 8:42:25 a.m.³², Dayong attempted to walk from the sidewalk on Capitol Hill Boulevard to the pond. Dayong intended to enter the water and save Jinglei and Le. He was restrained in his rescue attempt by Rhine and Scott.

208. Fire department policy required Rhine and Scott to keep all non-fire department personnel at least ten feet away from the water. *Id.* at Section IV.2.

209. Hogue and Firefighter Jesse Clark entered the water to rescue Jinglei and Le. Clark broke out the driver's side rear window and found Jinglei in the back of the vehicle. Hogue swam Jinglei to shore. Clark continued the search for Le. Clark located Le in the back of the vehicle. He pulled Le out of the vehicle and swam him to shore. Clark turned Le's care over

³¹ *Id.*

³² *Id.*

to Harwell who performed his initial assessment at 8:53:13 a.m.³³ At 9:05:57 a.m.³⁴, Le was taken by MEMS ambulance unit 227 from the scene enroute to Arkansas Children's Hospital. He was unconscious.

210. At 8:38 a.m.³⁵, Sharon Martin called MEMS and spoke to Chris. Chris complained to Sharon Martin about rescue's delayed response time. Sharon Martin explained that calls for police and fire were entered at 8:23:02 a.m. Chris responded that MEMS received a call from Little Rock 911 at 8:04 a.m. Sharon Martin stated she would go back and "check the tapes." Chris detailed how MEMS ambulance arrived at the scene at 8:20 a.m. which was three minutes before police and fire calls were entered. Chris told Sharon Martin that MEMS units "are not supposed to enter the water." Sharon Martin agreed MEMS was not to enter the water.

211. Sharon Martin informed Wilson of MEMS' claim of a delayed response. Sharon Martin and Wilson reviewed the 911 audio tapes and discovered the delay in the 911 call being entered and dispatched. Wilson alerted Laura Martin to the delayed response. Laura Martin and Wilson discussed the delayed response with Middleton. Middleton was subsequently relieved of her duties.

212. At 12:30 p.m., the water temperature in the pond was 47 degrees Fahrenheit per measurements by the Arkansas Department of Environmental Quality.

213. On the day of the incident, the Communications Center was authorized to employ 84 employees. Exhibit 29. Of the 84 positions, 67 were filled and 17 were vacant creating a vacancy rate of 20%. *Id.* There were 19 unfilled calltaker positions. *Id.* (There were 17

³³ Le Yang's MEMS medical records.

³⁴ MEMS CAD time stamp.

³⁵ MEMS call time stamp.

vacancies because 30 of the 49 calltaker positions were filled and 25 employees filled the 23 dispatcher positions, a surplus of two. *Id.*)

214. On the day of the incident, there was a backlog of streets, intersections, and address ranges to be entered and updated in the city's CAD system.

Post-Incident

215. On January 24, 2013, Captain Bob Sharp of the fire department entered the intersection of Cooper Orbit Road and Rushmore Avenue into the CAD.

216. On April 12, 2013, Sharp sent an email stating he was "no longer assisting with CAD issues such as streets missing or address [ranges] not being in the CAD." *See* April 12, 2013 email from Sharp attached as Exhibit 30.

217. In response to Sharp's email, Laura Martin stated she would "need to inform [Grimm] that she will have the [task] of entering streets until we can hire additional staff." *Id.*

218. On April 17, 2013, Kathleen Walker, Employment Services Manager for the City of Little Rock issued a memorandum on Communications Center call takers and dispatchers. *See* Exhibit 31. She noted on April 10, 2013, the Communications Center had twenty-one vacancies and a vacancy rate of 29%. *Id.*

219. In her memorandum, Walker discussed current recruitment and selection of call taker and dispatcher applicants and noted that "the current cut-off scores are low in an attempt to produce larger applicant pools." *Id.* Further, "[a]ddressing recruiting and quality of referred candidates [in the call taker position] is meaningless if the retention issue is not addressed." *Id.*

220. Walker also noted the current hiring salary of call takers was \$27,265, the minimum allowed for the position as graded by the city, and all call takers were making less than \$28,815, regardless of the length of their tenure and despite \$41,988 being the maximum

allowable salary. *Id.* Stated differently, all call takers were paid in the bottom 11% of the salary range as designated by the city. By comparison, all calltakers were being paid less than the lowest paid Little Rock Police Department secretary. *Id.*

221. Walker stated in her recommendations that “[t]he goal of improving retention and hire rates, would decrease the vacancy rates and improve the overall efficiency of the Communications Call Center.” *Id.*

Le’s Injuries and Death

222. On the day of the incident, Le was treated for near drowning, hypothermia, and cardio pulmonary arrest. His initial in-patient stay at Arkansas Children’s Hospital lasted for fifty days.

223. Le suffered from an anoxic brain injury and had spastic quadriplegia. He had a tracheostomy for breathing and a tube for feeding. His behavior and communication skills were that of a child less than four months old.

224. When he wasn’t being treated in-patient at Arkansas Children’s Hospital, Le lived at the Arkansas Pediatric Facility where he received around the clock care.

225. On January 19, 2015, Le died of pneumonia complicated by the anoxic encephalopathy which occurred in the near drowning event.

226. In the more than two years following the incident, Le incurred over \$1.1 million in medical expenses.

COUNT I: Negligent Hiring of Candace Middleton by the City of Little Rock, Stuart Thomas, Wayne Bewley, Laura Martin, Linda Wilson, and Alan Cate

227. All allegations are incorporated in this count.

228. Thomas, Bewley, Laura Martin, Wilson, and Cate owed a duty of reasonable care to the citizens of Arkansas and Le to properly, diligently, and adequately screen Middleton to determine her qualifications and employment history before hiring her as a call taker.

229. Thomas, Bewley, Laura Martin, Wilson, and Cate breached their duty to the citizens of Arkansas and Le by hiring Middleton as evidenced by Laura Martin's failure to follow up with Benton despite Benton's statement that Middleton was not eligible for rehire for the same position the city was seeking to hire Middleton; allowing Cate, a former supervisor and personal reference of Middleton, to serve on Middleton's interview panel; and the failure of Laura Martin, Wilson, and Cate to ascertain Middleton's employment history of substandard and dangerous work performance with Benton during her interview.

230. Thomas, Bewley, Laura Martin, Wilson, and Cate knew, or in exercising reasonable care should have known, that employing Middleton as a call taker subjected the citizens of Arkansas and Le to an unreasonable risk of harm.

231. Thomas, Bewley, Laura Martin, Wilson, and Cate's negligent hiring of Middleton as a call taker was a proximate cause of Le's injuries and death.

232. At the time of the hiring of Middleton, Thomas, Bewley, Laura Martin, Wilson, and Cate were acting within the scope of their employment with the city and the police department, subject to its control, and in furtherance of its interests.

233. Under the doctrine of *respondeat superior* and Arkansas law, the city is vicariously liable for the conduct of Thomas, Bewley, Laura Martin, Wilson, and Cate and all damages and consequences of their conduct.

COUNT II: Negligent Training of Candace Middleton by the City of Little Rock, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, and Marquita Dooley

234. All allegations are incorporated in this count.

235. Laura Martin, Wilson, Sharon Martin, Cate, and Dooley owed a duty of reasonable care to the citizens of Arkansas and Le to properly, diligently, and adequately train Middleton as a call taker.

236. Laura Martin, Wilson, Sharon Martin, Cate, and Dooley breached their duty to the citizens of Arkansas and Le by failing to properly train Middleton as evidenced by the lack of progress or improvement in her daily observation reports and monthly evaluations.

237. Laura Martin, Wilson, Sharon Martin, Cate, and Dooley knew, or in exercising reasonable care should have known, that Middleton subjected the citizens of Arkansas and Le to an unreasonable risk of harm as it was foreseeable her inability to perform critical tasks as a call taker in a high stress environment would cause bodily harm to those seeking aid.

238. Laura Martin, Wilson, Sharon Martin, Cate, and Dooley's negligent failure to properly train Middleton was a proximate cause of Le's injuries and death.

239. At the time of Middleton's training, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley were acting within the scope of their employment with the city and the police department, subject to its control, and in furtherance of its interests.

240. Under the doctrine of *respondeat superior* and Arkansas law, the city is vicariously liable for the conduct of Laura Martin, Wilson, Sharon Martin, Cate, and Dooley and all damages and consequences of their conduct.

COUNT III: Negligent Supervision of Candace Middleton by the City of Little Rock, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, and Marquita Dooley

241. All allegations are incorporated in this count.

242. Laura Martin, Wilson, Sharon Martin, Cate, and Dooley owed a duty of reasonable care to the citizens of Arkansas and Le to properly, diligently, and adequately supervise Middleton.

243. Laura Martin, Wilson, Sharon Martin, Cate, and Dooley breached their duty to the citizens of Arkansas and Le by failing to properly supervise Middleton as evidenced by the absence of any shift supervisor comments on her daily observation reports; the absence of shift supervisor signatures on sixteen of the sixty-six daily observation reports; Middleton's completion of probation and move to full-time call taker employment despite the failure of Wilson, Sharon Martin, Cate, Dooley, and Norman to complete and sign the sign off form; Middleton's completion of probation and move to full-time call taker employment despite the reports and evaluations indicating she was not ready to work on her own; Middleton's release from probation at the earliest possible date despite her lack of readiness; and the four counselings Middleton received post-probation for errors similar to errors she made during her probation.

244. Laura Martin, Wilson, Sharon Martin, Cate, and Dooley knew, or in exercising reasonable care should have known, that Middleton subjected the citizens of Arkansas and Le to an unreasonable risk of harm as it was foreseeable her inability to perform critical tasks as a call taker in a high stress environment would cause bodily harm to those seeking aid.

245. Laura Martin, Wilson, Sharon Martin, Cate, and Dooley's negligent failure to properly supervise Middleton was a proximate cause of Le's injuries and death.

246. Middleton was supervised by Laura Martin, Wilson, Sharon Martin, Cate, and Dooley, who were acting within the scope of their employment with the city and the police department, subject to its control, and in furtherance of its interests.

247. Under the doctrine of *respondeat superior* and Arkansas law, the city is vicariously liable for the conduct of Laura Martin, Wilson, Sharon Martin, Cate, and Dooley and all damages and consequences of their conduct.

COUNT IV: Negligent Retention of Candace Middleton by the City of Little Rock, Stuart Thomas, Wayne Bewley, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, and Marquita Dooley

248. All allegations are incorporated in this count.

249. Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley owed a duty of reasonable care to the citizens of Arkansas and Le to retain Middleton only if she was capable of properly, diligently, and adequately performing her duties as a call taker.

250. Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley breached their duty to the citizens of Arkansas and Le by retaining Middleton despite her lack of progress or improvement in her call taker performance as noted in her daily observation reports, monthly evaluations, and the counselings she received after her probationary period ended.

251. Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley knew, or in exercising reasonable care should have known, that retaining Middleton subjected the citizens of Arkansas and Le to an unreasonable risk of harm as it was foreseeable her inability to perform critical tasks as a call taker in a high stress environment would cause bodily harm to those seeking aid.

252. Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley's negligent retention of Middleton was a proximate cause of Le's injuries and death.

253. Middleton was retained by Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley, who were acting within the scope of their employment with the city and the police department, subject to its control, and in furtherance of its interests.

254. Under the doctrine of *respondeat superior* and Arkansas law, the city is vicariously liable for the conduct of Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley and all damages and consequences of their conduct.

COUNT V: City of Little Rock, Little Rock Police Department, Little Rock Fire Department, Karen Grimm, and Bob Sharp's Negligent Maintenance of the CAD System

255. All allegations are incorporated in this count.

256. The city, police department, fire department, Grimm, and Sharp owed a duty to the citizens of Arkansas and Le to keep the CAD system updated and current.

257. The city, police department, fire department, Grimm, and Sharp breached their duty to the citizens of Arkansas and Le by failing to update the CAD system with the intersection of Cooper Orbit Road and Rushmore Avenue for over twelve years after the streets were annexed and over eight years after the intersection was constructed.

258. The city, police department, fire department, Grimm, and Sharp knew, or in exercising reasonable care should have known, that not keeping the CAD system current would force call takers to perform manual location overrides which would increase the chances of calls not being entered, or entered incorrectly, into the CAD system making it foreseeable that individuals seeking emergency rescue services would suffer bodily harm.

259. The city, police department, fire department, Grimm, and Sharp's negligent maintenance of the CAD system was a proximate cause of Le's injuries and death.

260. In maintaining the city's CAD system, Grimm and Sharp were acting within the scope of their employment with the city, police department (Grimm), and fire department (Sharp), subject to its control, and in furtherance of its interests.

261. Under the doctrine of *respondeat superior* and Arkansas law, the city is vicariously liable for the conduct of Grimm and Sharp and all damages and consequences of their conduct.

COUNT VI: Inadequate Staffing of the Little Rock Police Department's Communications Center by the City of Little Rock, Little Rock Police Department, Stuart Thomas, Wayne Bewley, and Laura Martin

262. All allegations are incorporated in this count.

263. The city, police department, Thomas, Bewley, and Laura Martin owed a duty to the citizens of Arkansas and Le to adequately staff the Communications Center.

264. The city, police department, Thomas, Bewley, and Laura Martin breached their duty to the citizens of Arkansas and Le by chronically understaffing the Communications Center despite written acknowledgement the Communications Center was understaffed for years prior to this incident; proper staffing levels were critical to the Communication Center's performance; and calltaker positions involved high stress, odd and long hours, and inadequate pay which created high calltaker turnover.

265. The city, police department, Thomas, Bewley, and Laura Martin knew, or in exercising reasonable care should have known, that not keeping the Communications Center adequately staffed would force the available call takers to work more shifts and to answer more emergency calls which would increase the chances of calls not being handled properly making it foreseeable that individuals seeking emergency rescue services would suffer bodily harm or death.

266. The city, police department, Thomas, Bewley, and Laura Martin's inadequate staffing of the Communications Center was a proximate cause of Le's injuries and death.

267. In staffing the Communications Center, Thomas, Bewley, and Laura Martin were acting within the scope of their employment with the city and the police department, subject to its control, and in furtherance of its interests.

268. Under the doctrine of *respondeat superior* and Arkansas law, the city is vicariously liable for the conduct of Thomas, Bewley, and Laura Martin and all damages and consequences of their conduct.

COUNT VII: Middleton's Negligent Performance of Undertaking to Render Rescue Services

269. All allegations are incorporated in this count.

270. Middleton, through her employment with the city, undertook the duty to render rescue services to Jinglei and Le upon Jinglei's request for rescue services.

271. Middleton should have recognized rescue services were necessary to protect the lives and liberty of Jinglei and Le.

272. Jinglei, and by extension her son Le, relied upon Middleton providing rescue services.

273. Middleton failed to exercise reasonable care in securing rescue services for Le by not entering Jinglei's call into the CAD, by not notifying other call takers or dispatchers of her difficulty in entering the call, by ending Jinglei's phone call, by not remaining on the line with Jinglei, by not transferring Jinglei to MEMS, by not checking her calls pending or dispatched calls screen, by not notifying her supervisors of Jinglei's high priority call, and by not advising other call takers, dispatchers, or supervisors of the delay in dispatch after MEMS called and spoke to Keeler.

274. Middleton's negligent performance of undertaking to render rescue services was a proximate cause of Le's injuries and death.

275. When Middleton received the 911 call from Jinglei, she was acting within the course and scope of her employment with the city, subject to its control and in furtherance of its interests.

276. Under the doctrine of *respondeat superior* and Arkansas law, the city is vicariously liable for the conduct of Middleton and all damages and consequences of her conduct.

COUNT VIII: Frank Scott and Eddie Rhine's Negligent Performance of Undertaking to Render Rescue Services

277. All allegations are incorporated in this count.

278. Scott and Rhine, through their employment with the city and the fire department, undertook the duty to render rescue services to Jinglei and Le.

279. Scott and Rhine's failure to exercise reasonable care in performing rescue services increased the risk of harm to Le. Scott arrived at 8:28:45 a.m. Rhine arrived at 8:35:43 a.m. Scott briefed Rhine on the situation. Engine 20 had water rescue capabilities. Rhine advised Engine 20's crew to stand by and assist Rescue 2 which arrived at 8:40:34 a.m. Le was underwater in a submerged vehicle for a critical eleven minutes and forty-nine seconds during the inaction of Scott and Rhine. Scott and Rhine knew timely rescue services were necessary to protect the liberty of Le.

280. Scott and Rhine's negligent performance of undertaking to render rescue services was a proximate cause of Le's injuries and death.

281. When Scott and Rhine were performing rescue services, they were acting within the course and scope of their employment with the city and fire department, subject to its control and in furtherance of its interests.

282. Under the doctrine of *respondeat superior* and Arkansas law, the city is vicariously liable for the conduct of Scott and Rhine and all damages and consequences of their conduct.

COUNT IX: MEMS' Negligent Performance of Undertaking to Render Rescue Services

283. All allegations are incorporated in this count.

284. Johnson, Reilly, Harwell, and Williams, through their employment with MEMS, undertook the duty to render rescue services to Jinglei and Le.

285. Johnson's failure to exercise reasonable care in performing rescue services increased the risk of harm to Le. Johnson was on the phone with Jinglei from 8:07 a.m. until 8:21 a.m. Except for the last few seconds of the thirteen and a half minute phone call, Jinglei and Le were not completely submerged. At no point during the call did Johnson call Little Rock 911 to check the status of police and fire rescue. At no point during the call did Johnson advise another MEMS dispatcher to call Little Rock 911 to check the status of police and fire rescue. Johnson's failure to check the status of police and fire rescue, or to have another MEMS dispatcher check for her, resulted in additional time elapsing prior to the dispatching of police and fire rescue. Johnson knew timely rescue services were necessary to protect the life of Le.

286. Reilly's failure to exercise reasonable care in performing rescue services increased the risk of harm to Le. Reilly was handling MEMS radio traffic during the time Johnson was on the phone with Jinglei. At no point prior to hearing from Harwell and Williams did Reilly call Little Rock 911 to check the status of police and fire rescue. Reilly's failure to check the status of police and fire rescue, or to have another MEMS dispatcher check for her, resulted in additional time elapsing prior to the dispatching of police and fire rescue. Reilly knew timely rescue services were necessary to protect the life of Le.

287. Harwell and Williams' failure to exercise reasonable care in performing rescue services increased the risk of harm to Le. Despite being provided the scene location by MEMS dispatch, Harwell and Williams drove past the intersection and the pond off Rushmore without stopping the ambulance or exiting the ambulance to look for a vehicle in the pond before returning to the scene. Harwell and Williams' initial failure to inspect the scene resulted in an approximate five to ten minute delay in arriving at the scene which in turn caused a delay in contacting MEMS dispatch to check status of police and fire rescue. Harwell and Williams knew timely rescue services were necessary to protect Le.

288. Johnson, Reilly, Harwell, and Williams' negligent performance of undertaking to perform rescue services was a proximate cause of Le's injuries and death.

289. When Johnson, Reilly, Harwell, and Williams were performing rescue services, they were acting within the course and scope of their employment with MEMS, subject to its control, and in furtherance of its interests.

290. Under the doctrine of *respondeat superior* and Arkansas law, MEMS is vicariously liable for the conduct of Johnson, Reilly, Harwell, and Williams and all damages and consequences of their conduct.

COUNT X: Deliberate Indifference by the City of Little Rock, Little Rock Police Department, Stuart Thomas, Wayne Bewley, Laura Martin, Linda Wilson, and Alan Cate in the Hiring Decision of Candace Middleton

291. All allegations are incorporated in this count.

292. Middleton was hired as a call taker by the city and police department.

293. Middleton received a personal reference from Cate. She was interviewed by Laura Martin, Wilson, and Cate. Her hiring was recommended by Bewley, Laura Martin, Wilson, and Cate, and approved by Thomas.

294. The city, police department, Thomas, Bewley, Laura Martin, Wilson, and Cate owed a duty to the citizens of Arkansas and Le to hire capable and qualified individuals as call takers and to adequately scrutinize Middleton's employment background. The hiring of Middleton in light of her prior employment record with Benton evidences either a policy of indifference to the qualifications of call takers or a conscious decision by Thomas, Bewley, Laura Martin, Wilson, and Cate to execute policy.

295. The obvious consequence of the decision of the city, police department, Thomas, Bewley, Laura Martin, Wilson, and Cate to hire Middleton was that eventually and inevitably one or more citizens of Arkansas would be deprived of his or her federally protected right to life, liberty, and property.

296. The actions of the city, the police department, Thomas, Bewley, Laura Martin, Wilson, and Cate in hiring Middleton, in light of her termination from a substantially similar call taker position with Benton for unacceptable work performance, constitutes such a deliberate indifference to the safety and welfare of the citizens of Arkansas, Le, and others similarly situated as to constitute a deprivation of Le's constitutional right to life, liberty, and property and is actionable by Dayong under 42 U.S.C. § 1983.

297. The city, police department, Thomas, Bewley, Laura Martin, Wilson, and Cate's deliberate indifference in hiring Middleton was a proximate cause of Le's loss of life.

COUNT XI: Deliberate Indifference by the City of Little Rock, Little Rock Police Department, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, and Marquita Dooley in the Training of Candace Middleton

298. All allegations are incorporated in this count.

299. Middleton was trained as a call taker by the city and police department.

300. Middleton's individual trainer was Norman. Norman's supervisor was Dooley, the emergency communications trainer. Middleton's shift supervisors were Sharon Martin and Cate. Wilson was communications administrator and Laura Martin was the communications center manager.

301. The city, police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley owed a duty to the citizens of Arkansas and Le to train call takers to handle high stress emergency calls involving the potential for loss of life, liberty, and property. Middleton's lack of progress or improvement as a call taker as noted in her daily observation reports and monthly evaluations, evidences either a policy of indifference to the training process or a conscious decision by Laura Martin, Wilson, Sharon Martin, Cate, and Dooley to execute policy.

302. The obvious consequence of the decision of the city, police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley to not adequately train Middleton was that eventually and inevitably one or more citizens of Arkansas would be deprived of his or her federally protected right to life, liberty, and property.

303. The actions of the city, the police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley in failing to adequately train Middleton as a call taker constitutes such a deliberate indifference to the safety and welfare of the citizens of Arkansas, Le, and others similarly situated as to constitute a deprivation of Le's constitutional right to life, liberty, and property and is actionable by Dayong under 42 U.S.C. § 1983.

304. The city, police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley's deliberate indifference in training Middleton was a proximate cause of Le's loss of life.

COUNT XII: Deliberate Indifference by the City of Little Rock, Little Rock Police Department, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, and Marquita Dooley in the Supervision of Candace Middleton

305. All allegations are incorporated in this count.

306. Middleton was supervised as a call taker by the city and police department.

307. Laura Martin, Wilson, Sharon Martin, Cate, Dooley, and Norman supervised Middleton.

308. The city, police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley owed a duty to the citizens of Arkansas and Le to supervise call takers to insure that high stress emergency calls involving the potential for loss of life, liberty, and property were handled appropriately. The absence of any shift supervisor comments on Middleton's daily observation reports; the absence of shift supervisor signatures on sixteen of the sixty-six daily observation reports; Middleton's completion of probation and move to full-time call taker employment despite the failure of Wilson, Sharon Martin, Cate, Dooley, and Norman to complete and sign the sign off form; Middleton's completion of probation and move to full-time call taker employment despite the reports and evaluations indicating she was not ready to work on her own; Middleton's release from probation at the earliest possible date despite her lack of readiness; and the four counselings Middleton received post-probation for errors similar to errors she made during her probation, evidence either a policy of indifference to supervising call takers or a conscious decision by Laura Martin, Wilson, Sharon Martin, Cate, and Dooley to execute policy.

309. The obvious consequence of the city, police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley's failure to supervise Middleton was that eventually and inevitably one or more citizens of Arkansas would be deprived of his or her federally protected right to life, liberty, and property.

310. The actions of the city, the police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley in failing to supervise Middleton constitutes such a deliberate indifference to the safety and welfare of the citizens of Arkansas, Le, and others similarly situated as to constitute a deprivation of Le's constitutional right to life, liberty, and property and is actionable by Dayong under 42 U.S.C. § 1983.

311. The city, the police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley's deliberate indifference in failing to adequately supervise Middleton was a proximate cause of Le's loss of life.

COUNT XIII: Deliberate Indifference by the City of Little Rock, Little Rock Police Department, Stuart Thomas, Wayne Bewley, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, and Marquita Dooley in the Retention of Candace Middleton

312. All allegations are incorporated in this count.

313. Middleton was retained as a call taker by the city and police department.

314. Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley retained Middleton.

315. The city, police department, Thomas, Bewley, Laura Martin, Wilson, Cate, and Dooley owed a duty to the citizens of Arkansas and Le to retain and employee call takers capable of handling high stress emergency calls involving the potential for loss of life, liberty, and property. The retention of Middleton despite her prior employment record at Benton, her lack of progress or improvement in her call taker performance as noted in her daily observation reports, monthly evaluations, and the counselings evidence either a policy of indifference to retaining call takers or a conscious decision by Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley to execute policy.

316. The obvious consequence of the decision by the city, police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley to retain Middleton was that eventually and inevitably one or more citizens of Arkansas would be deprived of his or her federally protected right to life, liberty, and property.

317. The actions of the city, the police department, Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley in retaining Middleton constitutes such a deliberate indifference to the safety and welfare of the citizens of Arkansas, Le, and others similarly situated as to constitute a deprivation of Le's constitutional right to life, liberty, and property and is actionable by Dayong under 42 U.S.C. § 1983.

318. The city, police department, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley's deliberate indifference in retaining Middleton was a proximate cause of Le's loss of life.

COUNT XIV: Deliberate Indifference by the City of Little Rock, Little Rock Police Department, Little Rock Fire Department, Karen Grimm and Bob Sharp in Maintaining the CAD System

319. All allegations are incorporated in this count.

320. The city and police department, as a public service answering point for the state, operated a CAD system.

321. Grimm and Sharp were responsible for keeping the CAD system updated and current.

322. The city, police department, fire department, Grimm, and Sharp owed a duty to the citizens of Arkansas and Le to enter the intersection of Cooper Orbit Road and Rushmore Avenue into the CAD system. The failure of the city, police department, fire department, Grimm, and Sharp to update the CAD system with this intersection for over twelve years after

the streets were annexed and over eight years after the intersection was constructed evidences either a policy of indifference to keep the CAD system current or a conscious decision by Grimm and Sharp to execute policy.

323. The obvious consequence of the decision by the city, police department, fire department, Grimm, and Sharp to not keep the CAD system updated was that eventually and inevitably one or more citizens of Arkansas would be deprived of his or her federally protected right to life, liberty, and property.

324. The actions of the city, police department, fire department, Grimm, and Sharp to not keep the CAD system current constitutes such a deliberate indifference to the safety and welfare of the citizens of Arkansas, Le, and others similarly situated as to constitute a deprivation of Le's constitutional right to life, liberty, and property and is actionable by Dayong under 42 U.S.C. § 1983.

325. The city, police department, fire department, Grimm, and Sharp's deliberate indifference in failing to keep the CAD system current was a proximate cause of Le's loss of life.

COUNT XV: Deliberate Indifference by the City of Little Rock, Little Rock Police Department, Stuart Thomas, Wayne Bewley, and Laura Martin in Staffing the City of Little Rock's Communications Center

326. All allegations are incorporated in this count.

327. Thomas, Bewley, and Laura Martin were responsible for keeping the Communications Center adequately staffed.

328. The city, police department, Thomas, Bewley, and Laura Martin owed a duty to the citizens of Arkansas and Le to adequately staff the Communications Center. The failure of the city, police department, Thomas, Bewley, and Laura Martin to adequately staff the Communications Center despite written acknowledgement the Communications Center was

understaffed for years prior to this incident; proper staffing levels were critical to the Communication Center's performance; and calltaker positions involved high stress, odd and long hours, and inadequate pay which created high calltaker turnover, evidences either a policy of indifference to keep the Communications Center adequately staffed or a conscious decision by the city, police department, Thomas, Bewley, and Laura Martin to execute policy.

329. The obvious consequence of the decision by the city, police department, Thomas, Bewley, and Laura Martin in not keeping the Communications Center adequately staffed was that eventually and inevitably one or more citizens of Arkansas would be deprived of his or her federally protected right to life, liberty, and property.

330. The actions of the city, police department, Thomas, Bewley, and Laura Martin in not keeping the Communications Center adequately staffed constitutes such a deliberate indifference to the safety and welfare of the citizens of Arkansas, Le, and others similarly situated as to constitute a deprivation of Le's constitutional right to life, liberty, and property and is actionable by Dayong under 42 U.S.C. § 1983.

331. The city, police department, Thomas, Bewley, and Laura Martin's deliberate indifference in failing to keep the Communications Center adequately staffed was a proximate cause of Le's loss of life.

COUNT XVI: Deliberate Indifference by the City of Little Rock, Little Rock Police Department, and Candace Middleton in Handling Jinglei Yi's 911 Call

332. All allegations are incorporated in this count.

333. Middleton received Jinglei's cell phone 911 call. Forty-three minutes elapsed before water rescue arrived to assist Jinglei and Le.

334. It was foreseeable that a delayed and inappropriate rescue response would cause serious injuries to Le.

335. The delayed and inappropriate response evidenced a willful disregard of Le's safety by the city, police department, and Middleton.

336. Jinglei advised Middleton that Le was in the car with her. As Middleton knew of Le's presence in the vehicle, a special relationship existed between the city, the police department, and Middleton with Jinglei and Le.

337. Middleton told Jinglei, ". . . we're going to get some help on the way for you, okay?" However, upon Dayong's information and belief Middleton did not enter a call into the CAD system as was the custom or policy of the city and police department. By promising help was on the way, Middleton exercised authority over Jinglei and Le and left her with a sense of security calculated to foreclose recourse to other potential rescue resources or self help.

338. Having represented appropriate help was on the way, the conscious failure to then provide such assistance represents an affirmative act proximately causing the injuries sustained by Le for which Middleton is liable under 42 U.S.C. § 1983. Given Middleton's established history of failing to properly respond to emergency calls as an employee of Benton and as a city probationary trainee and permanent employee, the city, police department, Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley adopted Middleton's actions as custom and practice for which the city, police department, Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley may be held liable under 42 U.S.C. § 1983.

339. The obvious consequence of the decisions made by the city, police department, and Middleton in handling Jinglei's 911 call was that eventually and inevitably one or more citizens of Arkansas would be deprived of his or her federally protected right to life, liberty, and property.

340. The actions of the city, police department, and Middleton in responding to Jinglei's 911 call constitutes such a deliberate indifference to the safety and welfare of the citizens of Arkansas, Le, and others similarly situated as to constitute a deprivation of Le's constitutional right to life, liberty, and property and is actionable by Dayong under 42 U.S.C. § 1983.

341. The city, police department, and Middleton's deliberate indifference in responding to Jinglei's 911 call was a proximate cause of Le's loss of life.

COUNT XVII: Water Rescue Policies, Customs and Regulations of the City of Little Rock, Little Rock Police Department, Little Rock Fire Department, and MEMS Deprived Le Yang of His Life and Liberty

342. All allegations are incorporated in this count.

343. The water rescue policies, customs and regulations of the city, police department, fire department, and MEMS including Little Rock Fire Department Standard Operating Guideline Number 11650, Section IV.5.f)(iii), created a situation whereby MEMS ambulance unit 227 and Harwell and Williams (arrived at the scene at 8:20:18 a.m.), Engine 20 and Scott (arrived at 8:28:45 a.m.), Darr (arrived at 8:33:26 a.m.), McGuire and Whaley (arrived at 8:35:30 a.m.), Rhine (arrived at 8:35:43 a.m.), Carr (arrived at 8:37:00 a.m.), MEMS ambulance unit 517 (arrived at 8:37:19 a.m.), Nellis (arrived at 8:37:45 a.m.), and Dillard and Moore (arrived at 8:39:47 a.m.) could not enter the water for rescue efforts and were forced to await Rescue 2 with Hogue and Clark (arrived at 8:40:34 a.m.).

344. But for the water rescue policies, customs and regulations of the city, police department, fire department, and MEMS including Little Rock Fire Department Standard Operating Guideline Number 11650, Section IV.5.f)(iii), Le's death would have been prevented.

345. City, police department, fire department, and MEMS policies, customs, and regulations, including Little Rock Fire Department Standard Operating Guideline Number 11650, Section IV.5.f)(iii), deprived Le of his life in violation of his rights granted by the Fourteenth Amendment to the United States Constitution and said violation is actionable under 42 U.S.C. § 1983.

COUNT XVIII: Scene Security Policies, Customs and Regulations of the City of Little Rock, Little Rock Police Department, Little Rock Fire Department, and MEMS Cut Off Potential Sources of Private Aid and Failed to Provide Adequate Replacement Protection

346. All allegations are incorporated in this count.

347. The policies, customs, and regulations of the city, police department and fire department requiring vehicles responding to a request for emergency services to turn on their sirens and lights created a situation whereby MEMS ambulance unit 227 and Harwell and Williams (arrived at the scene at 8:20:18 a.m.), Engine 20 and Scott (arrived at 8:28:45 a.m.), Darr (arrived at 8:33:26 a.m.), McGuire and Whaley (arrived at 8:35:30 a.m.), Rhine (arrived at 8:35:43 a.m.), Carr (arrived at 8:37:00 a.m.), MEMS ambulance unit 517 (arrived at 8:37:19 a.m.), Nellis (arrived at 8:37:45 a.m.), and Dillard and Moore (arrived at 8:39:47 a.m.) were at the scene with their sirens and lights on.

348. The policies, customs, and regulations of the city, police department, fire department, and MEMS requiring emergency response personnel to secure the scene caused McGuire and Whaley to secure the scene upon their arrival.

349. The multiple emergency response vehicles with sirens and lights on and police officers securing the scene indicated to passing motorists and potential sources of private rescue that the rescue effort of Le was being adequately handled by the city, police, fire, and MEMS.

Le was denied potential self help from private citizens from 8:20:18 a.m., the time when the first ambulance arrived, until 8:40:34 a.m., the time when the authorized water rescue unit arrived.

350. But for the policies, customs, and regulations of the city, police department, fire department, and MEMS to turn on their sirens and lights and secure the scene resulting in a time of twenty minutes and sixteen seconds where Le's access to self help from private citizens was cut off, Le's bodily injuries would have been prevented or significantly reduced.

351. City, police department, fire department, and MEMS policies, customs, and regulations deprived Le of his life in violation of his rights under the Fourteenth Amendment and said violations are actionable under 42 U.S.C. § 1983.

COUNT XIX: The City of Little Rock, Little Rock Fire Department, Frank Scott, and Eddie Rhine Arbitrarily Asserted Their Power and Prevented the Self Help Rescue Attempt of Dayong Yang

352. All allegations are incorporated in this count.

353. Dayong arrived at the scene at 8:37:38 a.m. At 8:42:25 a.m., a time after Rescue 2 arrived but prior to Hogue and Clark entering the water, Dayong attempted to walk from the sidewalk on Capitol Hill Boulevard to the pond. Dayong intended to enter the water and save Jinglei and Le.

354. Scott and Rhine, in conformity with the policies, customs and regulations of the city, police department, and fire department, including Little Rock Fire Department Standard Operating Guideline Number 11650, Section IV.2, to only allow water rescue attempts to be conducted by authorized water rescue personnel of the fire department, restrained Dayong and prevented his self help rescue attempt.

355. By preventing Dayong’s self help rescue attempt, Scott and Rhine, state actors carrying out the policies, customs, and regulations of the city, police department, and fire department, asserted the state’s power and deprived Le of his life.

356. But for policies, customs, and regulations of the city, police department, and fire department, including Little Rock Fire Department Standard Operating Guideline Number 11650, Section IV.2, preventing water rescue attempts by non-authorized water rescue personnel of the fire department, Le’s death would have been prevented.

357. The city, police department, and fire department policies, customs, and regulations, including Little Rock Fire Department Standard Operating Guideline Number 11650, Section IV.2, deprived Le of his life in violation of the Fourteenth Amendment of the United States Constitution and said violation is actionable under 42 U.S.C. § 1983.

COUNT XX: Civil Rights Offenses under the Arkansas Civil Rights Act

358. All allegations are incorporated in this count.

359. Each defendant is a “person” subject to liability, as that term is used within Ark. Code Ann. §16-123-105.

360. Defendants acted under “color of state law,” as that term is used within Ark. Code Ann. § 16-123-105.

361. Defendants “subjected” Le to a “deprivation” of his Arkansas constitutional rights and resulting damages, as those terms are used within Ark. Code Ann. §16-123-105.

362. Defendants actually and proximately caused Le to suffer a deprivation of his Arkansas constitutional rights and resulting damages.

363. Defendants acted under a custom or policy of the city, police department, or fire department.

364. Thomas, Bewley, Laura Martin, Wilson, Sharon Martin, Cate, and Dooley were designated decision-makers with policy-making authority for the city and police department.

365. Summers was a designated decision-maker with policy-making authority for the city and fire department.

366. Defendants caused Le to suffer an unlawful and unreasonable loss of life as protected by the Arkansas Constitution, without substantive and procedural due process of law, resulting in Le's death.

367. Under the Arkansas Civil Rights Act, Dayong is entitled to legal and equitable relief. Ark. Code Ann. §16-123-105.

368. Under the Arkansas Civil Rights Act, Dayong is entitled to recover compensatory and punitive damages, and the costs of litigation and a reasonable attorney's fee.

DAMAGES

369. All allegations herein are incorporated in this damages count.

Survival Action

370. Dayong brings this action pursuant to the Arkansas Survival Act and Arkansas law governing the survival of actions. Due to the actions of defendants as previously alleged in this Third Amended Complaint, Dayong, as special administrator of Le's estate, and on behalf of Le's estate and its heirs, is entitled to significant damages for:

- a. Le's conscious pain and suffering and mental anguish prior to his death;
- b. Le's funeral expenses;
- c. Le's loss of life;
- d. Le's medical expenses attributable to his fatal injuries;

- e. Le's scars, disfigurement, and visible results of his injuries sustained prior to his death;
- f. The expenses of necessary help in Le's home which were required as a result of his injuries; and
- g. All other damages which Le would have been able to recover had he lived.

Wrongful Death Action

371. Dayong brings this action pursuant to the Arkansas Wrongful Death Act and Arkansas law governing wrongful death actions. Due to the actions of defendants as previously alleged in this Third Amended Complaint, Dayong, as special administrator of Le's estate, and Le's statutory beneficiary, is entitled to significant damages. The statutory beneficiary, under the Arkansas Wrongful Death Act and Arkansas law governing wrongful death actions, known to Dayong is:

- a. Dayong Yang, surviving father of Le.

372. Dayong, as special administrator of Le's estate, on behalf of the statutory beneficiary, is entitled to significant damages for:

- a. Mental anguish suffered and reasonably probable to be suffered in the future by Dayong Yang from the death of Le;
- b. The value of Le's probable future services to Dayong Yang during his minority; and
- c. All other damages allowable under the Arkansas Wrongful Death Act or Arkansas law governing wrongful death actions.

PUNITIVE DAMAGES

373. Defendants knew or ought to have known, in light of the surrounding circumstances, their conduct described would naturally and probably result in injury and damage, and defendants continued such conduct in reckless disregard of the consequences, from which malice may be inferred.

374. Punitive damages should be imposed to punish defendants and to deter defendants and others from similar conduct.

ATTORNEY FEES AND COSTS

375. Dayong seeks an award of costs and attorney fees under 42 U.S.C. § 1988 and the Arkansas Civil Rights Act.

DEMAND FOR JURY TRIAL

376. Dayong requests a trial by jury.

WHEREFORE, as special administrator of the estate of Le Yang, deceased, prays for compensatory and punitive damages, attorney fees and costs, and for all other relief as he may be entitled, as cited above, against defendants, jointly and severally.

PETITION FOR DECLARATORY JUDGMENT

NATURE AND PURPOSE OF THE PETITION

377. This petition arises from the events described above in the Third Amended Complaint. Dayong Yang, as special administrator of the estate of Le Yang, deceased, contends and hereby seeks declaratory judgment that, under Ark. Code Ann. § 21-9-304, the State of Arkansas must indemnify the City of Little Rock in the event a judgment is rendered against the city or its employees. Alternatively, to the extent Ark. Code Ann. § 21-9-301 prevents a remedy of Dayong's negligence counts not covered by Ark. Code Ann. § 21-9-304, Dayong contends, and hereby seeks declaratory judgment that Ark. Code Ann. § 21-9-301 is unconstitutional.

PARTIES

378. Petitioner Dayong Yang is the special administrator of Le Yang's estate having been duly appointed by the Pulaski County Circuit Court. *See* Exhibits 1 and 2.

379. Respondent State of Arkansas is a state within the United States of America with its capitol in Little Rock, Pulaski County, Arkansas.

380. Respondent Arkansas Department of Emergency Management is an agency of the State of Arkansas.

381. Respondent William Asa Hutchinson is the Governor of Arkansas and, upon Petitioner's information and belief, may be served with process at Arkansas State Capitol, 500 Woodlane Street, Suite 250, Little Rock, Arkansas 72201.

382. Respondent Leslie Rutledge is the Arkansas Attorney General and, upon Petitioner's information and belief, may be served with process at Attorney General's Office, 323 Center Street, Suite 200, Little Rock, Arkansas 72201.

383. Respondent David Maxwell is the Director and State Homeland Security Adviser of the Arkansas Department of Emergency Management and the State 911 Coordinator as designated by the Governor of Arkansas and, upon Petitioner's information and belief, may be served with process at ADEM, Camp Robinson, Building 9501, North Little Rock, Arkansas 72199.

384. Respondent City of Little Rock is a political subdivision of the State of Arkansas and employed Respondents Stuart Thomas, Wayne Bewley, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, Marquita Dooley, Candace Middleton, Karen Grimm, Gregory L. Summers, Robert Sharp, Frank Scott, and Eddie Rhine. The city and its employees are included as respondents herein under Ark. Cod Ann. § 16-111-106(a), which states when declaratory relief is

sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration. The city and its employees have an interest in the state indemnifying them for the incident described above in the Third Amended Complaint.

UNIFORM DECLARATORY JUDGMENTS ACT

385. Under the Uniform Declaratory Judgments Act (“Act”) as adopted in Arkansas, “[a]ny person . . . whose rights, status, or other legal relations are affected by a statute . . . may have determined any question of construction or validity arising under the . . . statute . . . and obtain a declaration of rights, status, or other legal relations thereunder.” Ark. Code Ann. § 16-111-104. The purpose of the Act is “to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” Ark. Code Ann. § 16-111-102(b). The Act “is to be liberally construed and administered.” Ark. Code Ann. § 16-111-102(c). Petitions for declaratory judgment are also recognized under Ark. R. Civ. P. 57.

386. Under the Act, Dayong is a “person . . . whose rights, status, or other legal relations are affected” by Ark. Code Ann. § 21-9-304 and the state indemnifying the city *if* a judgment is rendered against the city or its employees on the facts as alleged in the Third Amended Complaint above. Pleading in the alternative, to the extent Ark. Code Ann. § 21-9-301 prevents a remedy of Dayong’s negligence counts not covered by Ark. Code Ann. § 21-9-304, Dayong is a “person . . . whose rights, status, or other legal relations are affected” by Ark. Code Ann. § 21-9-301.

387. Dayong may obtain a declaratory judgment under the Act to determine the estate’s rights, status, or other legal relations affected by Ark. Code Ann. § 21-9-304, and, pleading in the alternative, Ark. Code Ann. § 21-9-301. *See County of Searcy v. Stephenson*, 244 Ark. 54, 424 S.W.2d 369 (1968) (candidate for office could have had a judicial determination of

the constitutionality of a statute before paying the filing fee for office); *Kemp-Bradford VFW Post 4764 v. Wood*, 262 Ark. 168, 554 S.W.2d 344 (1977) (proceeding for declaratory judgment was the proper remedy where constitutionality of a statute was being challenged); *See also Lawson v. Mammoth Spring*, 287 Ark. 12, 696 S.W.2d 712 (1985) and *City of Cave Springs v. City of Rogers*, 343 Ark. 652, 37 S.W.3d 607 (2001).

388. Generally, the State of Arkansas cannot “be made defendant in any of her courts.” Ark. Const. Art. 5, § 20. However, there is an exception to this rule when the state would be under no financial obligation even if the plaintiff were to prevail on a declaratory judgment in which case the declaratory judgment is not considered one against the state. *Commission on Judicial Discipline & Disability v. Digby*, 303 Ark. 24, 26, 792 S.W.2d 594, 595 (1990). This exception to sovereign immunity applies here, where the determination of whether the state must indemnify the city creates no financial obligation for the state. This is because Dayong must first get a judgment against the city or its employees. Ark. Code Ann. § 21-9-304(b). Alternatively, a ruling that Ark. Code Ann. § 21-9-301 is unconstitutional does not create a financial obligation upon the state for the same reasons.

JURISDICTION AND VENUE

389. Jurisdiction and venue are proper in this court because the Act confers power to issue declaratory judgments upon “[c]ourts of record within their respective jurisdictions.” Ark. Code Ann. § 16-111-103(a). “The primary court of record is the circuit court, which under Constitutional Amendment 80 has ‘original jurisdiction of all justiciable matters not otherwise assigned pursuant to this Constitution.’” D. Newbern & J. Watkins, *Arkansas Civil Practice and Procedure* § 33-2, at 465 (3d ed. 2002). Declaratory judgment statutes are intended to supplement rather supersede ordinary causes of action. *UHS of Arkansas, Inc. v. Charter*

Hospital of Little Rock, Inc., 297 Ark. 8, 12 (1988); Newbern & Watkins § 33-2, at 465. As such, this Court is the most appropriate forum considering the negligence and civil rights case described in the Third Amended Complaint is already pending before this Court.

GROUND FOR DECLARATORY JUDGMENT

390. All facts alleged in the Third Amended Complaint above are incorporated here.

391. Ark. Code Ann. § 21-9-301(a) states: “It is declared to be the public policy of the State of Arkansas that all . . . political subdivisions of the state . . . shall be immune from liability and from suit for damages except to the extent that they may be covered by liability insurance.”

392. However, an exception to a city’s immunity exists when sued for actions it undertakes for the state. Ark. Code. Ann. § 21-9-304.

393. “When any city of the first class . . . and its employees are called upon to assist the state and its employees and, as a result, are sued for their actions performed under the supervision of a state official or employee, the Attorney General shall defend the city of the first class . . . and its employees.” Ark. Code Ann. § 21-9-304(a).

394. Here, the city has been called upon by the state to operate a public service answering point in connection with the statewide 911 system. Ark. Code Ann. § 21-9-304(a); *See also* Ark. Code Ann. § 12-10-302.

395. Further, the actions of the city in hiring, training, supervising, and retaining Middleton (Counts I – IV), maintaining its CAD system (Count V), adequately staffing its Communications Center (Count VI), Middleton’s response to Jinglei’s 911 call (Count VII), and the fire department’s response (Count VIII) were performed under the supervision of the State 911 Coordinator and in furtherance of the state’s desire to operate a statewide 911 system. Ark. Code Ann. § 21-9-304(a); *See also* Exhibits 3-6.

396. “*Should* a judgment be rendered against the city of the first class . . . or its employees, the *state shall pay* actual, but not punitive, damages adjudged by a state or federal court, or entered by the court as a result of a compromise settlement approved and recommended by the Attorney General, based on an act or omission by the officer or employee while acting without malice and in good faith within the course and scope of his or her employment and in performance of his or her official duties.” Ark. Code Ann. § 21-9-304(a) (emphasis added).

397. Accordingly, *if* a judgment is rendered for Dayong against the city or its employees, then the *state shall pay* actual damages awarded by the jury.

398. Alternatively, and to the extent Ark. Code Ann. § 21-9-301 prevents a remedy of Dayong’s negligence counts not covered by Ark. Code Ann. § 21-9-304, Ark. Code Ann. § 21-9-301 is unconstitutional.

399. Ark. Constitution Article 2 § 7 states: “The right of trial by jury shall remain inviolate, and shall extend to all cases at law, without regard to the amount in controversy; . . .”

400. Ark. Constitution Article 2 § 8 states: “No person shall be . . . deprived of life, liberty or property, without due process of law.”

401. Ark. Constitution Article 2 § 13 states: “Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, . . .; he ought to obtain justice freely, and without purchase; completely, and without denial; promptly and without delay; conformably to the laws.”

402. Ark. Constitution Article 5 § 32 provides: “. . . no law shall be enacted limiting the amount to be recovered for . . . injuries to persons . . .,”

403. Ark. Constitution Amendment 80 § 3 provides: “The Supreme Court shall prescribe the rules of pleading, practice and procedure for all courts; provided these rules shall

not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as declared in this Constitution.”

404. Thus, Ark. Code Ann. § 21-9-301 is an unconstitutional violation of Ark. Constitution Article 2 §§ 7, 8, and 13; Ark. Constitution Article 5 § 32; and Ark. Constitution Amendment 80 § 3.

WHEREFORE, pursuant to Ark. R. Civ. P. 57 and Ark. Code Ann. § 16-111-101, *et seq.*, the petitioner Dayong Yang, as special administrator of the estate of Le Yang, deceased, prays the Court enter declaratory judgment that the State of Arkansas, as required under Ark. Code Ann. § 21-9-304, will indemnify the City of Little Rock, Arkansas if a judgment is rendered against the city or its employees on the negligence counts pled in the Third Amended Complaint above. Alternatively, and to the extent Ark. Code Ann. § 21-9-301 prevents a remedy of Dayong’s negligence counts not covered by Ark. Code Ann. § 21-9-304, Dayong prays the Court enter a declaratory judgment that Ark. Code Ann. § 21-9-301 is unconstitutional. Dayong also prays for all attorney fees, costs, and all other relief to which he may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

On July 10, 2015, I electronically filed the foregoing with the Clerk of Court, using the EFLEX system, which will send notification of this pleading to:

Thomas M. Carpenter
OFFICE OF THE CITY ATTORNEY
500 West Markham, Ste. 310
Little Rock, Arkansas 72201
(501) 371-4527
tcarpenter@littlerock.org

On July 10, 2015, I emailed a copy of this pleading to:

Candace Middleton


David Curran
Nga Mahfouz
State of Arkansas
Attorney General's Office
Civil Department
323 Center Street, Suite 200
Little Rock, Arkansas 72201
david.curran@arkansasag.gov
nga.mahfouz@arkansasag.gov

On July 10, 2015, I caused a copy of this pleading to be served via process server to:

William Asa Hutchinson
Governor of Arkansas
Arkansas State Capitol
500 Woodlane Street, Suite 250
Little Rock, Arkansas 72201.

Leslie Rutledge
Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201

David Maxwell
ADEM
Camp Robinson, Building 9501
North Little Rock, Arkansas 72199

Robert Sharp



/s/ Carter C. Stein

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS,
SIXTEENTH DIVISION**

**REGIONS BANK TRUST DEPARTMENT,
As Special Administrator of the Estate of JINGLEI YI, deceased**

PLAINTIFF

v. Case No.: 60CV-15-4103

**CITY OF LITTLE ROCK, ARKANSAS, ET
AL.**

DEFENDANTS

BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

The City defendants in this matter brings the Motion for Summary Judgment and Brief in Support thereof against REGIONS BANK TRUST DEPARTMENT, As Special Administrator of the Estate of Jinglei Yi, deceased, pursuant to Ark. R. Civ. Proc. Rules 10 (c), 15 and 56. There are 19 counts listed in the Complaint, and all but three of them involve the defendants collectively referred to in this brief as "the City."¹ The other counts are against Candace Middleton² and the Little Rock Ambulance Authority ("MEMS").³ Ms. Middleton did not enter an appearance in this matter, and does not have counsel of record. The City does not represent Ms. Middleton because

¹ The collective term "the City" refers to the following defendants as set out in the Complaint: (1) The City of Little Rock, Arkansas, an entity, and those individuals listed as defendants in an official capacity including Sharon Martin and Robert Sharp who are listed only in their official capacity; (2) The individual defendants Stuart Thomas, Wayne Bewley, Laura Martin, Linda Wilson, Alan Cate, Marquita Dooley, Karen Grimm, Gregory L. Summers, Frank Scott and Eddie Rhine; (3) The two entities that *sui juris* cannot be sued, but are listed in certain counts of the T Complaint, the Little Rock Police Department, and the Little Rock Fire Department.

² Ms. Middleton was employed as a call taker in the Communications Center for the City on the date of the incident in question - January 14, 2013. Because her actions were not consistent with the policies and procedures of the Communications Center, after an investigation a notice was prepared to start termination proceedings. [EXHIBIT 1]. Ms. Middleton resigned prior to that process. [EXHIBIT 2].

³ MEMS is officially known as the Little Rock, Ark., Emergency Medical Services Public Facilities Board, and was created by the Board of Directors of the City of Little Rock, Arkansas, in 1981. Little Rock, Ark., Ordinance No. 14,062 (June 16, 1981) [EXHIBIT 3], *codified as* Little Rock, Ark., Rev. Code § 5-1 (1988) (hereafter "LRC § 5-27") [EXHIBIT 4]. MEMS is official known as the Little Rock Ambulance Authority. *See* LRC § 5-28. It operates under the business name Metropolitan Emergency Medical Services or MEMS [EXHIBIT 5].

her actions in this matter were not found to be consistent with the policies and procedures of the Little Rock Police Department Communications Center ("LR Center"). Additionally, Separate Defendant MEMS was dismissed by Order of this court on August 25, 2017.

On May 30, 2019 the Arkansas Supreme Court issued a mandate and affirmed Circuit Court, Pulaski County, No. 60-CV-13-3115, Timothy Davis Fox decision to grant the City and its employee's motion for summary judgment in the companion case brought by the father, as administrator of the child's estate alleging negligence and civil rights violations under 42 USC §1983, the Fourteenth Amendment to the United States Constitution, and Arkansas law arising from the alleged mishandling of an emergency services call seeking rescue services for his son. *Dayong Yang v. City of Little Rock*, 2019 Ark. 169 (2019). Chief Justice John Dan Kemp for the Court held that:

1. The city was entitled to municipal immunity form negligence claims;
2. City did not have §1983 liability for claims that it violated son's substantive and procedural due process rights; and
3. §1983 claims did not fall under state-created-danger exception to rule that government has no duty to render aid to those not in its custody.

The doctrine of law of the case prohibits a court from reconsidering issues of law and fact that have already been decided on appeal. *Green v. George's Farms, Inc.*, 2011 Ark. 70 (2011). The "law of the case doctrine" provides that on second appeal, the decision of the first appeal becomes the law of the case, and is conclusive of every question of law or fact decided in the former appeal, and also of those which might have been, but were not, presented, except that in criminal cases, the issue actually must have been decided explicitly or implicitly before the doctrine can apply. Although, the Plaintiff in the instant case is the Special Administrator of the

Estate of JINGLEI YI, deceased, the facts, causes of action and relief requested are identical as are the defenses. Therefore, applying the doctrine of law of the case the Supreme Court decision in *Dayong Yang v. City of Little Rock*, should bar any further proceedings as a matter of law.

FACTUAL BACKGROUND

There was winter weather in the Little Rock vicinity on the morning of January 14, 2013. Snow and ice were on the ground, and there was an extremely large number of calls to the LR Center,"⁴ Ms. Middleton worked as a 911 Call Taker at the LR Center on that date. A 911 Call Taker is the trained individual who initially takes a 911 emergency call, gleans certain information, and then transfers the call to a dispatcher so appropriate police or fire services can be sent. If the 911 call necessitates emergency medical services, the Call Taker contacts MEMS Dispatch⁵ to deal with the medical issues.

At approximately 7:50 a.m. on January 14, 2013, Ms. Jinglei Yi, the wife of Dayong Yang, placed her son Le Yang into her SUV automobile and began driving on Cooper Orbit Road. Near the intersection of Cooper Orbit and Rushmore, Ms. Yi lost control of her vehicle, jumped the curb, traveled several feet down an embankment, uprooted a tree, and landed approximately 40 feet from the embankment into a relatively shallow detention pond. At the time, Ms. Yi still had discernible amounts of a benzodiazepam in her system. [EXHIBIT 7]. With the car in the water, and Ms. Yi unable to drive it, she called her husband Dayong Yang. After telling him where she was, and what had occurred, he told her he was on the way. A 911 call was placed at 7:55:25 a.m.

⁴ The Communications Center is a division of the Little Rock Police Department. This Center is responsible for 3-1-1 calls, and 911 emergency calls within the corporate limits of the City of Little Rock, Arkansas. For purposes of this brief, it will be referred to as the LR Center.

⁵ MEMS Dispatch refers to the separate dispatch center for MEMS. In this instance, the dispatcher Brandi Johnson - was also a certified paramedic. [EXHIBIT 6, Dep. of Brandi Johnson at 11; II. 14-15.

according to a Pulaski County 911 call stamp. Complaint at ¶ 161. However, according to her phone records, Ms. Yi did not make a call under 7:59 a.m. [EXHIBIT 8].

Because of the placement of the various 911 towers, the call originally went to the Pulaski County 911 Call Center.⁶ When the county individual realized that Ms. Yi was not in Pulaski County, but in Little Rock, she transferred the call the LR Center. Complaint at ¶ 163. Ms. Middleton answered the call and began a conversation with Ms. Yi.

During the conversation, Ms. Middleton attempted to input Cooper Orbit and Rushmore into the computer aided dispatch ("CAD") system, but it would not take that address. Because not all streets, or intersections, are in the CAD system, the City has created an override system that allows a Call Taker to use the nearest fire station in order to enter the call. [EXHIBIT 9] Ms. Middleton had been trained on this procedure, and at the time of this incident had executed at least 25 emergency call overrides. [EXHIBIT 10] When she could not get the CAD to take the address initially, she asked a co-worker for assistance, and 911 Call Taker Thomas Keeler told her to use Cooper Orbit and Kanis as the override. Complaint at ¶ 170; [EXHIBIT 11, Keeler Dep. at 27; 11. 6-7] Ms. Middleton did so, and entered the information. For some unknown reason, the information did not make it to dispatch. Why the information was not sent has not been established. There were no other 911 calls for this incident. Mr. Yang did not attempt to call 911 even though he was aware that his wife was in water during the time she spoke to him. No other persons made calls, although it is quite common to get five or 10 calls for the same accident at the LR Center. [EXHIBIT 12, L Martin Dep. at 127; II. 15-16].

⁶ Another term used to refer to a call center is a PSAP, which stands for "public safety answering point." See Ark. Code Ann. § 12-10-303 (20) (West 2014).

Ms. Middleton also transferred the call to MEMS, although she may have accidentally hung up on Ms. Yi. Shortly afterwards Ms. Yi began her conversations with Brandi Johnson at MEMS Dispatch. [EXHIBIT 6, Brandi Johnson Dep. at 32, 1I. 23-24] Ms. Johnson, who started her conversation with Ms. Yi at 8:06 a.m. dispatched a MEMS ambulance at 8:07 a.m., but because of the weather conditions and problems in Little Rock, a unit from Maumelle had to be sent. [EXHIBIT 13] When the unit first drove by the scene, it was unable to see a vehicle in the water. [EXHIBIT 14, Patrick Harwell Dep. at 12; 1I. 19-24]

While talking with Ms. Yi, Ms. Johnson realized that the electrical system in the car was working, because Ms. Yi could operate the windows. [EXHIBIT 15 (Omitted)] Ms. Johnson repeatedly asked Ms. Yi to open the window, get her son, and crawl out of the car onto its roof. If she had done so, both Ms. Yi and her son, Le Yang, would be alive today since the roof of the vehicle was never more than a few inches under water. [EXHIBIT 16] Ms. Johnson stayed on the phone with Ms. Yi for approximately 13 minutes, but Ms. Yi never followed any of the instructions to exit the car.

Because something occurred which kept the data Ms. Middleton obtained from reaching the police and fire dispatcher in the LR Center, no police or fire services had been sent during this time frame. When the MEMS paramedics arrived, Paramedic Anthony Williams, who was also trained in swift water rescue, determined that the temperature of the water was too cold to try a swim to the car, especially since the MEMS crew lacked any equipment. [EXHIBIT 17, Anthony Williams Dep. at 44, 1I. 24-25] Paramedic Patrick Harwell called MEMS Dispatch to determine why no police or fire services were present. [EXHIBIT 14, at 29m 1I. 16-17] At this point, another MEMS dispatcher called the LR Center to determine where rescue services were located, and it

was realized that the call Ms. Middleton handled had not made it to dispatch. Mr. Keeler then input the data, and police and fire services, including water rescue services were dispatched.

It took approximately five minutes for the first LRFD engine to arrive. Acting Captain Frank Scott saw that the car was essentially submerged, and that there was no one to assist in a rescue except MEMS. Mr. Scott, now retired, directed his crew to put on life vests and attempt to get to the car. [EXHIBIT 18, Dep. of Frank Scott, at 37; II. 22-25] Before they could do so, however, LRFD Battalion Chief Eddie Rhine arrived at the scene and countermanded the order. [EXHIBIT 19, Dep. of Eddie Rhine at 43; II. 7-10] Chief Rhine realized that the water was too cold, the firefighters did not have the proper equipment, and they would be unable to enter the submerged car without that equipment. [EXHIBIT 19, at 38, 11.7-18] Chief Rhine testified that pursuant to his training, he knew that fire fighters readily risked their lives to save a life, but they would not do so without the proper training and equipment. He determined the water rescue had been contacted and was on the way.

Other emergency services from LRPD were arriving on the scene during this period, as well as Mr. Dayong Yang. Mr. Yang headed for the water as if he was going to swim to the car without any equipment, no apparent training, and unknown ability to swim at all - when Chief Rhine directed that he was intercepted. [EXHIBIT 19, at 52, 43; II. 18-25, 1-18] On one additional occasion, Mr. Yang headed to the water and was intercepted by LRPD Officer Anthony Moore. Officer Moore took Mr. Yang to a police car, sat with him, and consoled him by talking and praying. [EXHIBIT 20, Dep. of Anthony Moore at 23; II. 11-21]

LRFD Water Rescue was on the scene at this time. Two trained water rescue firefighters went to the vehicle with the necessary tools to break into the car and extract the passengers. [EXHIBIT 21, Dep. of John Hogue, at 42, 43; 11.24-25, 1-13] Even with tools, and training, the

firefighters had difficulty getting into the vehicle. According to LRFD Captain John Hogue, the supervisor of LRFD Water Rescuer, a submerged vehicle, because of various pressure issues, cannot be easily breached. [EXHIBIT 21, at 42, 43; 11.24-25, 1-13] Captain Hogue also noted that if Mr. Yang had entered the water, then the rescue effort would have focused upon him due to the cold nature of the water, and the knowledge that Mr. Yang could be saved while there was a question about the occupants of the vehicle. [EXHIBIT 21, at 45, 46; II. 4-25, 1-5]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

After the incident occurred, the City conducted an internal investigation as to what happened. LRPD Assistant Chief Wayne Bewley handled this investigation. [EXHIBIT 24-I] In addition to identifying some issues with the LR Center, he also noted that three individuals should be subjected to disciplinary action. Ms. Middleton was notified of an administrative hearing as a precursor to termination. [EXHIBIT 24-I] Because of complaints about Ms. Middleton voiced during the investigation, but not documented during her tenure of the LR Center, both Communications Center Supervisors - Sharon Martin and Alan Cate - received a written reprimand for improper documentation of those complaints. [EXHIBIT 24]

On January 2, 2015, Le Yang died. [EXHIBIT 25]

ARGUMENT

STANDARD FOR SUMMARY JUDGMENT

The Arkansas Rules of Civil Procedure permit the trial court to grant summary judgment, upon motion of a party, if "there is no genuine issue as to any material fact and ... the moving party is entitled to judgment as a matter of law on the issues specifically set forth in the motion." Rule 56 (c) (2), ARK. RULES CIV. PROC. Once the moving party establishes a prima facie case of entitled to summary judgment, the burden of proof shifts to the nonmoving party. *Repking v. Lokey*, 2010 Ark. 356, at 4,377 S.W.3d 211, 216. The nonmoving party is required to demonstrate that there are material factual disputes in existence. The trial court then reviews the pleadings, undisputed facts, affidavits, and other documents filed by the parties. Once viewed in the light most favorable to the nonmoving party, with all doubts and inferences resolved against the moving party, if there is no genuine issue of material fact, then the trial court should make a ruling on the matters of law. See *Brock v. Townsell*, 2009 Ark. 224, 309 S.W.2d 179, 185.

The nonmoving party may not rest on its pleadings or mere conclusions. Once a prima facie case is established by the movant, the nonmoving party must meet proof with proof in order to establish that summary judgment is not warranted. *Marlar v. Daniel*, 368 Ark. 505, 506, 247 S.W.3d 473,474 (2007). Summary judgment is no longer considered a drastic remedy that should be rarely granted. *Id.*

A. Negligent Hiring of Candace Middleton by the City of Little Rock, Stuart Thomas, Wayne Bewley, Laura Martin, Linda Wilson, and Alan Cate

The Complaint lists six defendants in Count I. Five of the defendants - Chief Thomas, Assistant Chief Bewley, Ms. Martin, Ms. Wilson and Mr. Cate, are sued for negligence in their individual capacities. [228-232]. The City is sued under the doctrine of respondeat superior on this theory of negligent hiring. [233]. Although Count I does not set out specific allegations of negligence, it refers to Ms. Middleton's history in Benton that Yang was able to obtain after the incident and pursuant to use of the Arkansas Freedom of Information Act. Ark. Code Ann. § 25-

19-101 to 1108 (West 2010 & West Supp. 2015). Based upon this information, not provided to the City defendants, Yang contends that there was a breach of duty to follow up with Benton, Arkansas, about Ms. Middleton's work history notwithstanding the fact that Ms. Middleton noted on her application of employment that she had been terminated from her dispatcher job in Benton, and explained her termination during her interview. [EXHIBIT 26]. In short, Yang argues that because the City did not do as much investigation as possibly could have been done, the City defendants are liable under a negligence theory.

i. Arkansas law entitles the City and the individual government defendants to immunity under Arkansas law for negligence actions.

The issue of whether a government defendant is immune from suit at the summary judgment stage is a question of law. *Repking v. Lokey*, 2010 Ark. 356, at 5, 377 S.W.3d at 216. The General Assembly has concluded that negligence actions will not lie against municipalities, or municipal employees, for work performed during the course of their duties.

(a) It is declared to be the public policy of the State of Arkansas that all ... municipal corporations ... and any of their boards, commissions, agencies, authorities, or other governing bodies shall be immune from liability and from suit for damages except to the extent that they may be covered by liability insurance.

(b) No tort action shall lie against any such political subdivision because of the acts of its agents or employees.

Ark. Code Ann. § 21-9-301 (West Supp. 2015). This statutory immunity in tort extends to the employees of a government entity, like the City of Little Rock, that is covered by the statute. See *Braden v. Mountain Home School Dist.*, 903 F. Supp. 2d 729 (W.D. Ark. 2012). Government employees sued in tort for actions taken in their governmental employment are immune from liability in Arkansas. *Matthew v. Martin*, 280 Ark. 345, 345-6, 658 S.W.2d 374,375 (1983). This statute has been expressly upheld against constitutional challenge, and it is beyond doubt that it

applies in cases such as this one. *Hardin v. City of Devalls Bluff*, 256 Ark. 480, 508 S.W.2d 559 (1974) (noting that § 21-9-301 is unambiguous and leaves no room for doubt); see also, *Davis v. Fulton Cty.*, 90 F.3d 1346, 1353 (8th Cir. 1996); *Matthews v. Martin*; *Young v. Blytheville School Dist.*, 2013 Ark. App. 50, at 8, 425 S.W.3d 865, 872. Hence, all state law negligence claims raised by Yang must be denied as a matter of law. *White v. City of Newport*, 326 Ark. 667, 933 S.W.3d 800 (19996).

Further, to the extent that Yang contends that the City, or City employees, are liable under federal law for negligent actions, this is simply wrong. The U.S. Supreme Court has made it quite clear that allegations based upon negligence are not cognizable under 42 U.S.C. § 1983. *Daniels v. Williams*, 474 U.S. 327 (1986); *Bd. Of County Comm'rs of Bryan County v. Brown*, 520 U.S. 397 (1997); *Gentry v. Robinson*, 2009 Ark. 634, at 11, 361 S.W.3d 788, 794.

Since the City did not possess general liability insurance on January 14, 2013, the date of the accident which lead to the filing of the Complaint, these Defendants should be dismissed as a matter of law. [Bruce Moore, City Manager, Stacey Witherell, Human Resources Director, and Jenny Bradford, Benefits and Risk Manager, EXHIBIT 27]

ii. Separate City employee defendants are not liable under Arkansas law for the negligent hiring of Ms. Middleton.

(1) Linda Wilson and Alan Cate.

Neither of these defendants made a hiring decision as to Ms. Middleton. They merely sat in on an interview held by the LR Center. There is no evidence that they had the authority to make the hiring decision. Hence, this is an additional reason there is no basis of liability against these individual defendants.

(2) Laura Martin.

Laura Martin, as the LR Center Manager, is the one responsible to suggest who should be hired from the list of candidates provided by the City Human Resources Department. As noted above, nothing that she did in this matter constitutes negligent hiring under Arkansas law. After this incident occurred on January 14, 2013, plaintiff's counsel discovered various problems that Ms. Middleton had at Benton. See Complaint at pages 17-23, 'il'i173-97. It is interesting to note that many of these incidents occurred during late 2010 and 2011 while Ms. Middleton was undergoing the dissolution of her marriage. [EXHIBIT 28, at 9; II. 15-19]. Even so, some of these "complaints," were not even made known Ms. Martin, much less the City defendants. [EXHIBIT 28, at 75; II. 15-22]. Although she knew about these other matters before she applied for a job in Little Rock, Ms. Middleton noted that she did not consider them the reason that she was terminated in Benton. [EXHIBIT 28, at 76-77; II. 15-25, 1-7]. The letter of termination does not specify why she was terminated, and Mr. Griffin, the manager in Benton, never told her. [EXHIBIT 28, at 77; II. 8-14].

A key, though, is that she did tell the City defendants about one of the most serious ones - i.e., sending an ambulance to a Wal-Mart in Benton instead of Bryant. Of course, this was not a matter of failing to dispatch a call, but of dispatching a call to the wrong Wal-Mart. To be sure, it is a serious issue, but after a discussion about the issue, Ms. Martin felt that Ms. Middleton's experience, the training she would receive from the City, and the probationary period, would be sufficient to establish whether she could handle the work in the LR Center. At the time, this was not a negligent decision.

(3) Stuart Thomas, Wayne Bewley, the City of Little Rock.

None of the remaining defendants were involved in the employment decision. There was nothing provided by Yang to suggest that they took any negligent action. The City had a process

where applicants had to apply for a position as a call taker. A test was administered to see if the applicants had the basic qualifications for the job. A request was made for employment history from a former employer. Ms. Middleton was interviewed by the LR Center management staff, and determined to be qualified for hire and to undergo the City's training and probationary period. In addition, certain additional tests were done such as a drug screening, a psychological evaluation, and a check of a criminal record. Based upon this procedure, in order to avoid summary judgment, Yang would have to produce proof that from the materials before them the City defendants at the time that they were alerted to the possibility that Ms. Middleton would fail to make a dispatch. *Saine v. Comcast Cablevision*, 354 Ark. at 502, 126 S.W.3d at 345. Yang has produced no proof that the City defendants had at the time of hiring information which would have alerted them to this possibility. As a result, they are entitled to summary judgment on the allegation of negligent hiring.

B. COUNT II: Negligent Training of Candace Middleton by the City of Little Rock, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate and Marquita Dooley.

As with negligent hiring, Arkansas also recognizes the tort of negligent training of an employee. The elements necessary to sustain this allegation are:

1. The plaintiff sustained damages;
2. The employer knew, or in the exercise of reasonable care should have known, that the employee subjected other to an unreasonable risk of harm;
3. The employer was negligent in training the employee;
4. The negligent training was the proximate cause of the plaintiff's damages.

Saine v. Comcast Cablevision of Arkansas, Inc., 354 Ark. at 497, 126 S.W.3d at 345.

Yang has presented no evidence whatsoever that the City defendants failed to train Ms. Middleton. Indeed, just the opposite has been shown. Once Ms. Middleton was hired, she had to

undergo classroom training about the CAD system and the call taker position. This lasted for a period of six weeks. [EXHIBIT 31, at 16; II. 3-8] Ms. Middleton successfully completed that portion of the training and scored 1259 of a possible 1500 points on the various tests, or 84%. [EXHIBIT 31, Dooley Memorandum 8/22/12 ex. 3 of deposition]. She was then placed with Varnell Norman for one-on-one instruction in the LR Center.⁷ In this training, the senior call taker and the probationary call taker are literally joined together by a cord with the headsets so each can hear the same call, and can hear how the other person handles the call.⁸ The senior call taker permits the probationary employee to take more responsibility for calls as they progress. In addition, daily observation reports are done,⁹ as well as monthly reports. Before the probationary call taker is released, Ms. Dooley sits with the individual and observes them in action. For Ms. Middleton, these observations covered 12 1/2 hours during three different days.¹⁰

Ms. Middleton received considerable training on the LR Center CAD system. Yang has not pointed to any training that she did not receive. The fact that something did not work correctly on the call that is the subject to this incident does not mean the City defendants failed to train. Nor are the City defendants liable because Ms. Middleton may not have been the best call taker. Liability is not based upon the possibility that one poorly screened employee may do something that causes injury. See *Gentry v. Robinson*, 2009 Ark. 634, at 15, 361 S.W.3d at 798. Liability is premised on the finding that the particular employee was likely to inflict a particular injury. *Id.*

⁷ [EXHIBIT 31, Dooley Dep, at 21; 11.5-8]

⁸ [EXHIBIT 31, Dooley Dep. at 22-23; 11.22-25,1-17]

⁹ [EXHIBIT 31, Dooley Dep. at 25; II. 15-25]

¹⁰ [EXHIBIT 31, Dooley Memorandum 8/22/12 ex. 3 of deposition]

Even so, as noted previously, municipalities and municipal employees are immune in Arkansas for actions based in negligence. Ark. Code Ann. § 21-9-301 (West Supp. 2015); *Braden v. Mountain Home School Dist.*, 903 F. Supp. 2d 729 (W.D. Ark. 2012); *Matthew v. Martin*, 280 Ark. 345, 345-6, 658 S.W.2d 374, 375 (1983).

Finally, Yang's failure to prove that there were any issues that Ms. Middleton was not trained to do defeats this argument. Additionally, since the City did not possess general liability insurance on January 14, 2013, the date of the accident which lead to the filing of the Complaint. [Bruce Moore, City Manager, Stacey Witherell, Human Resources Director, and Jenny Bradford, Benefits and Risk Manager, EXHIBIT 27]. Either alone, or combined with the local government immunity in Arkansas, summary judgment is appropriate.

C. COUNT III: Negligent Supervision of Candace Middleton by the City of Little Rock, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, and Marquita Dooley.

Arkansas also recognizes the tort of negligent supervision of an employee. The elements necessary to sustain this allegation are:

1. The plaintiff sustained damages;
2. The employer knew, or in the exercise of reasonable care should have known, that the employee subjected other to an unreasonable risk of harm;
3. The employer was negligent in supervising the employee;
4. The negligent supervision was the proximate cause of the plaintiff's damages.

Saine v. Comcast Cablevision of Arkansas, Inc., 354 Ark. at 497, 126 S.W.3d at 345. Yang has presented no evidence whatsoever that the City defendants failed to supervise Ms. Middleton. Indeed, just the opposite has been shown. Ironically, Yang relies upon three documented counseling sessions with Ms. Middleton to indicate that she was not a good employee. The problem for Yang is that these counseling sessions establish that Ms. Middleton was supervised.

If her reports were not completed in a timely manner, she was expressly counseled on the importance of doing so. In terms of supervision, the counseling letter from Ms. Dooley, although entered on November 12, 2012, dealt with an incident from May, 2012, when Ms. Middleton was still under the direct training supervision of Mr. Varnell Norman. In short, Ms. Dooley, when this issue was discovered, made sure that it was documented as a part of the ongoing supervision of the LR Center. [EXHIBIT 31] A more serious concern occurred on November when LR Center Supervisor Alan Cate noted that Ms. Middleton had taken information for a fire call, but had not verified the address with the CAD system. As a result, she sent the LRFD to an incorrect address. The seriousness of the situation, and explicit advice to follow in the future was provided. In addition, a copy of the CAD data was attached to the counseling memorandum for future reference if it became necessary to take disciplinary action in the future. [EXHIBIT 32]. Finally, LR Center Supervisor Sharon Martin documented that Ms. Middleton needed to increase the volume of calls that she took. Hence, on December 5, 2012, she held a counseling session with Ms. Middleton, and documented what she had told her. This documentation establishes that Ms. Middleton was still being supervised at the LR Center. Instead of establishing negligence, these counseling sessions verify that there is a system in place for the ongoing evaluation and supervision of an employee.

Yang has not provided any group of problems that would constitute actual notice to the supervisors that Ms. Middleton could not perform her job. Without such evidence, and in light of the facts that the LR Center supervised and documented occurrences as necessary, this ground for summary judgment must be granted.

In addition, because this particular issue sounds in negligence, the City defendants are entitled to local government immunity as noted above. Ark. Code Ann. § 21-9-301 (West Supp.

2015); *Braden v. Mountain Home School Dist.*, 903 F. Supp. 2d 729 (W.D. Ark. 2012); *Matthew v. Martin*, 280 Ark. 345, 345-6, 658 S.W.2d 374,375 (1983). Since the City did not possess general liability insurance on January 14, 2013, the date of the accident which lead to the filing of the Complaint [Bruce Moore, City Manager, Stacey Witherell, Human Resources Director, and Jenny Bradford, Benefits and Risk Manager, EXHIBIT 27].

D. COUNT IV: Negligent Retention of Candace Middleton by the City of Little Rock,

Stuart Thomas, Wayne Bewley, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate and Marquita Dooley.

Arkansas also recognizes the tort of negligent retention of an employee. The elements of this case of action are:

1. The plaintiff sustained damages;
2. The employer knew, or in the exercise of reasonable care should have known, that the employee subjected other to an unreasonable risk of harm;
3. The employer was negligent in retaining the employee;
4. The negligent retention was the proximate cause of the plaintiff's damages.

See *Saine v. Comcast Cablevision of Arkansas, Inc.*, 354 Ark. at 497, 126 S.W.3d at 345.

...employers are subject to direct liability for their ... negligent retention of employees when third parties are injured as a result of the tortious acts of those employees. See, e.g., *Regions Bank & Trust v. Stone Co. Skilled Nursing Facility, Inc.*, 345 Ark. 555, 49 S.W.3d 107 (2001); *Madden v. Aldrich*, 346 Ark. 405, 58 S.W.3d 342 (2001); *Porter v. Harshfield*, 329 Ark. 130,948 S.W.2d 83 (1997); *St. Paul Fire & Marine Ins. Co. v. Knight*, 297 Ark. 555, 764 S.W.2d 601 (1989); *American Auto. Auction, Inc. v. Titsworth*, 292 Ark. 452, 730 S.W.2d 499 (1987) ... the employer's liability rests upon proof that the employer knew or, through the exercise of ordinary care, should have known that the employee's conduct would subject third parties to an unreasonable risk of harm. *Jackson v. Ivory*, 353 Ark. 847, 120 S.W.3d 587 (2003) (citing *Madden v. Aldrich*, supra); see also *St. Paul Fire & Marine Ins. Co. v. Knight*, supra. As with any other negligence claim, a plaintiff must show that the employer's ... negligent retention of the employee was a proximate cause of the injury and that the harm to third parties was foreseeable. See *Jackson v. Ivory*, supra; *St. Paul Fire & Marine Ins. Co. v. Knight*, supra. It

is not necessary that the employer foresee the particular injury that occurred, but only that the employer reasonably foresee an appreciable risk of harm to others. *Jackson v. Ivory*, supra; *Madden v. Aldrich*, supra.

Id., at 497,342. Foreseeability requires that the injury is within the range of probability. It is more than on occurrence that is merely possible. *Ethyl Corp. v. Johnson*, 345 Ark. 476, 482, 44 S.W.3d 644, 648 (200 1). While the particular injury does not have to be foreseen, there must be an appreciable risk of harm to others. *Id.*

In *Saine*, a cable installer for Comcast raped a woman and attempted to kill her while at her house working on a cable installation. The Court noted that there was no reason to deny summary judgment on a theory of negligent hiring because the objective criteria of the individual did not put the company on any notice that he would do such a thing if employed. However, there was a genuine actual issue on a negligent retention theory because there had been earlier complaints about suggestive comments and inappropriate touching, including a complaint that this particular installer had unlocked all of the windows in another person's house. For some reason, this information was not shared with the employee's immediate supervisor who testified that had he known he would have taken action. 354 Ark. at 499, 44 S.W.3d at 343. Comcast was denied summary judgment because:

...there was no system in place for recording or acting upon complaints about employees, and ... there was no record in [the employee's file] of [a customer's] complaint to three Comcast employees....

354 Ark. at 499, 126 S.W.3d at 344. Unlike *Saine*, the LR Center had procedures in place for complaint follow up, had managers trained to document any action taken upon such complaints, and, in fact, documented the counseling sessions noted above. Yang has shown nothing under the facts of this case to show that the "natural and probable consequence" of Ms. Middleton's retention is that some kind of mistake would be made that precluded the entry of a 911 call like that received

from Ms. Yi. In fact, there is no proof that Ms. Middleton did not enter the call, only that the data was not forwarded to dispatch. Such a finding is required to avoid summary judgment. 254 Ark. at 498, 126 S.W.3d at 343, quoting with approval *Regions Bank & Trust v. Stone Co. Skilled Nursing Facility, Inc.*, 345 Ark. 555, 569, 49 S.W.3d 107, 116 (2001).

In addition, because this particular issue sounds in negligence, the City defendants are entitled to local government immunity as noted above. Ark. Code Ann. § 21-9-301 (West Supp. 2015); *Braden v. Mountain Home School Dist.*, 903 F. Supp. 2d 729 (W.D. Ark. 2012); *Matthew v. Martin*, 280 Ark. 345, 345-6, 658 S.W.2d 374, 375 (1983). According to the official records of the City, it did not possess any form of general liability insurance on January 24, 2013. [Affidavits of City Manager Bruce Moore, Human Resources Director, Stacey Witherell, Exhibits 26]

E. COUNT V: City of Little Rock, Little Rock Police Department,¹¹ Little Rock Fire Department,¹² Karen Grimm, and Bob Sharp's Negligent Maintenance of the CAD System.

There is no case that deals with the negligent retention of a CAD system by a local government under Arkansas law. Even so, Yang has failed to provide proof of negligent maintenance. What Yang has shown is that the City did not have all of the addresses, streets, and intersections, in the CAD on January 14, 2013, that related to this incident. However, there was in place a specific system to override the CAD system and assist a caller in an emergency. As shown before, Ms. Middleton was trained in this system and had executed successfully on her own prior to this incident. Indeed, she did so just a few days before this incident.

¹¹ The Little Rock Police Department is not an entity that can sue or be used, but is a mere administrative department of the City. See ARGUMENT 1. *The Little Rock Police Department and the Little Rock Fire Department Should Be Dismissed Sui Juris*, *infra* at 7.

¹² The Little Rock Fire Department is not an entity that can sue or be sued, but is a mere administrative department of the City. See ARGUMENT 1. *The Little Rock Police Department and the Little Rock Fire Department Should Be Dismissed Sui Juris*, *infra* at 7.

The evidence is also clear that regardless of what happened when Ms. Middleton took the information, when MEMS dispatch called back, Mr. Keeler input the information and police and fire were dispatched to the scene. This fact alone establishes that the system functioned properly. All Yang has suggested is that if Ms. Middleton failed this one time accidentally to input the data, then the data was not sent. But, this one event does not constitute negligence, and it certainly does not indicate that the City or the named defendants negligent fulfilled their duties. It shows just the opposite.

In addition, because this particular issue sounds in negligence, the City defendants are entitled to local government immunity as noted above. Ark. Code Ann. § 21-9-301 (West Supp. 2015); *Braden v. Mountain Home School Dist.*, 903 F. Supp. 2d 729 (W.D. Ark. 2012); *Matthew v. Martin*, 280 Ark. 345, 345-6, 658 S.W.2d 374,375 (1983). It is a jurisdictional bar to the Plaintiff's complaint that the City did not possess general liability insurance on January 14, 2013, the date of the accident which lead to the filing of the Complaint. [Bruce Moore, City Manager, Stacey Witherell, Human Resources Director, and Jenny Bradford, Benefits and Risk Manager, EXHIBIT 27].

F. COUNT VI: Inadequate Staffing of the Little Rock Police Department's Communications Center by the City of Little Rock, Little Rock Police Department,¹³ Stuart Thomas, Wayne Bewley, and Laura Martin.

During the course of discovery in this matter, Yang realized that there has been a problem to keep the staffing level for the LR Center filled. From this information, Yang made the conclusion that the LR Center was inadequately staffed. The conclusion does not follow from the

¹³ The Little Rock Police Department is not an entity that can sue or be used, but is a mere administrative department of the City. See ARGUMENT 1. *The Little Rock Police Department and the Little Rock Fire Department Should Be Dismissed Sui Juris*, *infra* at 7.

facts. The deposition testimony of Laura Martin made clear that the LR Center was staffed even if it required that some employees work overtime, or that some part-time employees be utilized.

It has been noted that the LR Call Center receives approximately 500,000 calls a year to the 911 center, and that approximately 160,000 dispatches of police and fire services are made on the basis of those calls. It is not known how many of the 911 calls to the LR Center are handled exclusively by MEMS dispatch because of the medical nature of the emergency, but it is clear that occurs.

The major point for summary judgment is that Yang has not produced any evidence that the City defendants do not staff the LR Center. While there are open positions, the LR Center has been exempted from hiring freezes for other City employees for some period of time. [EXHIBIT 33] Although City budget procedures require that such authorization be given annually, the City Manager has never failed to permit hiring at any time as long as vacancies exist in the LR Center. Relying upon the precedents referred to above, there is also no indication that the City had notice that calls were not received or acted upon because of the manner in which the LR Center was manned on any given date. Even on the date of this incident - January 14, 2013 - when there was snow on the ground, and a heavy call volume, there were still personnel present to handle the load. The status of this record, without anything to refute it, is that this is the only time in the history of the LR Center that information for dispatch has not been sent through. Hence, there was nothing to suggest to the City that an incident of this nature was foreseeable.

In addition, because this particular issue sounds in negligence, the City defendants are entitled to local government immunity as noted above. Ark. Code Ann. § 21-9-301 (West Supp. 2015); *Braden v. Mountain Home School Dist.*, 903 F. Supp. 2d 729 (W.D. Ark. 2012); *Matthew v. Martin*, 280 Ark. 345, 345-6, 658 S.W.2d 374,375 (1983). It is a jurisdictional bar to the

Plaintiff's complaint that the City did not possess general liability insurance on January 14, 2013, the date of the accident which lead to the filing of the Complaint. [Bruce Moore, City Manager, Stacey Witherell, Human Resources Director, and Jenny Bradford, Benefits and Risk Manager, EXHIBIT 27].

G. COUNT VII: Middleton's¹⁴ Negligent Performance of Undertaking to Render Rescue Services.

The City does not represent Ms. Middleton in this action. However, for an allegation based in negligence, she would also be entitled to governmental immunity. Ark. Code Ann. § 21-9-301 (West Supp. 2015); *Braden v. Mountain Home School Dist.*, 903 F. Supp. 2d 729 (W.D. Ark. 2012); *Matthew v. Martin*, 280 Ark. 345, 345-6, 658 S.W.2d 374,375 (1983). It is a jurisdictional bar to the Plaintiff's complaint that the City did not possess general liability insurance on January 14, 2013, the date of the accident which lead to the filing of the Complaint. [Bruce Moore, City Manager, Stacey Witherell, Human Resources Director, and Jenny Bradford, Benefits and Risk Manager, EXHIBIT 27].

H. COUNT VIII: Frank Scott and Eddie Rhine's Negligent Performance of Undertaking to Render Rescue Services.

There has been no evidence of negligence on the party of Mr. Scott or Chief Rhine in their rescue attempts in this matter. It is really not clear why Yang even contends that they were negligent. Ironically, if Mr. Scott or Chief Rhine had ordered firefighters into the water without training or equipment to try and rescue Ms. Yi and Le Yang, and the firefighters became victims, they would have to be saved by Rescue 2 before there was an attempt to enter the submerged car.

¹⁴ As noted previously, the City defendants do not include Ms. Candace Middleton. However, the City points out that in terms of a negligent action, Ms. Middleton was an employee of the City at the time of the incident, and would be entitled to the same immunity as a matter of law afforded city employees. *See Repking v. Lokey*, 2010 Ark. 356, at 5,377 S.W.3d 311, 316; *see also, Matthew v. Martin*, 280 Ark. 345, 345-6,658 S.W.2d 374, 375 (1983)

Perhaps in that situation Yang would raise a negligent attempt at a rescue argument. However, that is not the case.

What is evident is that the professionals followed various protocols in order to get the individuals from the submerged car without the risk of death or injury to them, or to others. Reasonable steps were taken, and Yang has pointed to no evidence of other reasonable measures that legally had to be taken under the circumstances.

In addition, this Count sounds in negligence, and since both Mr. Scott and Chief Rhine were City employees at the time of this incident, they are entitled to the benefit of local government immunity for negligence actions. Ark. Code Ann. § 21-9-301 (West Supp. 2015); *Braden v. Mountain Home School Dist.*, 903 F. Supp. 2d 729 (W.D. Ark. 2012); *Matthew v. Martin*, 280 Ark. 345, 345-6, 658 S.W.2d 374,375 (1983). It is a jurisdictional bar to the Plaintiff's complaint that the City did not possess general liability insurance on January 14, 2013, the date of the accident which lead to the filing of the Complaint. [Bruce Moore, City Manager, Stacey Witherell, Human Resources Director, and Jenny Bradford, Benefits and Risk Manager, EXHIBIT 27]. Therefore, summary judgment on this Count should be given.

I. COUNT X: Deliberate Indifference by the City of Little Rock, Little Rock Police Department,¹⁵ Stuart Thomas, Wayne Bewley, Laura Martin, Linda Wilson, and Alan Cate in the Hiring Decision of Candace Middleton.

i. No liability/or negligence under 42 U.S.C. § 1983.

Yang has repeated the Complaint counts that were based as negligence actions discussed earlier. Although the words "deliberate indifference" are not listed in Counts XVII and XVIII, or the Arkansas Civil Rights Act provisions of Count XIX, as will be demonstrated such a test also

¹⁵ The Little Rock Police Department is not an entity that can sue or be used, but is a mere administrative department of the City. See ARGUMENT 1. *The Little Rock Police Department and the Little Rock Fire Department Should Be Dismissed Sui Juris*, *infra* at 7.

applies in these situations. Simply using the words "Deliberate Indifference" does not automatically make a negligence cause of action a constitutional tort. It is more than a matter of nomenclature.

Section 1983 claims are not a cause of action, but a means for a plaintiff to seek redress for the violation of a federal constitutional or statutory right. The basic elements of any such action are: (1) A person acting under color of state law; (2) Violated the federal constitutional or statutory rights of another person; and, (3) Caused damages. A municipality can be liable pursuant to 42 U.S.C. § 1983, but not because one of its employees has violated a person's protected rights. A municipality is liable if, and only if: (1) The violation was pursuant to a municipal policy, custom, or practice; and, (2) The specific violation was the moving force behind the constitutional violation. *L.L. Nelson Enters., Inc. v. Cty. of St. Louis*, 673 F.3d 799,805 (8th Cir. 2012). A policy is formal, and is established by the governing body, or by a person to whom the governing body has delegated policymaking authority in a particular area. See *Granda v. City of St. Louis*, 472 F.3d 565, 568 (8th Cir. 2007). However, because most governments do not adopt a policy that is clearly unconstitutional, an action may be equated with policy if by custom or usage the practice in question is so known, and so widespread, as to be the equivalent of a written policy. If these conditions are not met, the municipal liability does not attach.

In addition, liability pursuant to 42 U.S.C. § 1983 is not available for mere negligent acts. *Daniels v. Williams*, 424 U.S. 327 (1986); *Repking v. Lokey*, 2009 Ark. 356, at 7,377 S.W.3d at 217. However, the Courts have suggested that there may be some instances where no policy exists, but the government, or the policymakers, are deliberately indifferent to what could happen in the lack of such a policy. See *Canton v. Harris*, 489 U.S. 378 (1989). This thought can also apply to training issues. While *Canton* dealt with whether officers were deliberately indifferent to the

medical needs of a pre-trial detainee, the Court illustrated the type of issue that could raise a deliberate indifference claim:

For example, city policymakers know to a moral certainty that their police officers will be required to arrest fleeing felons. The city has armed its officers with firearms, in part to allow them to accomplish this task. Thus, the need to train officers in the constitutional limitations on the use of deadly force, see *Tennessee v. Garner*, 471 U.S. 1 (1985), can be "so obvious" that failure to do so could properly be characterized as "deliberate indifference" to constitutional rights.

It could also be that the police, in exercising their discretion, so often violate constitutional rights that the need for further training must have been plainly obvious to the city's policy makers, who, nevertheless, are "deliberately indifferent" to the need.

Id., at 378, n.10.

In this case, for example, it was clear that not all addresses, streets, and intersections, had been loaded into the CAD system at the LR Center. If the City was aware of this fact, and it was, and if there was not in place a method to override the CAD and input an address that would facilitate the dispatch of appropriate emergency services, the City might be deemed "deliberately indifferent," to the risk that services would not be dispatched.¹⁶ In this case, there was a system for the override, so there is no deliberate indifference to providing for such a possibility.

Further, one isolated instance is not generally sufficient to establish municipal liability. *Repking v. Lokey*, 2010 Ark. 356, at 6, 377 S.W.3d at 217. To take the issue one step further, though, as the footnote in *Canton* suggests, if this override system consistently did not work and it was clear that there were a number of instances when no dispatch occurred, the City might be deemed deliberately indifferent to the need for additional training. Again, though, with a call

¹⁶ The phrase "might be," is chosen carefully because the government is under no constitutional duty to rescue anyone.

volume in excess of 500,000 calls a year, and well over 200,000 for several years, the fact that one call was not successfully dispatched through the override system does not indicate deliberate indifference. Further, the fact that Ms. Middleton had handled at least 25 calls using the override system since she began work as an unsupervised call taker, and that there were no failures, did not provide the kind of notice to which the City defendants exhibited deliberate indifference.

Municipal liability for a "custom or usage," that carries the force of law is demonstrated by:

(1) the existence of a continuing, widespread, persistent pattern of unconstitutional misconduct by the government entity's employees; (2) deliberate indifference to or tacit authorization of such conduct by the governmental entity's policymaking officials after notice to the officials of that misconduct; and (3) the plaintiffs injury by acts pursuant to the governmental entities custom, i.e., proof that the custom was the moving force behind the constitutional violation.

Gentry v. Robinson, 2009 Ark. 634 at 21, 361 S.W.3d at 799, quoting with approval, *Ware v. Jackson County*, 150 F.3d 873 (8th Cir. 1998).

ii. Neither the City of Little Rock, Stuart Thomas, Wayne Bewley, Laura Martin, Linda Wilson, nor Alan Cate acted with deliberate indifference in the hiring decision of Ms. Middleton as alleged in Count X of the Complaint.

As already discussed in detail above, there was no negligence on the part of the City defendants in the decision to hire Ms. Middleton. There has been no law cited to suggest that there was. Even so, in an evident attempt to avoid dismissal of this matter, Mr. Yang has reframed it with the phrase "deliberate indifference" with the apparent hope that a cause of action might be stated pursuant to 42 U.S.C. § 1983, or the Arkansas Civil Rights Act. There is no evidence in this

record to remotely suggest deliberate indifference in the hiring decision, so the named defendants should be granted summary judgment.

The first weakness in Yang's argument is the conclusion that the alleged deliberate indifference in the hiring decision was a proximate cause of Ms. Yi's and Le Yang's death.¹⁷ However, all of the evidence in this case is that Ms. Yi drowned, and that Le Yang died from complications caused by drowning. [EXHIBIT 34]. In other words, no problem with the LR Center was the moving force behind Ms. Yi driving her car into the water and staying in it until it submerged and she and her son were drowned. They drowned because Ms. Yi refused to follow the instructions of the MEMS dispatcher -- who was contacted by the Ms. Middleton of the LR Center - to get herself and her child out of the car. As noted by one of the paramedics on the scene, the car went off the road, down an embankment, knocked down a small tree, and ended up several feet from the shore nearest the road. Nothing about the hiring of Ms. Middleton caused these events.

Under 42 U.S.C. § 1983, a municipality is not liable because it hires a tort-feasor. *Monell v. Dep't. of Soc. Serv.*, 436 U.S. 658, 694 (1978). Congress never intended to impose municipal liability unless some deliberate action of the municipality itself was the "moving force" behind a deprivation of constitutional rights. *Bd. Of Comm'rs of Bryan Cty. V. Brown*, 520 U.S. 397, 400 (1997): A finding of culpability simply cannot depend on the mere probability that any [employee] inadequately screened will inflict any constitutional injury. Rather, it must depend on a finding that this [employee] was highly likely to inflict the particular injury suffered by the plaintiff. 520 U.S. at 412 [explanation added] [emphasis supplied]. As demonstrated above, there was nothing in the material considered by the City defendants to suggest anything of the sort. Not only did Ms.

¹⁷ Complaint at 62, ¶ 297.

Middleton score 96 on her qualifying examination, she had 11 years of experience in emergency dispatch. Further, before she would be permitted to work alone in the LR Center, she would have to successfully complete classroom training, and the job training by direct supervision that she would receive until she was ready to do the work. The Plaintiff has not produced any evidence to suggest that this was the case.

In *Morris v. Crawford Cty*,¹⁸ the U.S. Court of Appeals for the Eighth Circuit held that to succeed on a deliberate indifference in hiring claim, the plaintiff must demonstrate proof of prior complaints in the employee's background "that are nearly identical" to the type of misconduct alleged in the pending case. *Id.*, at 924. The Arkansas Supreme Court has fully adopted this test. *Gentry v. Robinson*, 2009 Ark. 634, at 19, 361 S.W.3d at 799. In this case, Yang is required to provide proof that Ms. Middleton failed to properly send a call to dispatch after she was trained and individually supervised by the LR Center before being allowed on her own.

A great deal is made of the need to override certain addresses on the CAD system if they have not been successfully placed into the system. However, such an override takes a very short period of time. More to the point, from the time she was released to work on her own, until the date of this incident, Ms. Middleton had completed 25 successful overrides while working as a 911 Call Taker. [EXHIBIT 10]. Indeed, the evidence in this case is that Ms. Middleton achieved the override after receiving information from 911 Call Taker Thomas Keeler to try the Cooper Orbit and Kanis Road address as the override. [EXHIBIT 11, at 275; n. 7-8].

¹⁸ 299 F.3d 919 (8th Cir. 2002).

Of the defendants listed in this Count, only the City, Chief Thomas, and Laura Martin had any conceivable final responsibilities on the hiring decision. Two of the entities, as noted previously, are not properly sued. The other individuals did not make a hiring decision.

As to the City, Chief Thomas, and Laura Martin, there is no evidence in the record to meet the standard for deliberate indifference set by the U.S. Supreme Court, and adopted by the Arkansas Supreme Court in *Gentry v. Robinson*.¹⁹ Laura Martin testified that the LR Center answers over 500,000 911 calls a year. [EXHIBIT 12, L. Martin Dep. at 35; 126; n. 19-20 (500,000); 22-24 (524,000)]. There is no evidence that a dispatch was not sent through except for this one time, and even then, there is still no proof that the failure was a mistake by Ms. Middleton, or a mechanical malfunction. For purposes of liability, though, Yang is required to provide such proof to avoid summary judgment. The failure to do so means that summary judgment on this allegation must be dismissed.

J. COUNT XI: Deliberate Indifference by the City of Little Rock, Little Rock Police Department,²⁰ Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, and Marquita Dooley in the Training of Candace Middleton.

For liability to attach pursuant to 42 U.S.C. § 1983 on a failure to train claim, the following must be established:

1. The training practices must be shown to be inadequate;

¹⁹ See 2009 Ark. 634, at 21,361 S.W.3d 788, 799.

²⁰ The Little Rock Police Department is not an entity that can sue or be sued, but is a mere administrative department of the City. See *ARGUMENT 1. The Little Rock Police Department and the Little Rock Fire Department Should Be Dismissed Sui Juris*, *infra* at 7.

2. The City was deliberately indifferent to the rights of others when it adopted the training practice to the extent that there was a conscious choice by the government not to train its organization; and,

3. The failure in training procedures actually caused the plaintiffs injuries.

Parrish v. Ball, 594 F.2d 993, 997 (8th Cir. 2010). Even if the training is minimal, it will not support a failure to train allegation. *City of Canton*, 489 U.S. at 390-91. Instead, the need for more, or different, training must be so obvious, and the likelihood of a constitutional violation occurring without such training so apparent, that the government can reasonably be held deliberately indifferent for not providing the training. *Bd. of County Comm'rs v. Brown*, 520 U.S. at 411. The mere fact that a particular officer is unsatisfactorily trained is not sufficient to lead to government liability under 42 U.S.C. § 1983 on a failure to train theory. *City of Canton*, 489 U.S. at 390-91.

As to individual liability, the failure to train claim is really an action against the government and not the individual. To that extent, Laura Martin, Ms. Wilson, Sharon Martin, Alan Cate, and Marquita Dooley should be dismissed because this claim does not apply to them in an individual capacity. The cause of action is based upon notice to a local government that continued adherence to a training regimen will lead to tortious conduct by government employees, so there is a conscious decision by government to disregard a possible outcome which amounts to deliberate indifference. *See Connick v. Thompson*, 131 S.Ct. 1350, 1360 (2011). Without such notice of a deficiency, there is no way to say that policymakers have been deliberately indifferent to the outcome.

The Plaintiff has provided no evidence to support this claim. There is no history of non-transferred 911 calls in this record. Just the opposite, there is a history of more than 500,000 annual calls being received, considered, and sorted, and this leading to 160,000 police and fire dispatches

by the LR Center. As to Ms. Middleton, there is no notice that she has consistently not put information through on a 911 call, even one that required an address override; indeed, the only evidence that Yang has produced is that it may have happened in this situation. It is clear that the information did not go through, but it is not clear whether Ms. Middleton made a mistake, or there was a mechanical malfunction. What is undisputed is that this is the only case that Yang can base his claim upon, and as the cases above clarify, this is not enough as a matter of law.

Deliberate indifference is a stringent standard. It requires proof that a municipal actor disregarded a known and obvious consequence. *Gentry v. Robinson*, 2009 Ark. 634. At 14, 361 S.W.3d at 796. Yang has produced no evidence of the kind of "continuing, widespread, persistent pattern of unconstitutional conduct," by the LR Center employees necessary to withstand summary judgment on such a claim. *Gentry v. Robinson*, 2009 Ark. 634, at 22, 361 S.W.3d at 800. Therefore, the motion should be granted.

K. COUNT XII: Deliberate Indifference by the City of Little Rock, Little Rock Police Department,²¹ Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, and Marquita Dooley in the Supervision of Candace Middleton.

The same principles outlined above on a failure to train claim also apply to a failure to supervise claim. As to Laura Martin, Linda Wilson, Alan Cate and Marquita Dooley, they were not physically present when the breakdown on transfer of the information by Ms. Middleton occurred. For them to be liable, then, there must be some City policy, custom, or usage, in place that is unconstitutional. As discussed above, that is not the case. When added to the stringent standard that must be met for a "deliberate indifference" finding, and in light of the authorities cited above, it is clear that this claim cannot stand.

²¹ The Little Rock Police Department is not an entity that can sue or be used, but is a mere administrative department of the City. See ARGUMENT 1. *The Little Rock Police Department and the Little Rock Fire Department Should Be Dismissed Sui Juris*, *infra* at 7.

L. COUNT XIII: Deliberate Indifference by the City of Little Rock, Little Rock Police Department²² Stuart Thomas, Wayne Bewley, Laura Martin, Linda Wilson, Sharon Martin, Alan Cate, and Marquita Dooley in the Retention of Candace Middleton.

As noted in paragraph K. above, the same arguments apply to a claim of negligent retention.

Yang has produced no evidence of Ms. Middleton's work at the LR Center, after training, which would support a finding of deliberate indifference to her retention. Without a causal connection, this Count must also be dismissed on summary judgment.

M. COUNT XIV: Deliberate Indifference by the City of Little Rock, Little Rock Police Department,²³ Little Rock Fire Department,²⁴ Karen Grimm and Bob Sharp in Maintaining the CAD System.

The bases for denying this claim as a negligence claim have been fully discussed before. There is absolutely no evidence in the record that any damage had ever been caused because of the address override system utilized by the City with its CAD system. It is possible that there were a few seconds of delay from time to time as a call taker had to accomplish the override, but Yang has produced no evidence of a consistent and widespread situation that would provide the necessary notice required for a showing of deliberate indifference. Based upon the authorities and arguments above, summary judgment must be granted on this claim.

²² The Little Rock Police Department is not an entity that can sue or be used, but is a mere administrative department of the City. See ARGUMENT 1. *The Little Rock Police Department and the Little Rock Fire Department Should Be Dismissed Sui Juris*, *infra* at 7.

²³ The Little Rock Police Department is not an entity that can sue or be used, but is a mere administrative department of the City. See ARGUMENT 1. *The Little Rock Police Department and the Little Rock Fire Department Should Be Dismissed Sui Juris*, *infra* at 7.

²⁴ The Little Rock Fire Department is not an entity that can sue or be sued, but is a mere administrative department of the City. See ARGUMENT 1. *The Little Rock Police Department and the Little Rock Fire Department Should Be Dismissed Sui Juris*, *infra* at 7.

N. COUNT XV: Deliberate Indifference by the City of Little Rock, Little Rock Police Department,²⁵ Stuart Thomas, Wayne Bewley, and Laura Martin in Staffing the City of Little Rock's Communication Center.

Yang has raised this allegation without any proof to support it. As pointed out above, Yang cannot meet a showing of negligence on this issue, much less on the stringent test of deliberate indifference. While the City had notice that it needed to hire and train call takers and dispatchers, and has consistently taken steps to do so, it has not had any notice whatsoever that at any point there were not enough people to handle the call volume. In light of the testimony of Laura Martin, Chief Thomas and Chief Bewley about how busy the LR Center is, the Plaintiff would have to establish a consistent pattern of lack of staffing that resulted in harm in order to avoid summary judgment on this claim. There is no such evidence present, so summary judgment should be granted.

O. COUNT XVI: Deliberate Indifference by the City of Little Rock, Little Rock Police Department,²⁶ and Candace Middleton in Handling Jinglei Vi's 911 Call.

There is absolutely nothing to support the allegation that the City was deliberately indifferent to what happened in this situation. Almost immediately upon learning that a dispatch had been delayed, the LR Center began an investigation. Ms. Middleton was removed from the LR Center, and essentially did not return to work. An internal investigation was conducted that attempted to determine what happened, what weaknesses might exist in the system, and to suggest measures to improve the entire system. A tragedy occurred on January 14, 2013, but rather than simply ignore it, the City immediately undertook a full and thorough investigation of the matter.

²⁵ The Little Rock Police Department is not an entity that can sue or be used, but is a mere administrative department of the City. *See ARGUMENT 1. The Little Rock Police Department and the Little Rock Fire Department Should Be Dismissed Sui Juris, infra at 7.*

²⁶ The Little Rock Police Department is not an entity that can sue or be used, but is a mere administrative department of the City. *See ARGUMENT 1. The Little Rock Police Department and the Little Rock Fire Department Should Be Dismissed Sui Juris, infra at 7.*

This investigation concluded that there was reason to terminate Ms. Middleton as a call taker. Before that process could be completed, she resigned. Still, the stringent test of deliberate indifference is not met here. Even if a single incident could somehow lead to municipal liability under 42 U.S.C. § 1983, a point that even the U.S. Supreme Court finds doubtful, nothing about the handling of this particular incident suggests a conscious object by the City to ignore a known and obvious risk to the constitutional rights of others.

The U.S. Court of Appeals for the Seventh Circuit en banc has also addressed this issue in *Archie v. City of Racine*, 847 F.2d 1211 (7th Cir. 1988). In this case a person called 911 because of complaints about the inability to breathe. It turned out that the caller was one who called 911 frequently, and often did not have a medical emergency. The 911 call taker listened to the complaint and request to send an ambulance, but refused to do so. Instead, the call taker directed that the person breathe into a bag. There were other calls to 911, but essentially the same advice was given. Even though the person was only a few blocks from a hospital, it was impossible for the person to travel that distance without assistance.

The Court denied that there was a positive right to be rescued afforded by the Fourteenth Amendment to the U.S. Constitution. The U.S. Court of Appeals for the Eighth Circuit has also cited with approval the proposition that there is no duty to rescue. Since there is no constitutional right to have the government perform a rescue, Yang cannot show that the r. Scott was under no obligation to require the firefighters to enter the water. See *Lansdown v. Chadwick*, 152 F.Supp.2d at 1142, quoting with approval, *Jackson v. City of Joliet*, 715 F.2d 1200 (7th Cir. 1983).

P. COUNT XVII: Water Rescue Policies, Customs and Regulations of the City of Little Rock Police Department,²⁷ Little Rock Fire Department,²⁸ and MEMS Deprived Le Yang of his Life and Liberty.

Because Count XVII is stated as a cause of action pursuant to 42 U.S.C. § 1983, Yang must establish that the water rescue policies and customs of the City were the moving force behind Ms. Yi's death, and that of Le Yang in order to succeed on this claim. While it is vaguely worded in paragraph 343 of the Complaint, Yang seems to suggest that because MEMS personnel, fire fighters, and police officers, did not jump into the freezing water without training, tools, or experience in cold water rescue, then Ms. Yi died. There is nothing about the City's procedures to protect untrained personnel from inappropriate risks that caused these deaths. The people drowned, or died from complications of drowning, because the car submerged in water. Nothing about the City's water rescue policies put the car in the water, nor did anything about those policies cause Ms. Yi to refuse instructions to climb out of the car and take her son to the top of the car until help could pick them up.

The government is under no duty to rescue its citizens. *S.S. v. McMullen*, 225 F.3d 960, 967 (8th Cir. 2000). Even having offered a citizen shelter, the government does not become the guarantor of an individual's safety. *Id.*

There is no duty to rescue a bystander in distress, but having rescued him from certain death you are not privileged to kill him. This is not to say that you assume responsibility for his future

²⁷ The Little Rock Police Department is not an entity that can sue or be used, but is a mere administrative department of the City. See ARGUMENT 1. *The Little Rock Police Department and the Little Rock Fire Department Should Be Dismissed Sui Juris*, *infra* at 7.

²⁸ The Little Rock Fire Department is not an entity that can sue or be sued, but is a mere administrative department of the City. See ARGUMENT 1. *The Little Rock Police Department and the Little Rock Fire Department Should Be Dismissed Sui Juris*, *infra* at 7.

welfare. You do not. Our point is only that in the absence of a duty to rescue does not entitle the rescuer to harm the person whom he has rescued.

Id.

Since the law is clear that the government does not have a duty to rescue, it is virtually impossible to argue that the government's rescue policies are the cause of a loss of life. In this instance, it was because the City defendants followed its rescue policies that the life of Le Yang was saved. Yang has no evidence that even if the call had gone through when Ms. Middleton originally received it, that with the weather, traffic, and other problems of that day, Ms. Yi would have survived. The statement to the contrary is mere speculation. Because no proof has been presented of an unconstitutional policy, or custom, summary judgment on Count XVI must be granted.

Q. COUNT XVIII: Scene Security Policies, Customs and Regulations of the City of Little Rock, Little Rock Police Department,²⁹ Little Rock Fire Department,³⁰ and MEMS Cut Off Potential Sources of Private Aid and Failed to Provide Adequate Replacement Protection.

The U.S. Court of Appeals for the Eighth Circuit has stated that there is no duty to rescue. since there is no constitutional right to have the government perform a rescue, Yang cannot show that the City defendants were under any obligation to require the firefighters, police officers, or paramedics, to enter the water. See *Lansdown v. Chadwick*, 152 F.Supp.2d at 1142, quoting with approval, *Jackson v. City of Joliet*, 715 F.2d 1200 (7th Cir. 1983).

²⁹ The Little Rock Police Department is not an entity that can sue or be used, but is a mere administrative department of the City. See ARGUMENT 1. *The Little Rock Police Department and the Little Rock Fire Department Should Be Dismissed Sui Juris*, *infra* at 7.

³⁰ The Little Rock Fire Department is not an entity that can sue or be sued, but is a mere administrative department of the City. See ARGUMENT 1. *The Little Rock Police Department and the Little Rock Fire Department Should Be Dismissed Sui Juris*, *infra* at 7.

In Lansdown, an individual with mental problems stole gasoline, ran his truck into a storefront, and then proceeded to his home where he set the house on fire and went to lie down in a bedroom. The law enforcement officers on the scene, aware that Mr. Lansdown had weapons, would not let firefighters into the house for a rescue until they were certain that the scene was safe. At one point, the firefighters could see Mr. Lansdown lying face down on a bed through a window, but still they were not permitted to go into the scene. When the estate sued the county and others for a constitutional violation, the District Court granted summary judgment, and this ruling was affirmed on appeal.

Notwithstanding the lack of professionalism shown that day by the law enforcement officers and fire fighters, no constitutional violation occurred. Lansdown's death, from smoke inhalation, was caused by his actions in setting fire to the house, not by any action or disagreement by law enforcement. *Lansdown*, 258 F.3d at 756.

Here there is no evidence that once upon the scene the City defendants acted unprofessionally. Indeed, the scene was secured, the right equipment was brought to the scene, and attempts were made to get specialized medical equipment ready to assist Le Yang. The rescue of Ms. Yi and Le Yang from the water was not delayed because other persons, private or government, were allowed in the water to create problems for the City's rescue efforts. Yang has provided no evidence to the contrary. Therefore, summary judgment on this Count must be granted.

R. COUNT XIX: The City of Little Rock, Little Rock Fire Department,³¹ Frank Scott, and Eddie Rhine Arbitrarily Asserted Their Power and Prevented the Self Help Rescue Attempt of Dayong Yang.

³¹ The Little Rock Fire Department is not an entity that can sue or be sued, but is a mere administrative department of the City. See ARGUMENT 1. *The Little Rock Police Department and the Little Rock Fire Department Should Be Dismissed Sui Juris*, *infra* at 7.

In Count XIX, Yang claims a constitutional violation of the Fourteenth Amendment Due Process Clause, actionable pursuant to 42 U.S.C. § 1983, because at 8:42:25 a.m.³² shortly after the LRFD Water Rescue unit arrived, the City of Little Rock, acting through LRFD Battalion Chief Eddie Rhine,³³ refused to permit his self-help attempt to enter the water. Yang contends that LRFD policies about the control of a fire rescue scene which allows only authorized water rescue personnel to enter the water in such a situation violates the Fourteenth Amendment Due Process Clause. There is no claim that Dayong Yang was trained in water rescue, could swim, or had the necessary tools to enter a submerged vehicle. More to the point, with the water at a very colder temperature - later believed to be 54° F -³⁴ there is no allegation that Mr. Yang was properly dressed for such an attempt. In any event, no constitutional violation occurred, and Mr. Scott and Chief Rhine are entitled to summary judgment as a matter of law.

There is no Arkansas law on this direct point. The most closely analogous case is *Ross v. United States*³⁵ which, as will be demonstrated, is totally inapposite. In addition, Ross has been

³² See Complaint at 72, ~ 352 to 357.

³³ This Count also names LRFD Driver Frank Scott as a defendant. However, at the time of this aspect of the incident, Mr. Scott had relinquished command of the scene to Chief Rhine. Chief Rhine testified that he was the scene commander once he arrived. [EXHIBIT 19, at 32;11. 16-24] Mr. Scott had asked crew members from E-20 to put on certain gear and enter the water before Chief Rhine arrived. However, Chief Rhine countermanded that order in order to assure that the firefighters did not become victims since they did not have the proper training or equipment, and since Chief Rhine could tell that water rescue was soon to arrive. [EXHIBIT 19, at 37-39;11. 15-25, 1-25, 1-22] Since there is no constitutional right to have the government perform a rescue, Mr. Scott was under no obligation to require the firefighters to enter the water. See *Lansdown v. Chadwick*, 152 F.Supp.2d at 1142, *quoting with approval*, *Jackson v. City of Joilet*, 715 F.2d 1200 (7th Cir. 1983). The lack of a cause of action for failure to protect is particularly applicable where the danger that caused a person's death was created by that person. *Id.* Or, in this case, the death by drowning of Ms. Yi and Le Yang was the result of Ms. Yi's actions in driving off the road into the water, not anything that was done by the City defendants. In any event, because Mr. Scott was not in command of the decision to keep Mr. Yang out of the water, nothing is stated in this Count that applies to him. The argument, then, focuses upon the alleged liability of Chief Rhine.

³⁴ [EXHIBIT 21, at 43-44; 11.22-25,1-10] According to a temperature measurement taken at the scene on the day of the incident, LRPD Officer Scott Detmer reported that the temperature of the water was 47° F. [EXHIBIT 27].

³⁵ 910 F.2d 1422 (7th Cir. 1990).

held not to apply to a rescue situation in Arkansas. *Lansdown v. Chadwick*, 152 F.Supp.2d 1128, 1142-43 (W.D. Ark. 2000), *aff'd*, 258 F.3d 754 (8th Cir. 2001) (adopting the District Court's reasoning and analysis). *Id.*, at 757. A review of the facts demonstrates that Ross is not at all like the situation in this case.

In Ross a young man walking along a breakwater on Lake Michigan fell into the lake and began to drown. The County personnel who oversaw water safety immediately notified emergency services, and shortly afterwards a deputy sheriff arrived on the scene to oversee rescue attempts. A particular county policy stated that in such situations a deputy sheriff should prevent a citizen rescue of a person in danger of drowning in the lake. *Ross*, 910 F.2d at 1425. The deputy sheriff in this express situation took that policy too far.

While the county rescue services were in route, two scuba-diving civilians in the area offered assistance which included the use of their boat, their services, and their equipment. 910 F.2d at 1424. The deputy sheriff in charge of the scene not only refused the assistance, but threatened to arrest them if they entered the water. A full 20 minutes later, approximately 30 minutes the young man fell into the water, the county water rescue team arrived. *Id.*, at 1425. They eventually found the young man, but he died from his injuries the following day. *Id.* The Seventh Circuit, in this one case, denied summary judgment to the county and noted that "[p]rotecting the preventing of harm to private rescuers rather than the lives of those drowning in the lake is an arbitrary choice." *Id.*, at 1431.

The Court also upheld the denial of qualified immunity from the deputy sheriff in charge of the scene. Noting there was no evidence of a malicious intent to harm the drowning victim, the Seventh Circuit accepted a finding of recklessness as a proxy for actual intent. *Ross*, 910 F.2d at 1433. However, to constitute constitutionally actionable recklessness, there must be proof that the

state actor ignored a known and significant risk of death. *Id.* Here, the case was allowed to proceed past summary judgment because: (1) the deputy sheriff knew that a person would probably drown within five minutes of entering the water; (2) the civilian rescuers presented themselves with equipment and a willingness to assist; (3) the victim had already been under water for a few minutes; and, (4) the deputy sheriff could have told through the uniforms and equipment, or a brief inquiry, if the civilian personnel were qualified to attempt the rescue. *Id.* It was this factor, and the additional 20 minutes it took for rescue to arrive, that made the deputy sheriff's actions subject to trial.

The facts in this case are dissimilar. According to the Complaint, Ms. Yi made the first telephone call to the Arkansas 911 system at 7:55:25 am.³⁶ At 7:56:03 a.m., the initial 911 PSAP transferred the call to the LR Center.³⁷ At 8:05 a.m., feeling water from the pond on her legs, Ms. Yi called her husband - Mr. Dayong Yang - who was in the process of scrubbing in for surgery in North Little Rock.³⁸ At 8:20:18 a.m., MEMS paramedics Patrick Harwell and Anthony Williams called MEMS dispatch to report that they were on the scene, and that the car was totally submerged.³⁹ Mr. Yang arrived on the scene at 8:37:38 a.m.⁴⁰ Almost five minutes later, he made an attempt to enter the water at 8:42:25 a.m.⁴¹ The LRFD Water Rescue unit was on the scene at 8:40:07, so they had been there for almost two minutes.⁴² In short, there was no 20-minute wait

³⁶ Complaint at 40, ¶ 163.

³⁷ *Id.*, at 41, ¶ 166.

³⁸ *Id.*, at 43, ~ 180.

³⁹ *See Id.*, at 45, ~ 188; [EXHIBIT 14, at 7,8 ;11.21-25,1-3]

⁴⁰ Complaint at 72, ¶353.

⁴¹ *Id.*

⁴² *Id.*, at 72, ~ 349; [EXHIBIT 21, at 22, 23 ;11.22-25,1-7]

for the arrival of the rescue unit from the time that Mr. Yang was kept from entering the water as was the case in Ross.

Further, he was not really restrained by the City. The testimony of the two involved officers noted that he was encouraged not to enter the water, and then sat in a supervisor's car with them and talked and prayed.⁴³ But, the actual contact was much more sedate.

ATTORNEY: Okay. Who restrained Mr. Yang?

OFF. DILLARD: I did. It wasn't a physical restraint. Once they started pulling her out of the water, he wanted to go help. And there was fire and MEMS over there that were with him trying to help her out. And they asked for us to stop him. And so, I just got in front of him and said, "Let them work on her."

ATTORNEY: Who-

OFC. DILLARD: And-

ATTORNEY: I'm sorry. Go ahead.

OFC. DILLARD: And he walked back to the car with me.

ATTORNEY: Who asked you to stop Mr. Yang?

OFC. DILLARD: I can't say for certain. It was just somebody that was on the other side.

⁴³ [EXHIBIT 20, A. Moore Dep, at 23 ;11. 15-21]

That was either fire or MEMS asked.

* * * * *

ATTORNEY: All right. And when you and Officer Moore restrained Mr. Yang, did you do that in accordance with Little Rock Police Department scene security policies?

OFC. DILLARD: Yeah. I did that so that, you know, they could work on them. And we don't know the state of Mr. Yang in the traumatic situation. And like I said, it was more of a verbal restrain, like, "Let them work on them." I didn't physically grab him or anything.

ATTORNEY: And the "they" being the MEMS paramedics and the fire department rescuers.

OFC. DILLARD: Someone from over there.

[EXHIBIT 35, Dillard Dep. at 7, 15; II. 12-23, 9-23]

In addition, relying upon his observations and training, Chief Rhine could readily discern that Mr. Yang did not have equipment, was not dressed for cold water swimming. According to LRPD Captain John Hogue, for Mr. Yang to enter the water without tools to try and enter the submerged vehicle under those conditions would have been an exercise in futility." Further, if Mr. Yang had

entered the water, then the chance to rescue Ms. Yi and Le Yang would be delayed while the water rescue personnel assisted Mr. Yang:

ATTORNEY: All right. Now, it was testified to at an earlier deposition that firefighters have a kind of risk a life to save a life standard and that you go towards the viable life. In this situation, assume for a moment that Mr. Yang had gotten into the water, and you've got Mr. Yang on top of the water, if he had started swimming towards the car, what would you have done?

CAPT. HOGUE: We would have had to rescue him.

ATTORNEY: And when you say we, are you saying that you and the firefighter you were with?

WITNESS: Yes, sir. The two -

ATTORNEY: He wouldn't have gone ahead and gone to the car?

WITNESS: No, sir.

ATTORNEY: Why not?

WITNESS: Because you have a live patient, you don't know if they're going to be combative, you need somebody to back you up in that situation.

ATTORNEY: So, had he entered the water, it actually would have delayed any efforts to extract Mrs.[Yi] and the young boy; is that correct?

WITNESS: That would be accurate, if he entered the water.

[EXHIBIT 21, at 45-46; II. 8-25. 1-5][emphasis added].

From a factual standpoint, Yang has provided no information that he was trained as a swimmer, trained in entry into submerged vehicles, had any tools, had any equipment, or had any protective clothing at the time he attempted to enter the water. The undisputed facts, then, are that LRFD personnel, in a very tense and rapidly evolving situation, concluded that it would be detrimental to the attempt to save Ms. Yi and Le Yang to let Mr. Yang into the water with the LRFD water rescue personnel. This was not an arbitrary choice as in Ross. Instead, this was a reasonable decision in the midst of an emerging situation that was made to protect both the firefighters and Mr. Yang. Such a decision does not state a constitutional cause of action. Lansdown, 152 F.Supp.2d at 1145.

In addition, there is no information to suggest that death was caused by keeping Mr. Yang out of the water. In fact, death was caused by drowning, and the only person who created that possibility was Ms. Vi. The City defendants did nothing to make her drive into the pound, nor did they do anything to keep her from leaving the car to save her life and that of her child. She caused the first, and chose to follow the second option.

S. COUNT XX: Civil Rights Offenses under the Arkansas Civil Rights Act.

The Arkansas Civil Rights Act encourages the courts to look to federal court decisions of civil rights cases when deciding whether a violation of the state act has occurred. Ark. Code Ann.

§ 16- 123-105 (c) (West 2013). With this in mind, and noting that the City defendants have used both federal and state decisions in the arguments above, the Court should grant summary judgment on the legal bases set forth in this brief as to the Arkansas Civil Rights Act claims.

T. The City defendants sued in their individual capacity are entitled to qualified immunity since even if the Court finds a constitutional violation, no clearly established law demonstrated that the actions were in fact unconstitutional.

The City defendants named in their individual capacity are entitled to qualified immunity from suit. Yang has failed to show that clearly established law in effect on January 14, 2013, or on the dates prior to that when Ms. Middleton started to work for the City, provided notice that any of the complained of actions were unconstitutional. Hence, qualified immunity from suit should be granted. *Smith v. Brt*, 363 Ark. 126, 211 S.W.3d 485 (2005).

The purpose of qualified immunity is to reassure public employees that they should think about their duties as they carry them out, and not about a risk to their fortunes. *Martin v. Hallum*, 2010 Ark. App. 193, at 10,374 S.W.3d 152, 158. Public officials:

... have qualified immunity from liability in their individual capacity unless they violate a clearly established right of which a reasonable person would know. *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). A motion for summary judgment based upon qualified immunity is precluded only when the plaintiff has asserted a constitutional violation, demonstrated that the constitutional right is clearly established and raised a genuine issue of fact as to whether the official would have known that the conduct violated the clearly established right. *Id.*, 2010 Ark. App. at 9-10, 374 S.W.3d at 158-59. The U.S. Supreme Court has recently reminded courts that a general constitutional right is not the focus when qualified immunity determination.

A clearly established right is one that is 'sufficiently clear that every reasonable official would have understood that what he is doing violates that right' ... 'We do not require a case directly on point,

but existing precedent must have placed the statutory or constitutional question beyond debate.' *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

Mullenix v. Luna at 5, No. 14-1143, U.S. Supreme Court (per curiam) (November 9, 2015). A court considering a claim of qualified immunity is not to define clearly defined law with a high degree of generality. *Ashcroft*, 563 U.S. at 742.

This means that to overcome summary judgment on Count X as to Chief Thomas, Chief Bewley, Laura Martin, Linda Wilson, and Alan Cate, the status of the law must have been clear that hiring a person who revealed a previous termination violated Le Yang's constitutional rights because he drowned when his mother drove into a body of water and did not exit the car. There is no clearly established law on this point. To the contrary, *Bd. Of Comm'rs v. Brown* suggests that hiring decisions are not clearly unconstitutional, and that any claim on such a point should rarely be upheld. These defendants are entitled to summary judgment on this issue because Yang has failed to establish clearly established law that put it beyond debate that their hiring decision was unconstitutional.

As to Count XI of the Complaint, which raises the question of deliberate indifference on training Ms. Middleton, Laura Martin, Linda Wilson, Alan Cate, and Marquita Dooley, they are entitled to qualified immunity because no law clearly established that training Ms. Middleton, even if the training was not as successful as it could be, violated the constitutional rights of Le Yang. Indeed, the law of the U.S. Court of Appeals for the Eighth Circuit at the time of this incident indicated that even actions which indicate "carelessness, incompetence, and an extreme lack of professionalism" that one would not expect from emergency services workers does not establish a constitutional violation even when that alleged violation results in the loss of life. *Landsdown v.*

Chadwick, 258 F.3d at 757. Therefore, these individual defendants are entitled to qualified immunity on these claims.

Count XII alleged deliberate indifference in the supervision of Ms. Middleton against Laura Martin, Linda Wilson, Alan Cate and Marquita Dooley in their individual capacities. Again, there is no clearly established law to suggest that anything that they did would be equivalent to the denial of any of Le Yang's constitutional rights. Summary judgment against these defendants individual on the basis of qualified immunity is appropriate.

The same argument is true for Chief Thomas, Chief Bewley, Laura Martin, Linda Wilson, Alan Cate, and Marquita Dooley, in the Count XIII allegation on retention of Ms. Middleton. As noted above, there is nothing to establish deliberate indifference of these individuals in the policies that they followed while supervising Ms. Middleton. Only Chief Thomas, and perhaps Laura Martin, had any say in the decision to retain her employment. Hence, summary judgment based upon qualified immunity is appropriate.

On Count XIV in relation to the maintenance of the CAD system, there is no clearly established law that an individual has a constitutional right to expect a municipality to even have a CAD system, or to use it for rescue purposes. If that is the case, there is clearly no clearly established constitutional right to how such a center is staffed. Because there was no such right established, Karen Grimm and Captain Sharp are entitled to qualified immunity in an individual capacity.

Similarly, Count XV seeks individual liability from Chief Thomas, Chief Bewley, and Laura Martin on the staffing of the LR Center. No citizen has a constitutional right to 911 call center. Since no such right exists, these individual defendants are entitled to qualified immunity on the individual liability claims against them.

Further, as to Count XVIII, there is no clearly established law of a constitutional right to have a self-help rescue attempt when police and fire services take control of an emergency scene. In the very limited and special circumstances of *Ross v. United States*, discussed above, one court in one case with extraordinarily unique facts found that summary judgment should be granted. However, since that case other decisions have indicated that there is no right to a rescue, and that the facts of the *Ross* case are not to be extended to other cases. As a result, Frank Scott and Chief Rhine are entitled to qualified immunity of the claims of individual liability that have been plead against them.

Finally, as to the Arkansas Civil Rights Act, all of these argument apply also to any claims that Yang attempts to bring under the state civil rights law. For the reasons outlined above, the individual defendants are entitled to qualified immunity.

CONCLUSION

This facts and circumstances surrounding this case are without doubt a tragedy. Propelled by the weather and compounded by the location of this tragic accident, a husband lost his wife and son. There was snow and ice on the ground. Traffic was extremely busy during the morning rush hour. Yet, there were evidently no cars traveling along Cooper Orbit Road when Ms. Yi went through the intersection with Rushing Road. Unlike other situations when there are multiple 911 calls about a traffic accident, in this instance there was only one. The call was originally sent to Pulaski County because of the placement of the various towers. Something happened after the call was transferred to Ms. Middleton at the LR Center, because while she took down information and received assistance from Mr. Keeler to override the location of the call, the information was not transmitted to dispatch fire and police. MEMS dispatched ambulance services, but because of the heavy call load that day an ambulance from Maumelle had to be routed to Little Rock, and by the

time it arrived the SUV with Ms. Yi and Le Yang could not be seen from the road. The paramedics looked for another location, and then came back and found the submerged vehicle but no other emergency personnel. So, they contacted MEMS dispatch, which contact the LR Center, which dispatched police and fire to the scene. By the time Rescue 2 was able to perform its service, Ms. Yi had essentially expired, and Le Yang was fatally injured, ultimately to die from those injuries. Dayong Yang, like any husband and father, was willing to attempt to swim to the car himself, it appears, even though he was not trained, did not have tools, was not wearing protective clothing, and would have delayed any rescue attempts for his wife and son because he was a viable life that would be saved first. There is no evidence there was a malicious act by any City defendant at any time, nor even by Ms. Middleton. Arkansas law precludes local government liability for negligence. The stringent requirements for liability pursuant to 42 U.S.C. § 1983 have not been reached. There was no intentionally oppressive government action here; at worst, there was an accident. To avoid summary judgment, Yang is required to come forward with proof of a conscious choice by the City defendants to cause harm. There is no such proof in this case. The record shows that of the hundreds of thousands of 911 calls received by the LR Center, this is the only time that a call taker's information has not been sent to dispatch. Therefore, summary judgment to the City defendants is warranted.

Respectfully submitted,

Thomas M. Carpenter City Attorney

By: /s/ Thomas M. Carpenter
Thomas M Carpenter, Bar #77024
City Attorney
Office of the City Attorney
500 West Markham, Suite 310
Little Rock, Arkansas 72201
(501 371-4527
tcarpenter@littlerock.gov

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of February, 2023, I electronically filed the foregoing with the Clerk of the Court using the eFlex Electronic Filing System which shall send notification of such filing to all counsel of record.

/s/ Thomas M. Carpenter

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
SIXTEENTH DIVISION**

**REGIONS BANK TRUST DEPARTMENT, as Special
Administrator of the Estate of JINGLEI YI, deceased**

PLAINTIFF

vs.

Case No. 60CV-15-4103

CITY OF LITTLE ROCK, ARKANSAS, *et al*

DEFENDANTS

**PLAINTIFF'S RESPONSE TO CITY OF LITTLE ROCK, ARKANSAS'
MOTION FOR SUMMARY JUDGMENT**

On January 14, 2013, Jinglei Yi and her five-year old son, Le Yang, were involved in a tragic drowning as a result of a mishandled 911 call. Jinglei Yi died that morning as a result of the drowning. On January 19, 2015, Le Yang died due to his drowning related injuries.

On September 1, 2015, Plaintiff Regions Bank Trust Department, as Special Administrator of the Estate of Jinglei Yi, deceased (hereinafter "Yi"), filed the instant case against the City of Little Rock, Arkansas *et al* (hereinafter "City") related to the mishandling of Jinglei Yi's 911 call seeking rescue services for her Le Yang. Yi's claims against the City include numerous claims of negligence and civil rights violations. Additionally, Le Yang's father, Dayong Yang sued the City, among others, on behalf of the Estate of Le Yang, deceased in *Dayong Yang, as Special Administrator of the Estate of Le Yang, Deceased v. City of Little Rock, Arkansas et al.*, Pulaski County Circuit Court, Case 60CV-13-3115. The *Yang* case was appealed to the Arkansas Supreme Court twice.

Yi acknowledges the precedent in *Yang v. City of Little Rock*, 2019 Ark. 169, 575 S.W.3d 394. In *Yang*, the Arkansas Supreme Court affirmed the circuit court's grant of summary judgment in favor of the City as to Yang's negligence claims based on the City's affidavits that it did not

possess general liability insurance at the time of the incident to cover Yang's claims. *Yang*, 2019 Ark. at * 4-7.

Here, the City has attached to its summary judgment filing the same affidavits of no general liability insurance that it did in *Yang*. Yi concedes that the City did not have general liability insurance at the time of the drowning.

Additionally in *Yang*, the Arkansas Supreme Court addressed Yang's § 1983 civil rights claims and held as a matter of law: "the City had no constitutional duty to provide rescue services for Yang's son" and "no constitutional violation had occurred at the time of the City's rescue efforts." *Yang*, 2019 Ark. at * 9-10. Yi concedes that *Yang* is controlling precedent and Yi is unable to show there is a genuine issue of material fact to preclude summary judgment on the civil rights claims.

In conclusion, Yi acknowledges the controlling precedent in *Yang v. City of Little Rock*, 2019 Ark. 169, 575 S.W.3d 394 and concedes that the City is entitled to summary judgment as a matter of law on the negligence and civil rights claims. Yi's claims against Candace Middleton, the at fault 911 call operator who is not represented by the City and whose actions the City acknowledges were not consistent with the policies and procedures of the City, should remain a defendant.

Respectfully submitted,

By: /s/ Carter C. Stein
Carter C. Stein, AR Bar No. 2015169
MCMATH WOODS P.A.
711 West Third Street
Little Rock, AR 72201
Phone: (501) 396-5400
Facsimile: (501) 374-5118
carter@mcmathlaw.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

On February 24, 2023, I electronically filed the foregoing with the Clerk of Court using the eFlex system, which shall send notification of the filing to:

Tom M. Carpenter
OFFICE OF THE CITY ATTORNEY
500 West Markham, Ste. 310
Little Rock, AR 72201
tcarpenter@littlerock.org

On February 24, 2023, I mailed by regular U.S. Mail a copy of this filing to:

Candace Middleton


/s/ Carter C. Stein
Carter C. Stein

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
16TH DIVISION

REGIONS BANK TRUST DEPARTMENT, as Special
Administrator of the Estate of JINGLEI YI, deceased

PLAINTIFF

vs.

Case No. 60CV-15-4103

CITY OF LITTLE ROCK, ARKANSAS, *et al*

DEFENDANTS

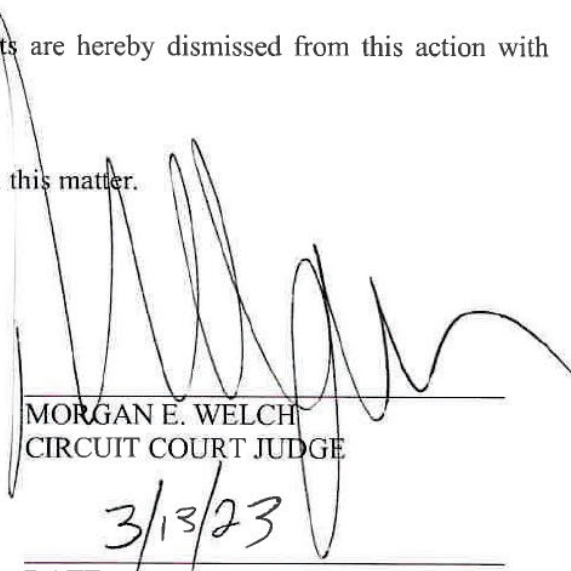
ORDER

On February 17, 2023, the City Defendants – City of Little Rock, Arkansas; Stuart Thomas; Wayne Bewley; Laura Martin; Linda Wilson; Sharon Martin; Alan Cate; Marquita Dooley; Karen Grimm; Gregory L. Summers; and Robert Sharp – filed their *Motion for Summary Judgment of All City Defendants Except Candace Middleton in her individual capacity*.

Upon consideration, the Court finds that City Defendants' motion for summary judgment should be and hereby is granted. City Defendants are hereby dismissed from this action with prejudice.

Candace Middleton remains a defendant in this matter.

IT IS SO ORDERED.


MORGAN E. WELCH
CIRCUIT COURT JUDGE

3/13/23
DATE

Prepared by:

/s/ Thomas M. Carpenter

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Approved by:

/s/ Carter C. Stein

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COPY

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

**DAYONG YANG, AS SPECIAL
ADMINISTRATOR OF THE
ESTATE OF LE YANG, DECEASED**

CLAIMANT

V. CLAIM NO. 16-0496-CC

**STATE OF ARKANSAS, ARKANSAS
DEPARTMENT OF EMERGENCY
MANAGEMENT**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is a request by the State of Arkansas and the Arkansas Department of Emergency Management (collectively, the “Respondents”) to remove the January 19, 2018, hearing from the docket and to hold the instant claim in abeyance until the underlying litigation in the instant claim, as well as the companion claim, has been fully and finally resolved. Claimant Dayong Yang, as Special Administrator of the Estate of Le Yang, deceased (the “Claimant”) objects to the removal of the hearing from the January 19, 2018, docket.

Prior to entry of this order, Respondent also filed a motion for judgment on the pleadings and brief in support.

Based upon the letter briefs filed by both parties and the law of Arkansas, the Claims Commission hereby finds as follows:

1. The Claims Commission has jurisdiction to hear this claim pursuant to Ark. Code Ann. § 19-10-204(a).
2. The instant claim was filed on January 12, 2016.
3. The companion claim, *Regions Bank Truck Department, as Special Administrator of the Estate of Jinglei Yi, deceased v. State of Arkansas, Arkansas Department of Emergency*

Management, Claims Commission Claim No. 16-0497-CC (the “Companion Claim”), was also filed January 12, 2016.

4. Both claims arise out of the same tragic facts. On January 14, 2013, Jinglei Yi was driving with her son, Le Yang, in the vehicle when she hit a patch of ice. Yi lost control of her vehicle, and the vehicle ended up in a retaining pond. Yi called 911, but rescue units did not arrive until nearly 45 minutes later. Yi was pronounced dead at the hospital, and her son suffered an anoxic brain injury. Le Yang died two years later from pneumonia complicated by his injuries.

5. The instant claim relates to the death of Le Yang.

6. The Companion Claim relates to the death of Jinglei Yi.

7. The underlying litigation in the Companion Claim has been stayed pending resolution of the underlying litigation in the instant claim.

8. In the underlying litigation in the instant claim, Claimant received a judgment against a City of Little Rock employee for \$17,627,638.04.

9. Claimant now seeks to recover that amount from the State pursuant to Ark. Code Ann. § 21-9-304(b).

10. Upon request by Claimant’s counsel, the instant claim was removed from abeyance and scheduled for hearing.

11. Respondents then objected to the scheduling of this claim for hearing, stating that a hearing should not be scheduled until the underlying litigation in both the instant claim and the Companion Claim is concluded.

12. Claimant’s counsel confirmed to the Claims Commission that an appeal is pending in the underlying litigation related to the instant claim.

13. The Claims Commission finds that the instant claim should be placed back into abeyance pending resolution of the appeal in the underlying litigation related to the instant claim.

However, once the appeal is final, the instant claim can proceed to hearing. The Claims Commission is unpersuaded that the instant claim and the Companion Claim must be heard simultaneously.

14. As such, Respondent's motion for judgment on the pleadings is denied, but the Respondent may renew its motion once the appeal in the underlying litigation has been resolved, and this claim has been removed from abeyance.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

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

DATE: December 6, 2017

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).

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

August 29, 2023

Mr. Carter C. Stein
McMath Woods P.A.
711 West Third Street
Little Rock, Arkansas 72201

(via email)

Mr. Charles Lyford
Mr. John Payne
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201

(via email)

RE: ***Regions Bank Trust Department, as special administrator of the Estate of Jinglei Yi, deceased v. Arkansas Department of Emergency Management***
Claim No. 16-0497-CC

Dear Mr. Stein, Mr. Lyford, and Mr. Payne,

The Claims Commission has scheduled this claim for a two-hour hearing on **Friday, December 8, 2023**, beginning at 9:00 a.m. All parties will attend via Zoom. If either party objects to the Zoom format, a written objection must be submitted via email (kathryn.irby@arkansas.gov) or mail no later than September 5, 2023. The Zoom invitation is enclosed.

The following prehearing materials are due by November 10, 2023:

- Each party's list of witnesses who will testify live at the hearing or via deposition;
- Each party's list of exhibits that may be introduced at the hearing;
- Deposition transcripts if any deposition testimony will be submitted in lieu of live testimony;
- Prehearing briefs if either party would like to submit for Commission review; and
- Subpoena requests (absent a showing of good cause, the Commission will not issue subpoenas for requests received after the prehearing material deadline).

To the extent that either party intends to file a motion of any kind, absent a showing of good cause, the motion must be submitted in sufficient time to allow the motion to be fully briefed pursuant to the Arkansas Rules of Civil Procedure by November 10, 2023.

Please note that a copy of any filing must be served upon the opposing party in accordance with the Arkansas Rules of Civil Procedure.

If you have any questions, please do not hesitate to contact my office.

Sincerely,

Kathryn Irby

ES: kmirby

The Claims Commission is inviting you to a scheduled Zoom meeting.

Topic: Claims Commission -- hearings

Time: Dec 8, 2023 09:00 AM Central Time (US and Canada)

Join Zoom Meeting

<https://us06web.zoom.us/j/85893882497?pwd=N2llMzVUNFpSTXJ3NU1lR05tcDJ0dz09>

Meeting ID: 858 9388 2497

Passcode: 5EJeTg

One tap mobile

+13052241968,,85893882497#,,, *758554# US

+13092053325,,85893882497#,,, *758554# US

Dial by your location

- +1 305 224 1968 US

- +1 309 205 3325 US

- +1 312 626 6799 US (Chicago)

Meeting ID: 858 9388 2497

Passcode: 758554

Find your local number: <https://us06web.zoom.us/j/kdjNiwX06r>

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

**REGIONS BANK TRUST
DEPARTMENT, AS SPECIAL
ADMINISTRATOR OF THE
ESTATE OF JINGLEI YI,
DECEASED**

CLAIMANT

V.

CLAIM NO. 16-0497-CC

**ARKANSAS DEPARTMENT OF
EMERGENCY MANAGEMENT**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Commission”) is the claim of the Regions Bank Trust Department, as special administrator of the Estate of Jinglei Yi, deceased (collectively referred to herein as the “Claimant”) against the Arkansas Department of Emergency Management (the “Respondent”). At the claim hearing, Carter C. Stein appeared on Claimant’s behalf, and Brian D. Black appeared on behalf of Respondent. Based upon a review of the claim file, the argument of the parties, the Legislature’s decision in the companion claim¹, and the law of the State of Arkansas, the Commission hereby finds as follows:

1. Claimant filed the instant indemnification claim on January 13, 2016, pursuant to Ark. Code Ann. § 21-9-304(a). This claim relates to the failure of a City of Little Rock dispatcher, Candace Middleton, to send police and fire units to the scene of a one-vehicle accident, in which Jinglei Yi and her young son, Le Yang, ended up in a vehicle submerged in a pond. Jinglei Yi died as a result, and Le Yang suffered an anoxic brain injury and died two years later.

¹ *Dayong Yang, as special administrator of the Estate of Le Yang, deceased v. Ark. Dept. of Emergency Mgmt.*, Claim No. 16-0496-CC.

2. The estates of Jinglei Yi and Le Yang filed separate claims at the Commission² and separate underlying lawsuits in Pulaski County Circuit Court.³ In both underlying lawsuits, the Pulaski County Circuit Court entered default judgments against Middleton (\$17,627,638.04 in *Yang* and \$5,000,000 in *Yi*).⁴

3. On September 15, 2020, the Commission entered an order on the *Yang* claim, granting Respondent's motion for judgment on the pleadings (a copy of which order is attached and incorporated by reference). Mr. Yang filed a notice of appeal, and the Claims Subcommittee of the Joint Budget Committee of the Arkansas General Assembly (collectively referred to as the "Subcommittee") considered the appeal on March 16, 2021. At that meeting, the Subcommittee declined to uphold the Commission's order and instead awarded Mr. Yang \$100,000.⁵ Pursuant to the Subcommittee's decision, as ratified by the Joint Budget Committee,⁶ Mr. Yang was paid through an appropriation bill in May 2021, and the Commission's file was closed.

4. Following the conclusion of the underlying *Yi* lawsuit in June 2023, counsel for Claimant asked for a hearing.

² The *Yang* claim is Claim No. 16-0496-CC. The *Yi* claim is Claim No. 16-0497-CC.

³ The underlying lawsuit for the *Yang* claim is *Dayong Yang, as special administrator of the Estate of Le Yang v. Middleton*, Pulaski County Circuit Court Case No. 60CV-13-3115. The underlying lawsuit for the *Yi* claim is *Regions Bank Trust Dept., as special administrator of the Estate of Jinglei Yi, deceased v. City of Little Rock, Ark.*, Pulaski County Circuit Court Case No. 60CV-15-4103.

⁴ In the *Yang* lawsuit, the default judgment was entered on October 19, 2017. The default judgment in the *Yi* lawsuit was not entered until June 22, 2023.

⁵ On March 18, 2021, the Joint Budget Committee of the Arkansas General Assembly reviewed and approved the Subcommittee's report with its recommendations.

⁶ *See id.*

5. In Claimant's prehearing brief, Claimant noted its willingness to resolve its \$5,000,000 indemnification claim for \$15,000. Upon a question from a commissioner, counsel for Claimant confirmed the amount.

6. In Respondent's prehearing brief, Respondent argued that Claimant's indemnification claim must fail under Arkansas law.

7. Upon a question from a commissioner as to how the Commission can reject the Subcommittee's guidance from the *Yang* claim, counsel for Respondent argued that the Subcommittee's award in the *Yang* claim was out of kindness for Mr. Yang, not because the Commission's legal analysis was incorrect.

8. If the Commission did not have the benefit of the Subcommittee's prior decision, the Commission would enter an order dismissing the claim, as it did with the *Yang* claim. However, the Commission does have the Subcommittee's prior decision, and the Commission finds that it would be improper for the Commission to parse the decisions of the Arkansas General Assembly to determine which decisions should be interpreted as guidance and which decisions should not. The *Yang* claim is based on identical facts, and the Subcommittee declined to affirm the Commission's decision in that claim, instead voting to give Mr. Yang \$100,000. The Commission cannot ignore that guidance, which so directly informs the instant claim. As such, the Commission finds that Claimant should be awarded \$15,000 and directs the Commission clerk to issue a voucher in payment thereof.

9. The Commission also notes that while Ark. Code Ann. § 21-9-304 was amended⁷ following the award in the *Yang* claim, the amendment did not include language specifying that

⁷ Act 613, 2021 Regular Session of the Arkansas General Assembly. Act 613 added the word "direct" before the word "supervision" in subsection (a) of Ark. Code Ann. § 21-9-304, which now reads as follows:

the amendment was to be applied retroactively.⁸ According to the Subcommittee’s decision in the *Yang* claim, Ark. Code Ann. § 21-9-304 provided for a right to recover in the instant claim. Given that the 2021 amendment would disturb a vested right, the Commission finds that the amendment cannot apply to the instant claim.⁹

-
- (a) When any city of the first class, city of the second class, incorporated town, county, and its employees are called upon to assist the state and its employees and, as a result, are sued for their actions performed under the *direct* supervision of a state official or employee, the Attorney General shall defend the city of the first class, city of the second class, incorporated town, county, and its employees.
 - (b) Should a judgment be rendered against the city of the first class, city of the second class, incorporated town, county, or its employees, the state shall pay actual, but not punitive, damages adjudged by a state or federal court, or entered by the court as a result of a compromise settlement approved and recommended by the Attorney General, based on an act or omission by the officer or employee while acting without malice and in good faith within the course and scope of his or her employment and in performance of his or her official duties.

...
(emphasis added).

⁸ *Dye v. Precision Found. Specialties & Flow Rite Drainage Solutions, Inc.*, 2022 Ark. App. 220, *13, 646 S.W.3d 168, 177 (“Retroactivity is a matter of legislative intent. Unless it states expressly otherwise, we presume the legislature intends for its laws to apply only prospectively”).

⁹ *Id.*

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, chair

DATE: December 21, 2023

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

From: [Kathryn Irby](#)
To: carter@mcmathlaw.com; brian.black@arkansasag.gov
Subject: ORDER: Regions Bank v. ADEM, Claim No. 16-0497-CC
Date: Thursday, December 21, 2023 1:20:00 PM
Attachments: [Regions Bank v. ADEM, 16-0497-CC -- order.pdf](#)

Mr. Stein and Mr. Black, please see attached order entered by the Commission.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: [Gabrielle Mays](#)
To: [Kathryn Irby](#); [ASCC Pleadings](#)
Cc: [Brian Black](#); [Misty Scott](#)
Subject: RE: Regions Bank Trust c/o Jinglei Yi Estate v. ADEM 16-0497-CC
Date: Tuesday, January 30, 2024 4:40:14 PM
Attachments: [image001.jpg](#)
[2024-01-30 - Respondents Motion for Reconsideration.PDF](#)

Director Irby,

Please find attached a cover letter and the Respondent's Motion for Reconsideration to be filed in this matter on behalf of Assistant Attorney General Brian D. Black.

Thank you.

Gabrielle "Gabby" Mays, Legal Assistant

Office of Attorney General Tim Griffin
323 Center Street, Suite 200
Little Rock, Arkansas 72201
www.ArkansasAG.gov

(501) 682-2007 (Main)
(501) 682-2016 (Direct)





TIM GRIFFIN
ATTORNEY GENERAL

Brian D. Black
Assistant Attorney General

Direct Dial: (501) 683-3296
Email: brian.black@arkansasag.gov

January 30, 2024

Sent Via Email

Ms. Kathryn Irby
Arkansas State Claims Commission
101 E. Capitol Ave., Suite 410
Little Rock, AR 72201
Kathryn.irby@arkansas.gov

Re: *Regions Bank Trust Dept. v. ADEM*
Case No.: 16-0497-CC

Dear Ms. Irby:

Please find attached with this letter the Respondent's Motion for Reconsideration for filing in the above-referenced matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "BDB", is written over a faint, larger signature that appears to read "Black".

Brian D. Black
Assistant Attorney General

BDB/gm
Attachment

cc: Carter Stein, Esq. (by e-mail and US Mail)

323 CENTER STREET, SUITE 200
LITTLE ROCK, ARKANSAS 72201

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

REGIONS BANK TRUST DEPARTMENT
Special Administrator of the Estate of
Jinglei Yi, deceased

CLAIMANT

VS.

Claim No. 16-0497-CC

STATE OF ARKANSAS,
ARKANSAS DEPARTMENT OF
EMERGENCY MANAGEMENT

RESPONDENT

**MOTION FOR RECONSIDERATION
AND INCORPORATED BRIEF IN SUPPORT**

COMES NOW RESPONDENT, Arkansas Department of Emergency Management, by its undersigned attorneys, states as follows for its Motion for Reconsideration and its Incorporated Brief in Support:

Respondent brings this Motion for Reconsideration pursuant to Arkansas Administrative Code Section 030.00.1-7.1, and Arkansas Rules of Civil Procedure 52(b)(1) and 59.

Claimant filed the instant claim on January 13, 2016, ostensibly under Ark. Code Ann. § 21-9-304(a). This claim relates to the failure of a City of Little Rock dispatcher, Candace Middleton, to send police and fire units to the scene of a single-car accident, in which Jinglei Yi and her young son, Le Yang, ended up in a vehicle submerged in a pond. Jinglei Yi died as a result, and Le Yang suffered an anoxic brain injury and died two years later.

This is the second of two claims arising from the same tragic facts. Both claims were filed on January 12, 2016. The first claim, Claim 16-0496-CC (hereinafter, the “Yang Claim”), was brought by Dayong Yang (Le Yang’s father) and sought relief based on the death of Le Yang. This Claim (the “Yi Claim”) is based on the death of Jinglei Yi and is brought by Regions Bank Trust Department, as Special Administrator of the Estate of Jinglei Yi.

Both claims had corresponding litigation in the Pulaski County Circuit Court. The Circuit Court lawsuit corresponding to the *Yang* claim was *Dayong Yang, as special administrator of the Estate of Le Yang v. Middleton*, Pulaski County Circuit Court Case No. 60CV-13-3115. The corresponding lawsuit for the *Yi* claim is *Regions Bank Trust Dept., as special administrator of the Estate of Jinglei Yi, deceased v. City of Little Rock, Ark.*, Pulaski County Circuit Court Case No. 60CV-15-4103. The two lawsuits are based on identical facts and underly the theory of recovery in this Claim. In both cases, the plaintiff alleged that a City of Little Rock employee negligently handled Ms. Li's 911 call and negligently handled the ensuing rescue. Both cases resulted in the dismissal of all the City of Little Rock defendants but for one dispatcher, Candace Middleton, against whom default judgment was entered in both cases—\$17,627,638.04 in the *Yang* case, and \$5,000,000 in the *Yi* case.

The Claimant in this case, as Mr. Yang did in the prior claim, asserts that the State of Arkansas, through the Arkansas Department of Emergency Management, is obligated to pay the five-million-dollar default judgment against Ms. Middleton.

The Claimant in *Yang* did not contend the State of Arkansas was at fault in any way. He instead contended, as Claimant does here, that Arkansas Code section 21-9-304 requires the State to indemnify against, or pay, any judgment against the City of Little Rock or its employees in the related litigation, because the State has authorized and encouraged the establishment of 911 systems.

Respondent asserted, as it continues to do here, that the Arkansas Constitution generally prohibits the State from indemnifying others against their own obligations, and specifically prohibits the State from paying the obligations or liabilities of cities.

Contrary to the interpretation urged by the Claimant in both the Yang Claim and the instant Claim, section 21-9-304 cannot, consistent with the Arkansas Constitution, be read to require the State to pay judgments entered against cities or their employees. Properly interpreted, section 21-9-304 only provides for payment of obligations incurred by cities as a direct result of activities carried out by city employees under the direct supervision of State officials or employees.

The City Defendants filed a motion for judgment on the pleadings in the Yang Claim, explaining that the Mr. Yang's claims were (1) barred by the doctrine of collateral estoppel; (2) prohibited by the Arkansas Constitution; and (3) prohibited by section 21-9-304 of the Arkansas Code.

Following completion of briefing by the parties, on September 15, 2020, this Commission issued its Order in the Yang Claim. The Commission found no facts pled to support a claim that David Maxwell, the State's 911 Coordinator) supervised Candace Middleton (the defaulting individual defendant). Likewise, Mr. Yang's counsel conceded that Mr. Maxwell did not directly supervise Ms. Middleton, and probably didn't know her name.

Consequently, the Commission entered an order on the *Yang* Claim, granting Respondent's motion for judgment on the pleadings (a copy of which order is attached and incorporated by reference).

Mr. Yang filed a notice of appeal, and the Claims Subcommittee of the Joint Budget Committee of the Arkansas General Assembly (collectively referred to as the "Subcommittee") considered the appeal on March 16, 2021. At that meeting, the Subcommittee voted to award \$100,000, notwithstanding the Commission's Order of September 14, 2020. Pursuant to the Subcommittee's decision, as ratified by the Joint Budget Committee, Mr. Yang was paid through an appropriation bill in May 2021, and the Commission's file was closed.

During the hearing on the instant claim, the Respondent noted that the facts in this Claim, like those in the Yang Claim, warranted dismissal of the Claim. The Commission disagreed however. In its December 21 Order, the Commission stated:

If the Commission did not have the benefit of the Subcommittee's prior decision, the Commission would enter an order dismissing the claim, as it did with the *Yang* claim. However, the Commission does have the Subcommittee's prior decision, and the Commission finds that it would be improper for the Commission to parse the decisions of the Arkansas General Assembly to determine which decisions should be interpreted as guidance and which decisions should not. The *Yang* claim is based on identical facts, and the Subcommittee declined to affirm the Commission's decision in that claim, instead voting to give Mr. Yang \$100,000. The Commission cannot ignore that guidance, which so directly informs the instant claim. As such, the Commission finds that Claimant should be awarded \$15,000 and directs the Commission clerk to issue a voucher in payment thereof.

December 21, 2023 Order, ¶ 8.

Respondent contends that this was error. As the Respondent's counsel advised, the decision of the Claims Subcommittee was not based on an error in the Commission's September 15, 2020 Order. To the contrary, the award was made at the recommendation of Mr. Yang's State Senator. The video of the Claims Subcommittee's hearing was not available at the hearing, but is available on the Legislature's web site.¹

The video of the hearing makes clear that the Claims Sub-Committee's decision was made to assuage (to the extent that such a monetary award could do so) Mr. Yang's grief. While Respondent concedes that such a decision lies within the Legislature's purview, and that it is possible the Legislature could decide to make a similar appropriation in this case, Respondent

¹ <https://sg001-harmony.sliq.net/00284/Harmony/en/PowerBrowser/PowerBrowserV2/20210316/-1/21352?gefdesc=&startposition=20210316115904>.

respectfully submits that the Legislature's decision in the Yang case should not be the basis for the Commission's decision here.

Respondent respectfully submits that the Commission should reconsider its decision of December 21, 2023, and dismiss the instant Claim.

Respectfully submitted,

TIM GRIFFIN
Attorney General

By:

Brian D. Black
Ark. Bar No. 2017-176
Assistant Attorney General
Arkansas Attorney General's Office
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Phone: (501) 683-3296
Fax: (501) 682-2591
Email: brian.black@arkansasag.gov

Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 30, 2024, I caused a copy of the forgoing
to be sent by first class mail to:

Carter C. Stein
McMATH WOODS
711 West Third Street
Little Rock, AR 72201

Brian D. Black

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

**DAYONG YANG, AS SPECIAL
ADMINISTRATOR OF THE ESTATE
OF LE YANG, DECEASED**

CLAIMANT

V.

CLAIM NO. 16-0496-CC

**ARKANSAS DEPARTMENT OF
EMERGENCY MANAGEMENT**

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the renewed motion filed by the Arkansas Department of Emergency Management (the “Respondent”) for judgment on the pleadings filed by Dayong Yang, as special administrator of the Estate of Le Yang, deceased (the “Claimant”). At the hearing on the motion, Carter C. Stein appeared on Claimant’s behalf, and Vincent P. France appeared on behalf of Respondent. Based upon a review of the motion, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. The Claims Commission has jurisdiction to hear this claim pursuant to Ark. Code Ann. § 19-10-204(a).
2. Claimant filed his indemnification claim on January 12, 2016, pursuant to Ark. Code Ann. § 21-9-304(a). At the time of filing, Claimant requested that the claim be held in abeyance until the underlying litigation was concluded. This claim relates to the failure of a City of Little Rock dispatcher, Candace Middleton, to send police and fire units to the scene of a one-vehicle accident, in which Jinglei Yi and her young son, Le Yang, ended up in a vehicle submerged in a pond. Jinglei Yi died as a result, and Le Yang suffered an anoxic brain injury and died two years later. As part of the underlying litigation, the Pulaski County Circuit Court entered a default judgment against Ms. Middleton in the amount of \$17,627,638.04.

3. After the underlying litigation was concluded, Respondent filed the instant motion, arguing that Claimant's claim is (1) barred by the doctrine of collateral estoppel, (2) prohibited by the Arkansas Constitution, and (3) not permitted by Ark. Code Ann. § 21-9-304.

4. Claimant filed a response, arguing that Respondent's collateral estoppel argument fails due to Respondent's inconsistent positions (Respondent argued to the circuit court that the Claims Commission has jurisdiction to determine Respondent's liability under Ark. Code Ann. § 21-9-304, and Respondent is now arguing to the Claims Commission that the circuit court had jurisdiction of the indemnification issue and adjudicated that issue) and the fact that the indemnification issue was not litigated or dismissed by the circuit court. As to the constitutional argument, Article 12 § 12 of the Arkansas Constitution provides an applicable exception to the rule against the state paying cities' liabilities. As to Respondent's argument regarding Ark. Code Ann. § 21-9-304, the facts in this claim satisfy the statutory requirements because the 911 system is a statewide system coordinated by and carried out under the supervision of State employees.

5. Respondent replied, arguing that it did not take inconsistent positions in the underlying litigation and the instant claim. If the circuit court had found that the facts supported state indemnification, Claimant's claim would be "ripe for adjudication" by the Claims Commission. In the underlying litigation, the City of Little Rock, its employees, and Ms. Middleton were not represented by the Arkansas Attorney General's Office because these defendants were not assisting the state and acting under the supervision of a state employee. Had they been, the Arkansas Attorney General would have been "statutorily obligated" to represent them.

6. At the hearing, Respondent argued that there is no statewide 911 operating system and pointed to Ark. Code Ann. §§ 12-10-302(e)(3)¹ and 12-10-304 as evidence that 911 systems are local. Respondent is not responsible for maintaining, operating, or running 911 centers. Ark. Code Ann. § 21-9-304 pertains to situations where the State calls for the assistance of local officials for help with a state issue and the local officials are sued as a result of assisting the state. Ms. Middleton was not assisting the state, and Respondent did not oversee her work. To permit Claimant to recover would open Pandora's box.

7. Claimant responded, arguing that Respondent is trying to read "direct supervision" into the requirements of Ark. Code Ann. § 21-9-304. The City of Little Rock was called upon by the state to operate a 911 center. Respondent wants the state to have a statewide 911 system for the benefits (David Maxwell, who was appointed to be the state's 911 coordinator, applied for and received federal funding for the state's 911 programs) but not the liabilities. The facts of this claim show a statewide 911 system, in that when Jinglei Yi called 911, Pulaski County dispatch answered the call and then transferred it to the City of Little Rock. The Claims Commission is the conscience of the State of Arkansas.

8. Upon a question by a commissioner, Claimant confirmed that Mr. Maxwell is the only state employee identified in this claim, although Claimant referenced some other state employees identified in the underlying litigation.

9. Upon a question by a commissioner as to the indicia of supervision by Mr. Maxwell over Ms. Middleton and whether Claimant's counsel could amend his complaint to provide any

¹ Ark. Code Ann. § 12-10-302(e)(3) provides that "It is found and declared necessary to [e]ncourage the political subdivisions to implement public safety answering points" Ark. Code Ann. § 12-10-304 permits the "chief executive of a political subdivision" to "[r]etain a dispatch center to serve both public safety answering point and dispatch functions."

further details regarding supervision, Claimant confirmed that Mr. Maxwell did not directly supervise Ms. Middleton and probably did not know her name.

10. Upon a question by a commissioner as to whether Claimant believes the state to be responsible for any negligence on the part of a 911 response, Claimant stated that an analysis must be done through Ark. Code Ann. §§ 21-9-301 and 21-9-304. As to the amount of the judgment, Claimant also noted that the state extricated itself from the underlying litigation and could have stayed in.

11. Upon a question from a commissioner as to the permissive language in Ark. Code Ann. § 12-10-302, Claimant stated that the permissiveness of the language does not matter because the City of Little did decide to operate a 911 center.

12. Ark. Code Ann. § 21-9-304 provides, in pertinent part, that:

- (a) When any city of the first class, city of the second class, incorporated town, county, and its employees are called upon to assist the state and its employees and, as a result, are sued for their actions performed under the supervision of a state official or employee, the Attorney General shall defend the city of the first class, city of the second class, incorporated town, county, and its employees.
- (b) Should a judgment be rendered against the city of the first class, city of the second class, incorporated town, county, or its employees, the state shall pay actual, but not punitive, damages adjudged by a state or federal court, or entered by the court as a result of a compromise settlement approved and recommended by the Attorney General, based on an act or omission by the officer or employee while acting without malice and in good faith within the course and scope of his or her employment and in performance of his or her official duties

(emphasis added).

13. The Claims Commission finds that there are no facts pled to support a claim that Mr. Maxwell was supervising Ms. Middleton. While the Claims Commission appreciates Claimant's counsel's diligent representation of his client, without specific guidance from the

Arkansas General Assembly, the Claims Commission is unwilling to find that the existence of a 911 coordinator means that the state is supervising every 911 dispatcher and emergency responder.

14. Because the Claims Commission finds that dismissal is appropriate pursuant to Ark. R. Civ. Proc. 12(c), it need not reach Respondent's collateral estoppel and constitutional arguments.

15. As such, the Claims Commission GRANTS Respondent's motion for judgment on the pleadings and DISMISSES Claimant's claim.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Courtney Baird



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, Chair



ARKANSAS STATE CLAIMS COMMISSION
Sylvester Smith

DATE: September 15, 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).

From: [Carter Stein](#)
To: [ASCC Pleadings](#)
Cc: [Kathryn Irby](#); [Brian Black](#); [Sabrina Marshall](#)
Subject: Regions Bank Trust Department, as Special Administrator for the Estate of Jinglei Yi, deceased v. ADEM, Claim No. 16-0497-CC; Response to Motion for Reconsideration
Date: Wednesday, February 7, 2024 9:36:05 AM
Attachments: [Response to Motion for Reconsideration.pdf](#)

Attached please find *Regions Bank's Response to Motion for Reconsideration*.

At your convenience, please confirm the filing of this response.

I am copying defense counsel on this communication with the Claims Commission.

Thanks.

Carter C. Stein
McMath Woods P.A.
(501) 396-5409 - Office
www.mcmathlaw.com

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

**REGIONS BANK TRUST DEPARTMENT,
as Special Administrator of the Estate of
JINGLEI YI, deceased**

CLAIMANT

vs.

Claim No. 16-0497-CC

**ARKANSAS DEPARTMENT OF
EMERGENCY MANAGEMENT**

RESPONDENT

REGIONS BANK'S RESPONSE TO MOTION FOR RECONSIDERATION

The Arkansas Department of Emergency Management's motion for reconsideration should be denied.

Arkansas State Claims Commission Rule 7.1 states: "Motions for Reconsideration will only be entertained if they set forth new or additional evidence which was not available to the moving party at the time of the scheduled hearing." In its motion for reconsideration, ADEM wrote: "The video of the Claims Subcommittee's hearing was not available at the hearing, but is available on the Legislature's web site." Motion for Reconsideration and Incorporated Brief in Support, p. 4. ADEM provided a hyperlink to the March 16, 2021 Claims Subcommittee hearing video. The hearing video was publicly available for over two and a half years prior to the December 8, 2023 hearing in this case. ADEM's motion for reconsideration fails to set forth new or additional evidence which was not available to ADEM at the time of the December 8, 2023 hearing as required by Arkansas State Claims Commission Rule 7.1. ADEM's motion for reconsideration should not be entertained and should be summarily denied.

Respectfully submitted,

By: /s/ Carter C. Stein
Carter C. Stein, AR Bar No. 2004049
MCMATH WOODS P.A.

711 West Third Street
Little Rock, AR 72201
Telephone: (501) 396-5400
Email: carter@mcmathlaw.com

*Attorney for Claimant
Regions Bank Trust Department,
as Special Administrator of the Estate of
Jinglei Yi, deceased*

CERTIFICATE OF SERVICE

I, Carter C. Stein, certify that on February 7, 2023, I sent this response by email to asccpleadings@arkansas.gov for filing and am sending a copy by email to the following counsel of record:

Brian D. Black
323 Center Street, Suite 200
Little Rock, AR 72201
brian.black@arkansasag.gov

*Attorney for Respondent
State of Arkansas,
Arkansas Department of
Emergency Medicine*

/s/ Carter C. Stein
Carter C. Stein

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

**REGIONS BANK TRUST
DEPARTMENT, AS SPECIAL
ADMINISTRATOR OF THE
ESTATE OF JINGLEI YI,
DECEASED**

CLAIMANT

V.

CLAIM NO. 16-0497-CC

**ARKANSAS DEPARTMENT OF
EMERGENCY MANAGEMENT**

RESPONDENT


**ORDER ON RESPONDENT’S
MOTION FOR RECONSIDERATION**

Now before the Arkansas State Claims Commission (the “Commission”) is a motion filed by the Arkansas Department of Emergency Management (the “Respondent”) for reconsideration of the Claims Commission’s December 21, 2023, order awarding Regions Bank Trust, as Special Administrator of the Estate of Jinglei Yi, deceased (collectively referred to as the “Claimant”) \$15,000. Based upon a review of the claim file, including the instant motion and Claimant’s response, and the law of the State of Arkansas, the Commission hereby unanimously finds that Respondent’s motion should be denied, given that the Commission addressed Respondent’s arguments in its original order and that Respondent’s motion does not set forth new or additional evidence that was not previously available. *See* Commission Rule 7.1.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Solomon Graves



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow



ARKANSAS STATE CLAIMS COMMISSION
Paul Morris, chair

DATE: March 7, 2024

Notice(s) which may apply to your claim

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- (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: [Kathryn Irby](#)
To: carter@mcmathlaw.com; brian.black@arkansasag.gov
Cc: [Mika Tucker](#)
Subject: ORDER: Regions Bank v. ADEM, Claim No. 16-0497-CC
Date: Thursday, March 7, 2024 4:12:00 PM
Attachments: [8--Regions Bank, 16-0497-CC.pdf](#)

Mr. Stein and Mr. Black, please see attached order entered by the Commission.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822

From: [Brian Black](#)
To: [Kathryn Irby](#); carter@mcmathlaw.com
Cc: [Mika Tucker](#); [ASCC Pleadings](#); [Misty Scott](#)
Subject: Regions Bank v. ADEM, Claim No. 16-0497-CC
Date: Wednesday, March 27, 2024 10:54:57 AM
Attachments: [image001.jpg](#)

Some people who received this message don't often get email from brian.black@arkansasag.gov. [Learn why this is important](#)

Good afternoon, Ms. Irby.

Please accept this as ADEM's notice of appeal in the above referenced action.

Sincerely,

Brian D. Black
Assistant Attorney General – Civil Litigation Division

Office of Attorney General Tim Griffin
323 Center Street, Suite 200 | Little Rock, Arkansas 72201
Office: (501) 683-3296 | Fax: (501) 682-2591
Email: brian.black@arkansasag.gov



From: Kathryn Irby <Kathryn.Irby@arkansas.gov>
Sent: Thursday, March 7, 2024 4:13 PM
To: carter@mcmathlaw.com; Brian Black <brian.black@arkansasag.gov>
Cc: Mika Tucker <Mika.Tucker@arkansas.gov>
Subject: ORDER: Regions Bank v. ADEM, Claim No. 16-0497-CC

You don't often get email from kathryn.irby@arkansas.gov. [Learn why this is important](#)

Mr. Stein and Mr. Black, please see attached order entered by the Commission.

Thanks,
Kathryn Irby

Kathryn Irby
Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, Arkansas 72201
(501) 682-2822