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Please print in ink or type

Arkansas State Claims Commission

DEC 27 2018

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BEFORE THE STATE CLAIMS COMMISSION Of the State of Arkansas

- Mr. Mrs. Ms. Miss

Kimberly Burks, Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces. Claim No., Date Filed, Amount of Claim \$, Fund.

COMPLAINT

Kimberly Burks, the above named Claimant, of Hot Springs, AR 71901, County of Garland, represented by [Legal Counsel]

of [Address and Contact Info]

State agency involved: Dept of Transportation. Amount sought: 3055.25

Month, day, year and place of incident or service: August 15, 2018, Coy St & E Grand Ave. Explanation: I was turning East onto E Grand Ave from Coy St. In the median there is a drainage cover and the curb is even with the street which raises the drain higher, it sucked my vehicle to that side as I was turning and I hit the drain, it blew out both tires on the left side of my vehicle and caused more damage under my vehicle. I had to have it towed and had a rental vehicle until mine was fixed.

The drain is a large concrete drain, it has been hit by several vehicles causing various damages.

I have photos of the drain.

This caused me to miss four (4) hours of work totaling \$71.81.

As parts of this complaint, the claimant makes the statements, and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?

(Yes or No), when? (Month) (Day) (Year) to whom? (Department) and that the following action was taken thereon:

and that \$ [Amount] was paid thereon: (2) Has any third person or corporation an interest in this claim? [No]; if so, state name and address

and that the nature thereof is as follows: (Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and was acquired on [Date] in the following manner:

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

Kimberly Burks (Print Claimant/Representative Name)

[Signature] (Signature of Claimant/Representative)

SWORN TO and subscribed before me at Hot Springs, Arkansas (City) (State)

on this 6th day of November, 2018 (Date) (Month) (Year)



[Signature] (Notary Public)

My Commission Expires: 9-21-2026 (Month) (Day) (Year)

**ARKANSAS STATE CLAIMS COMMISSION
MOTOR VEHICLE ACCIDENT REPORT FORM**

**SECTION I
CLAIMANT**

Kim Burks

Arkansas
State Claims Commission
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ADDRESS _____

Trl

CITY & STATE

Hot Springs, AR

ZIP CODE 71901

DATE OF ACCIDENT: 8-15-2018

TIME: 2:00pm

MOTOR VEHICLE DAMAGED: TYPE Ford MAKE Escape YEAR 2014

DRIVEN BY: Kim Burks ADDRESS Coyst d E. Grand Ave

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

Turning east from Coyst to E Grand Ave crossing median and hit a drainage cover that is sitting higher than the curb. It blew out both left side tires and caused damage to my vehicle. Caused me to miss 4 hours of work

SECTION II

Has this vehicle been repaired? Yes No If repairs have been made, give the following information: Amount \$ _____ Have you paid for the repairs? Yes No NOTE: Attach a copy of repair bill.

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

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

SECTION III

Was vehicle covered by Insurance? Yes No Liability Only

Comprehensive: Yes No What is your deductible? \$ 100

Collision: Yes No What is your deductible? \$ 500

NAME OF INSURANCE CARRIER ADDRESS

State Farm

SECTION IV

Type of State Vehicle involved NA License No. _____

Driver _____ Property of which State Agency _____

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

give name and title of officer making the investigation: _____

SECTION V

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



(Notary Seal)

[Signature]
Signature of Claimant

Sworn to and subscribed before me at Hot Springs, Arkansas City, State
on this 6th day of November, 2018.
day month year

My Commission Expires 9-21-2026

[Signature]
Notary Public

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

KIMBERLY BURKS

CLAIMANT

V.

CLAIM NO. 190690

ARKANSAS DEPARTMENT OF
TRANSPORTATION

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the motion filed by the Arkansas Department of Transportation (the “Respondent”) to dismiss the claim of Kimberly Burks (the “Claimant”). Based upon a review of Respondent’s motion, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

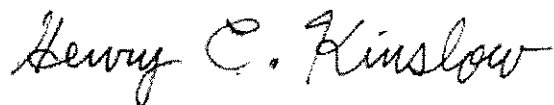
1. The Claims Commission has jurisdiction to hear this claim pursuant to Ark. Code Ann. § 19-10-204(a).
2. Claimant filed the instant claim on December 27, 2018, alleging that Claimant’s vehicle was damaged after hitting a drain “[i]n the median.”
3. Respondent filed a motion to dismiss, arguing that Claimant’s damage was caused by Claimant, given that her own photographs show that the drain is not on the roadway. Respondent seeks dismissal pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure.
4. Claimant did not respond.
5. In reviewing this motion to dismiss, the Claims Commission must treat the facts alleged in the complaint as true and view them in a light most favorable to the Claimant. *See Hodges v. Lamora*, 337 Ark. 470, 989 S.W.2d 530 (1999). All reasonable inferences must be resolved in favor of the Claimant, and the complaint must be liberally construed. *See id.* However, the Claimant must allege facts, not mere conclusions. *Dockery v. Morgan*, 2011 Ark. 94 at *6, 380 S.W.3d 377, 382. The facts alleged in the complaint will be treated as true, but not “a plaintiff’s

theories, speculation, or statutory interpretation.” *See id.* (citing *Hodges*, 337 Ark. 470, 989 S.W.2d 530 (1999)).

6. The Claims Commission agrees with Respondent that dismissal of this claim is proper. Claimant’s explanation of the claim state that the drain was “[i]n the median,” not on the roadway.

7. As such, Respondent’s Motion to dismiss is GRANTED, and Claimant’s claim is DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION

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

DATE: March 11, 2019

Notice(s) which may apply to your claim

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(b). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(b)(3). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(b). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

Arkansas
State Claims Commission

MAR 22 2019

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03/21/2019

Kimberly Burks

Hot Springs, AR 71901

*Re: Kimberly Burks vs. Arkansas Department of Transportation
Claim No. 190690*

To whom it may concern:

I would like to make an appeal to the decision made for my claim no. 190690. I feel that it was not my fault running over the drain in the median. The street has been paved and there is no curve to help keep your vehicle from hitting the drain. It literally sucks your vehicle into it. I have spoken with the owner of 1100 E Grand Ave, while I was taking the photographs and she stated that there have been so many cars disabled in that same location. I could not afford to pay the extra money to fix my vehicle and it put my finances in a bind. It caused me to fall behind in my bills and has hurt me financially. If I have to obtain an attorney, I will but I am hoping that I don't have to. Please forward my appeal of the decision and let me know if I need to send any more information. I am sending a drawing of the intersection which shows the way I was traveling.

Thank you


Kimberly Burks

1109

38328

70B

38332

limped to get out of traffic

lane

9069

MV = My vehicle

70B

38331

1100

in my way

38330

1045

1100

1100

54254



1000

1000

1000

1000

1000

1000

1000

1000