

Arkansas
State Claims Commission
JUN 24 2019

Please print in ink or type

Arkansas
State Claims Commission
JUN 17 2019

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

RECEIVED

RECEIVED

Mr.
 Mrs.
 Ms.
 Miss
Tommie Freeman, Claimant

Do Not Write in These Spaces			
Claim No.	_____		
Date Filed	_____	_____	_____
	(Month)	(Day)	(Year)
Amount of Claim \$	_____		
Fund	_____		

vs.

State of Arkansas, Respondent

COMPLAINT

Tommie Freeman, the above named Claimant, of _____
 _____ (Street or R.F.D. & No.) _____ (City)
 _____ County of _____ represented by _____
 _____ (State) _____ (Zip Code) _____ (Daytime Phone No.) _____ (Legal Counsel, if any, for Claim)

of _____ says:
 _____ (Street and No.) _____ (City) _____ (State) _____ (Zip Code) _____ (Phone No.) _____ (Fax No.)

State agency involved: _____ Amount sought: \$1,089.75

Month, day, year and place of incident or service: June 6, 2019 at Interstate 40W

Explanation: Around 9:30pm, my daughter was driving my car a 2011 Nissan Maxima from Scott, AR to North Little Rock to go to Camp Robinson with her daughter and niece. She was driving in the second lane going toward Little Rock when she came across a pothole in the highway that caused for her to swerve her car after hearing the tire go flat. She had to proceed to the shoulder and wait for someone to come help change her tire. My daughter stated to me she also noticed several more cars on the side of the highway due to the same pothole. After replacing her tire with a spare donut tire, she noticed that the rim was bent on the inside due to the pothole that caused the tire to go flat.

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?
 _____; when? _____; to whom? _____
 (Yes or No) (Month) (Day) (Year) (Department)

_____ and that the following action was taken thereon: _____

and that \$ _____ was paid thereon: (2) Has any third person or corporation an interest in this claim? _____; if so, state name and address
 _____ (Name) _____ (Street or R.F.D. & No.) _____ (City) _____ (State) _____ (Zip Code)

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

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.
Tommie Freeman (Print Claimant/Representative Name) Tommie Freeman (Signature of Claimant/Representative)

SWORN TO and subscribed before me at Little Rock Arkansas
 _____ (City) _____ (State)
 on this 21 day of June, 2019
 _____ (Date) _____ (Month) _____ (Year)
[Signature]
 _____ (Notary Public)
 My Commission Expires: October 23 2027
 _____ (Month) _____ (Day) _____ (Year)



SF1-R7/99

ARKANSAS STATE CLAIMS COMMISSION MOTOR VEHICLE ACCIDENT REPORT FORM

Arkansas State Claims Commission

JUN 24 2019

SECTION I CLAIMANT

JAMIE FREEMAN

RECEIVED 17 2019

CITY & STATE ZIP CODE

DATE OF ACCIDENT: 6-6-19 TIME: 9:30 pm

MOTOR VEHICLE DAMAGED: TYPE Maxima MAKE Nissan YEAR 2011

DRIVEN BY: Chelonda Freeman ADDRESS

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

Daughter was driving car on I-40W and came upon a pothole in the highway that caused dent to manufacture original rim that cannot be repaired to rim nor tire.

SECTION II

Has this vehicle been repaired? Yes () No (X) If repairs have been made, give the following information: Amount \$ 1,089.75 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.

Table with 3 columns: NAME, ADDRESS, AMOUNT. Row 1: McLarty Nissan, 1 Colonel Glenn, \$1,089.75

SECTION III

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

Comprehensive: Yes () No () What is your deductible? \$ Collision: Yes () No () What is your deductible? \$

NAME OF INSURANCE CARRIER ADDRESS Geico

SECTION IV

Type of State Vehicle involved 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.



Jamie Freeman Signature of Claimant

Sworn to and subscribed before me at Little Rock, Arkansas City, State on this 21 day of June, 2019 year

[Signature] Notary Public

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

TOMMIE FREEMAN

CLAIMANT

V.

CLAIM NO. 191261

**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 Tommie Freeman (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, alleging that Claimant’s vehicle was damaged after hitting a pothole on a state highway on June 6, 2019.
3. Respondent filed a motion to dismiss, arguing that Claimant failed to show that Respondent had prior knowledge of a pothole yet failed to respond within a reasonable amount of time to repair it. Respondent seeks dismissal pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure.
4. Claimant responded to the motion, arguing that, in light of the size and depth of the pothole, it “could have only gotten that way over a long length of time.” Claimant also stated that Respondent knew about the pothole because it “went on KARK news (channel 4) to address the situation on June 25, 2019 . . . [regarding] complaint of damage that caused flat tires and damage to vehicles on June 24, 2019.”

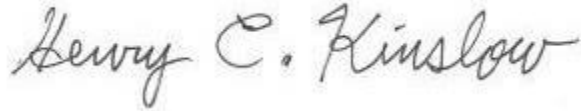
5. Respondent filed a reply brief, arguing that Claimant's response only offers evidence that Respondent knew of the pothole on June 24, 2019, which was "weeks after Claimant's incident."

6. 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)).

7. The Claims Commission agrees with Respondent that dismissal of this claim is proper. Claimant did not allege any facts regarding Respondent's prior knowledge of a pothole or failure to repair it within a reasonable amount of time. The fact that Respondent knew of the pothole on June 24, 2019, does not demonstrate that Respondent knew of the pothole prior to June 6, 2019. Respondent is unable to monitor every part of the nearly 16,000 miles of state highways at all times. Respondent is also unable to monitor every section of the nearly 16,000 miles of state highways that have had a pothole at one time. As stated by Respondent in the motion to dismiss, encountering a pothole is a risk assumed by the public in general as a part of travel. In the absence of evidence that Respondent had prior knowledge of the pothole that caused Claimant's damage and failed to repair it in a reasonable amount of time, the existence of a pothole is insufficient to establish liability.

8. 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: August 21, 2019

Notice(s) which may apply to your claim

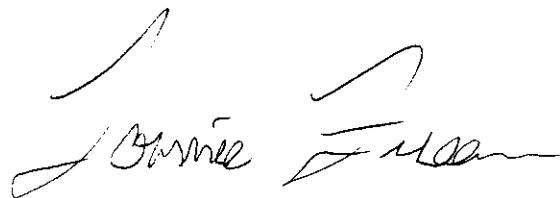
- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion 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).

Claim # 191261

Notice of Appeal with the Claims Commission

Arkansas
State Claims Commission
SEP 18 2019

I, Tommie Freeman, on the behalf of my daughter Chelonda Freeman on the night of June 6, 2019 was driving my vehicle on I-40 that caused sever damage to tire and rim from a pothole. I would like to appeal the decision made by the Commission due to the fact that it was negligence on ARDOT. My daughter's incident happened June 6th where she noticed that she was not the only individual on the side of the road due to damage caused by a pothole. So, my argument is that I could not have only been the only person to make a complaint about the potholes in the area. From the evidence I presented with the KARK news story, they stated 10 more cars made complaints about flat tires due to the bad road conditions in that same area but were unable to fix it on June 24th because of weather conditions. With that statement being made, you would know that ARDOT was made aware prior of the road conditions in order to plan road repair for that date but Respondent stated "unable to monitor every part of the nearly 16,000 miles of state highways". So again, my argument is that if the highway is so vast and large that its hard to keep monitor of the road conditions at all times. How is that ARDOT was able to make a news story and mention they were going to schedule a repair for that week of June 24th without having prior knowledge of potholes. I believe this and prior information such as pictures and video of the highway and damage to rim and tire that I have submitted is enough for me to present my case before the Claims Commission.



Date: September 17, 2019