

Arkansas
State Claims Commission

MAR 04 2015

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Please print in ink or type

RECEIVED

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas☒ Mr.
☒ Mrs.
☐ Ms.
☐ MissJason and Ashley Bowmaster Claimant

VS.

State of Arkansas, Respondent

Office of Prosecutor Coordinator

personal injury, negligence
pain & suffering

COMPLAINT

Jason Bowmaster the above named Claimant, of 37 Wedgewood Dr. Cabot
(Name) (Street or R.F.D. & No.) (City)
AR. 72023 501-786-0438 County of Lonoke represented by Aaron Martin
(State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)
of P.O. Box 3597, Fayetteville, AR. 72702, 479-442-2244, 479-442-0134
(Street and No.) (City) (State) (Zip Code) (Phone No.) (Fax No.) says:State agency involved: Office of the Prosecutor Coordinator Amount sought: \$4,000,000.00Month, day, year and place of incident or service: 3/19/12Explanation: Claimant Jason Bowmaster suffered Multiple serious
injuries when Bryce Allen ran him over on 3/19/12.
Bryce Allen was on conditional release at the time
and had previously violated the terms of his conditional
release and failed to comply with treatment. The
defendant knew or should have known that Bryce Allen
was not compliant and state law required him to be
taken before the court without delay.See attached Complaint Narrative for the Claimant's
Complete allegations

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

Yes : when? approx. 4/14 to whom? Arkansas Crime Victims Reparations
(Yes or No) (Month) (Day) (Year) (Department)and that the following action was taken thereon: Claimant received approx. \$13,000.
but received money from auto insurance and had to return the \$13,000and that \$ — was paid thereon: (2) Has any third person or corporation an interest in this claim? Yes : if so, state name and address
(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)(Potentially) Arkansas Municipal League, 301 West 2nd St. N. Little Rock, AR. 72115
and that the nature thereof is as follows: Workers Compensation benefitsand was acquired on 3/19/12 forward in the following manner:
payment of medical benefits, temporary total and permanent partial benefits

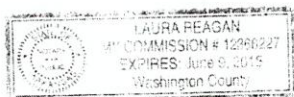
THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes

that they are true.
Jason Bowmaster / Ashley Bowmaster (Signature of Claimant/Representative)
(Print Claimant/Representative Name)SWORN TO and subscribed before me at — (City) (State)(SEAL) on this 26 day of February 2015
(Date) (Month) (Year)

(Notary Public)

My Commission Expires 2 26 2015
(Month) (Day) (Year)

SF1-R799



BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

JASON BOWMASTER, and ASHLEY BOWMASTER,
Husband and Wife, Claimant

Claim No _____

vs.

Date Filed _____

STATE OF ARKANSAS, Respondent

COMPLAINT NARRATIVE

The claimants, by and through their attorney state the following in support of their complaint:

Parties

1. That the claimant, Jason Bowmaster, was employed as fire-fighter for the City of Jacksonville, Arkansas.
2. That Ashley Bowmaster was and remains the wife of Jason Bowmaster.
3. That the defendant is the State of Arkansas, its Agencies, Departments, and Institutions.

Jurisdiction

4. This is a claim for personal injuries against the State of Arkansas and/or its Agencies, Departments, and Institutions.

5. That at the time of the incident giving rise to this claim, the claimant, Jason Bowmaster was working for the City of Jacksonville, Arkansas.
6. That the City of Jacksonville, Arkansas is not considered an Agency of the State.
7. The Arkansas State Claims Commission therefore has jurisdiction pursuant to ARK. CODE ANN. §19-10-204.

Allegations of Material Facts

8. That on March 19, 2012, the claimant, Jason Bowmaster, and other police and fire personnel were dispatched to a report of a motor vehicle wreck and possible gas leak in Jacksonville, Arkansas.
9. That Bryce Allen was driving to the scene of the wreck and purposely drove his vehicle into the first responders, striking at least three emergency responders, including the claimant, Jason Bowmaster.
10. That prior to the attack on March 19, 2012, Bryce Allen had been charged with the criminal offense of Battery in the Second Degree, Terroristic Threatening in the First Degree and Resisting Arrest.
11. That the Circuit Court of Pulaski County found that Bryce Allen was not guilty by reason of mental disease or defect, but that the offense involved bodily injury to another or serious damage to the property of another or a

substantial risk of such injury and that Bryce Allen remained affected by mental disease or defect and was a danger to himself or others.

12. That on December 6, 2010, the Circuit Court of Pulaski County thereby ordered that Bryce Allen be committed to the care and custody of the Director of the Department of Human Services for further evaluation (EX. A).

13. That on February 11, 2011, the Circuit Court of Pulaski County found that Bryce Allen was still affected by mental disease or defect, but did not present a risk of harm to self or to the person or property of others.

14. That based on its findings, the Circuit Court of Pulaski County Ordered that Bryce Allen would be released on the following conditions:

- a. That Bryce Allen shall reside at 700 Southeastern Avenue, Jacksonville, AR. 72706.
- b. That Bryce Allen take all medications currently prescribed or that may be prescribed for treatment of his mental illness or defect.
- c. That Bryce Allen comply in all respects and participate in treatment and therapy that may be recommended.
- d. That Bryce Allen not leave or otherwise remove himself from the approved residency without prior authorization.

- e. That Bryce Allen abstain from use of alcohol and illicit drugs and submit to random drug tests.
 - f. That Bryce Allen shall meet with Act 911 compliance monitors on a regularly scheduled basis (EX. B).
15. That following the conditional release, a Domestic Abuse case was filed by Terry Johnson against Bryce Allen on February 22, 2011 in the Circuit Court of Pulaski County (*Johnson v. Allen* 60DR-11-722).
16. That on March 4, 2011, Pulaski County and the Office of the Prosecutor Coordinator were informed that Bryce Allen failed to meet with his Act 911 compliance monitor on February 18, 2011 and when he later spoke with the compliance monitor, he cussed her and hung up the phone (EX. C).
17. That on May 16, 2011, Pulaski County and the Office of the Prosecutor Coordinator were notified that Bryce Allen had again cussed at the compliance monitor and hung up on her. The County and the Office of the Prosecutor Coordinator were also notified that Bryce Allen had also been detained at the Pulaski County Detention Center regarding a charge of terroristic threatening from 2009 (EX. D)
18. That on June 15, 2011, Pulaski County and the Office of the Prosecutor Coordinator were informed that Bryce Allen was not compliant with his medication (EX. E).

19. That on October 11, 2011, Pulaski County and the Office of the Prosecutor Coordinator were informed that Bryce Allen had left the state and travelled to Columbus Ohio on October 2, 2011 and returned October 6, 2011, and the compliance monitor had no notice (EX. F).
20. That on October 31, 2011, Pulaski County and the Office of the Prosecutor Coordinator were informed that on October 14, 2011, the compliance monitor had attempted to contact Bryce Allen but he was not at his residence and she was informed that Bryce Allen was going to Ohio, and that Bryce Allen had again missed dosages of his medication. The compliance officer also reminded Bryce Allen that he did not have permission to travel outside of Arkansas (EX. G).
21. That on February 15, 2012, Cassandra Booker filed a Domestic Abuse case against Bryce Allen in Pulaski County (*Booker v. Bryce* 60DR-12-780)
22. That on March 23, 2012, Pulaski County and the Office of the Prosecutor Coordinator were informed that the media had reported that Bryce Allen was charged with 2nd Degree Capitol Murder and two counts of Intent to Commit Capitol Murder for running over three individuals with his vehicle in the March 19, 2012 attack (EX H).

23. That on April 3, 2012, Pulaski County and the Office of the Prosecutor Coordinator were informed that on March 22, 2012, the compliance monitor was told that Bryce Allen was detained and refusing medication (EX. I)
24. That on April 30, 2012, Pulaski County and the Office of the Prosecutor Coordinator were informed that on April 16, 2012, an investigator with the Columbus Ohio Police Department informed the compliance monitor that Bryce Allen was being investigated for felony assault for running over a police officer back in October 2011 when he reportedly broke his conditional release and traveled out of state (EX. J).
25. That on May 14, 2012, Pulaski County and the Office of the Prosecutor Coordinator were informed that Authorities in Columbus, Ohio had charged Bryce Allen with an assault with a vehicle (EX. K).
26. That on May 18, 2012, Pulaski County and the Office of the Prosecutor Coordinator were informed that a female had alleged that Bryce Allen had vandalized a vehicle in 2011, that he failed to yield while operating a vehicle in 2011 and that a male alleged that Bryce Allen had shot him with a BB gun in 2011 (EX. L).
27. That on July 12, 2012, Pulaski County and the Office of the Prosecutor Coordinator were informed that Bryce Allen has reported to have physically threatened and spit on staff at the Pulaski County Detention Center (EX. M).

28. That finally on August 15, 2012, the Office of the Prosecutor Coordinator filed a Motion for Revocation of Bryce Allen's Conditional Release, for his failure to comply with the Order of Conditional Release and only cited three letters from the compliance officer dated March 20, 2012, March 22, 2012, and June 26, 2012 (EX. N).

29. That on August 22, 2012, the Circuit Court of Pulaski County entered an Order approving the Motion for Revocation of Bryce Allen's Conditional Release (EX. O).

Cause of Action

30. That the claimant hereby incorporates all preceding paragraphs.

31. That this cause of action is a negligence claim against the defendant for the negligent acts/and or omissions by the defendant and/or its agencies, departments, and institutions.

32. That under ARK. CODE ANN. §5-2-315(e)(C)(i), a person acquitted by reason of mental defect and on conditional release shall be taken without unnecessary delay before the circuit court having jurisdiction, upon written notice that the person acquitted has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

33. That after a hearing, the circuit court shall determine whether the person acquitted should be remanded to an appropriate facility on the ground that,

in light of his or her failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his or her continued release would create a substantial risk of bodily injury to another person or serious damage to property of another person. *See* ARK. CODE. ANN. §5-2-315(e)(C)(ii).

34. That Bryce Allen was a person acquitted by reason of mental defect and placed on conditional release on February 11, 2011.
35. That the defendant received written notice that Bryce Allen had failed to comply with the prescribed regimen of medical, psychiatric or psychological care or treatment on multiple occasions before the attack on March 19, 2012, but that Bryce Allen was not taken without unnecessary delay before the circuit court for a hearing as required under ARK. CODE ANN. §5-2-315.
36. That the defendant had a duty to its citizens and the claimants to comply with state law and specifically with ARK. CODE ANN. §5-2-315, and the defendant breached this duty by failing to comply with the clear requirements of this statute.
37. That the defendant's negligent acts and/or omissions include failing to recognize that Bryce Allen had not complied with the prescribed regimen of medical, psychiatric or psychological care or treatment on multiple occasions, even though the defendant was notified in writing of Bryce

Allen's failures to comply before he attacked the claimant, Jason Bowmaster, on March 19, 2012.

38. That the defendant's negligent acts and/or omissions was the direct and proximate cause of the claimant's injuries and resulting damages.
39. That if the defendant had properly recognized that Bryce Allen had failed to comply with the prescribed regimen of medical, psychiatric or psychological care or treatment on multiple occasions before the attack, then it would be required by law to take Bryce Allen before the Circuit Court of Pulaski County without unnecessary delay for a hearing before he attacked the claimant, Jason Bowmaster, on March 19, 2012.
40. That if the defendant had properly brought Bryce Allen before the Circuit Court of Pulaski County, the Court would have considered not only Bryce Allen's multiple failures to comply with treatment, but also his failure to comply with the terms of his conditional release, including his unauthorized trip to Columbus Ohio in October 2011, the multiple domestic abuse charges filed in Pulaski County, as well as all other relevant matters before the Court.
41. That if the defendant had properly brought Bryce Allen before the Circuit Court of Pulaski County without unnecessary delay, the competent Circuit Court of Pulaski County would have certainly revoked Bryce Allen's

conditional release, and he would not have been able to attack the claimant, Jason Bowmaster on March 19, 2012.

Damages

42. That the claimant hereby incorporates all preceding paragraphs.
43. That as a direct and proximate result of the defendant's negligent acts and/or omissions, the claimant, Jason Bowmaster suffered serious physical injuries resulting in the claimants' damages.
44. That as a result of the March 19, 2012 attack, Jason Bowmaster suffered serious physical injuries including but not limited to: 1) Traumatic brain injury to the frontal lobe 2) Non-displaced fracture of the pelvis 3) Displaced fracture to the right femur 4) Collapsed lung 5) Five fractured ribs 6) bruised spleen 7) Torn ACL to right knee 8) Right clavicle fracture 9) PTSD, anxiety and depression 10) Biceps tendon tear to the left shoulder 11) Dysphasia 12) Traumatic arthritis to left knee and 13) Lacerations and scarring to the head.
45. That as a result of the March 19, 2012 attack, the claimant, Jason Bowmaster, has resulting permanent injury as follows:
 - a. Right femur – 2%
 - b. Right knee – 3%
 - c. Left shoulder – 6%

- d. Pelvis – 3%
- e. Closed head injury – 29%
- f. Dysphasia – 10%

Total 61% to the body as a whole (EX. P)

46. That Jason Bowmaster's resulting damages include:

- a. Past and future medical bills
- b. Past and future pain and suffering
- c. Past and future mental anguish
- d. Permanent injury
- e. Lost wages of \$160,488.61 (EX. Q).
- f. Loss of earning capacity of \$1,543,040.56 (EX. Q)
- g. Scarring and disfigurement

47. That for all relevant times the claimant, Ashley Bowmaster, has been married to claimant, Jason Bowmaster, and has suffered loss of consortium as a direct and proximate result of the defendant's negligent acts and/or omissions.

Exhaustion of Remedies

48. That the claimants have exhausted or are currently pursuing all remedies against available insurers.

49. That the claimants settled with Bryce Allen's auto liability insurance carrier and received \$12,500.00, minus attorney's fees and costs.

50. That the claimants received \$25,000.00 from their own underinsured auto-insurance policy, reduced by attorney's fees and costs.

51. That the claimant received workers compensation benefits totaling \$384,334.35 from the Municipal League Workers Compensation Trust, and filed a claim for additional workers compensation benefits to be determined by the Arkansas Workers Compensation Commission (EX. R).

52. That the Arkansas State Claims Commission will not dismiss a claim with prejudice on grounds that the Claimant has received or is due benefits under a policy of insurance, but the Arkansas State Claims Commission shall hear no claim until the Claimant has exhausted all remedies against insurers, including the Claimant's insurer.

WHEREFORE, the Claimants respectfully request that an Award of the appropriate benefits be paid to the Claimants.

Respectfully submitted by:



Aaron L. Martin
AR. 2002086
MARTIN LAW FIRM
P.O. Box 3597
Fayetteville, AR. 72702
(479) 442-2244
aaron@martinlawpartners.com


VERIFICATION

State of Arkansas)
)
County of Washington)


Before the undersigned notary public, duly qualified and acting in and for this county and state, appeared Jason Bowmaster and Ashley Bowmaster satisfactorily proven to be the affiants herein, who each stated under oath:

I have read the foregoing document and the statements contained therein
Are true and correct to the best of my knowledge and belief.

In witness whereof, I hereunto set my hand this 26th day of February, 2015.




Jason Bowmaster



Ashley Bowmaster

Subscribed and sworn to before me this 26th day of February, 2015.



Notary Public



6/15/2015

Mr. Lemons,

First of all my family and I want to thank you for taking the time and effort to get this resolved for us.

On March 19, 2012 my husband and his Captain Donald Jones were responding to a single vehicle accident, where the SUV had ran off the road and hit a gas main. They arrived on the scene making sure the woman was fine and she was, but was trying to see if they had the proper fitting to shut off the gas main properly, unfortunately they did not have the fitting to shut it off and had to wait on the side of the road for the gas company. While waiting Ms. Thelma Allen (woman from the original accident) called her son Bryce Allen to come and pick her up. Once he arrived he saw all 3 first responders never braked and ran all three first responders over until his vehicle came to a stop in the ditch. Captain Donald Jones was killed instantly; Officer Daniel Dimatteo was injured as well along with my husband Engineer Jason Bowmaster, who was severely injured that night. Once the other firefighters arrived on scene my husband was only breathing 2 breaths a minute (normal is 12). Jacksonville Fire Dept. ended up having to MedFlight him to Baptist in LR where he stayed for 40 days.

His injuries are as follows:

- His right femur was broken in 3 places, surgery was performed on March 20, 2012 by Dr. Wassel, where a rod was placed in his femur to hold it together.
- His pelvis was broken in half and was tilted off to the right side. Surgery was performed on April 5, 2012, the surgery was performed by Dr. Garrison, where they had to break this pelvis to do the surgery due to the fact that the surgery was prolonged and had already started to fuse back together off to the side. Once they did that, they placed his right side back to center and placed a plate in the middle and 6 screws to hold it in place. After that they placed a long screw with a bolt into his hip to hold his right side in place as well.
- Jason also sustained 5 broken ribs, and has caused nerve damage on his right side next to his ribs, that no surgery could fix.
- Jason also had a broke clavicle on his right shoulder. Dr. Garrison was going to operate on it but at the last minute decided to place his hip as a priority and fix it first.
- Jason also sustained head trauma to the back of his head that has left nerve damage, which causes posttraumatic migraines, which occur from the trauma. These keep Jason down and in bed for up to a week. Other trauma

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to his head is frontal lobe damage; this affects his motor function, problem solving, spontaneity, memory, language, initiation, judgments, impulse control, and social behavior. There is no surgery that can correct this issue as of now. Jason is losing function of his fine motor skills and movements and strength of the arms, hands and fingers. He has shown a small decrease in his gross motor skills, such as catching a ball or picking up an object. I work with him on this skill weekly and as of today he has not decreased further that I have noticed.

- Jason's speech has been affected by his brain trauma. His speech is slurred at times and he presents a stutter when he is fatigued, stressed or upset.
- Dr. Smitherman did surgery on Jason's left shoulder, were he had to go in and repair his bicep tendon due to the fact that it was shredded. Dr. Smitherman had to use cadaver tendon to repair his shoulder.
- Dr. Smitherman also performed surgery on his right knee due to the fact that his ACL was completely torn. Dr. Smitherman had to go in first and remove rode from his femur in order to fix his ACL. Then he proceeded to fix the ACL with a cadaver's ACL. Dr. Smitherman placed two permanent restrictions on Jason. One to not lift no more than 10 pounds with his left shoulder, and on his right knee, that he can no longer apply any pressure to his knee. So no crawling or bending down on his right knee.
- Both of Jason's knees still buckle on him while he walks. We have asked for a second opinion but Doctor Baskin's (his BRI doctor) referral, Dr. Stewart said that he would only look at Jason's medical reports and that was it.
- Total Jason has had a year and half of physical, occupational, and speech therapy until they got to a point to where they could no longer assist his medical needs.
- Dr. Baskin has informed us on numerous occasions that Jason will need at least one knee replacement if not two knee replacements in the future. He has also indicated that Jason might have to have a hip replacement as well, but told us that it all depends on how his does in the future.

He was in SICU for about 3 weeks, in a medically induced coma for the first three weeks, and went through several procedures' to keep the pneumonia that was in his right lung from going over into his left lung. If it were to reach the healthy lung, it would begin to shut down his organs. Then he went to the step down ICU floor, and from there he was transferred to the rehabilitation center. Once he was there we found out that they could not help him at the state he was in, because he only had one working limb at that point. Jason, our daughter Bailey and I have been through so far 3 years of counseling to get us to where we are today. Jason is currently on fourteen medications, some for pain, and some for his traumatic brain

injury and another for PTSD. He still struggles from all of his injuries today. Jason has also been diagnosed with stage 3 arthritis in both knees and is developing it in his pelvis.

These are the 3 issues that we need resolved for us.

1. We have not received any money over the last 3 years from anyone except donations from the public, which we have very grateful for. We did file with Bryce Allen's insurance and he had a \$50,000 policy but with 3 families it had to be split 3 ways. Betty Jones got \$25,000 and my family and the other family got \$12,500 each, which was done through a lawyer so every dime went to pay lawyer fees. From workers compensation we have been receiving \$820/bi-weekly for his FIRST MMI rating, which will end this summer. I know we can receive \$10,000 from the State Claims commission and with that our daughters' education will be paid for. I asked about mine because I am finishing up college but at the time of this I was finishing up at ASU-Beebe but since I transferred to Harding and since it is a private funded school instead of a state funded school, I cannot get my college paid for. The \$10,000 is not enough for my family and I to live off of. My husband not only was a Jacksonville Fire Firefighter for 14 years but also for over 20 years was a mechanic at Crain Hyundai working a second job. I know workers compensation is not supposed to make up the second job difference, but by telling you his work status at the time I am hoping you can see how much money our family has lost. My husband was set to make \$30,000 at Hyundai (and that was part-time) at the Fire Department he made \$48,500. Our family has lost over half of our income. My husband will no longer be able to work anywhere because of his disability. Which at this point is 70% rating and workers compensation is supposed to pay on that but now they are appealing the 70% which could give us \$175,000 but because of their offset and says that it is because of my husband's retirement that they can offset. We have also filed for SSD and they too also do an offset of his retirement so now our family as a whole gets \$82 a month. My husband paid into workers compensation for 14 years, they should not be taking anything from my husband just to offset the cost they had to pay, they know they have to pay for injuries that occur on the job. It is not the employee's responsibility to pay back workers compensation for what they paid for. Also, with the decision from Judge Hogan, Workers Compensation was claiming that Fire Fighter/Police retirement (LOPFI) was insurance, our attorney Aaron Martin had David Clark director of LOPFI type up a statement why LOPFI was NOT insurance. Judge Hogan sided with workers compensation in saying that it was. It is not insurance, the city pays 2/3 and the employee pays 1/3.

2. Municipal League Workers Compensation has been another issue for our family...here is what was sent to Annamarie in Tim Griffins office today.

Annamarie,

This is in response to your email inquiry regarding the workers' compensation claim of *Jason Bowmaster v. City Of Jacksonville*, WCC File No.: G202759.

Mr. Bowmaster (Claimant) is currently represented by Fayetteville attorney, Mr. Aaron Martin. After a hearing was held in the case, an Opinion was filed by Administrative Law Judge Elizabeth Hogan on April 29, 2015. In that Opinion, the Judge found that Claimant is entitled to indemnity/disability benefits for a certain percentage of permanent anatomical impairment and wage loss disability. Further, the Judge determined that Respondent (City of Jacksonville) is entitled to an offset for a portion of the retirement (or disability retirement) benefits Claimant received as a result of a policy paid for by the Employer and Claimant.

Respondent filed an appeal of the Administrative Law Judge's Opinion to the Full Commission challenging the award of an increase in the permanent impairment rating and the extent of wage loss disability. Claimant cross-appealed the Judge's findings awarding the offset and denying an award of permanent and total disability benefits to the Claimant. The appeals are scheduled to be submitted to the Full Commission on July 15, 2015. Therefore, any decision regarding these issues has yet to become final and enforceable.

I hope this information is helpful. Please do not hesitate to contact me, if you have any other questions or concerns.

Sincerely,
Barbara W. Webb
Arkansas Workers' Compensation Commission

The lawyer that has been assigned to this case and his name is Chris Bradley.

3. I have been in contact as well with Congressman French Hill's office to see if they can take of a matter. July 2014 I sent in the forms and medical documentation for the PSOB (Public Safety Officers Benefit Fund) in Washington D.C. to apply for their disability program that could potentially give us \$328,000. I checked back with them in November and was informed that our case was in legal review and that was all that they could tell me. For the last 3 months I have called each

month asking for an update on our case and still all they can tell us is that it is currently in legal review. I have been speaking with Anushree Jumde with Congressman French Hill's office and she sent this email today. I Attached is the response they gave at this.

Mr. Lemons, our family needs your help in getting this resolved for our family. I have filled out paperwork for all of these possible compensations and nothing has been given to our family.

Everything has been up in the air for 2 years now. The ONLY person that is keeping us in this home is God because he has sent us some amazing people into our lives that have graciously gave from their own pockets. I am not only contacting you to help our family but to please help me to change this for ALL First Responders. No family should have to go through this because their family member what severely injured and can not longer work.

It needs to change with workers compensation but it also needs to change at a STATE level. \$10,000 is not enough for any family to live off of.

Over \$220,000 is given to a widow if their spouse dies in the line of duty, plus they get federal compensation, as well has their check and retirement for the rest of their lives. There needs to be something for the injured. Please help me make this happen!

Again Mr. Lemons, thank you so much for your time in this matter and I look forward to speaking with you soon!

Ashley Bowmaster
(wife of Jason Bowmaster)

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION



COPY

JASON BOWMASTER AND
ASHLEY BOWMASTER

CLAIMANTS

V.

CLAIM NO. 15-0599-CC

OFFICE OF THE PROSECUTOR
COORDINATOR

RESPONDENT

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is the motion filed by the Office of the Prosecutor Coordinator (the "Respondent") to dismiss the claim filed by Jason Bowmaster and Ashley Bowmaster (collectively, the "Claimants"). At the hearing held on February 16, 2018, Claimants were represented by Aaron L. Martin, and Patricia Van Ausdall Bell appeared on behalf of Respondent.

Based upon a review of the Respondent's motion, the Claimant's response, the Respondent's reply brief, the argument of the parties, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. Claimants filed their claim on March 4, 2015, against Respondent based upon Respondent's alleged failure to comply with Ark. Code Ann. § 5-2-315(e)(C)(i). Claimants assert that this noncompliance proximately caused claimant Jason Bowmaster to be injured when Bryce Allen drove into a group of first responders at the scene of an accident.
2. Ark. Code Ann. § 5-2-315 is part of what is known as "Act 911."
3. Bryce Allen was committed to the custody of the state in December 2010 after being found not guilty of criminal charges by reason of mental disease or defect. Allen was conditionally released in February 2011 by the Pulaski County Circuit Court. Claimants allege that Respondent was given repeated notifications that Allen was not complying with the terms of his

conditional release. Claimants assert that, pursuant to Ark. Code Ann. § 5-2-315(e)(C)(i), upon learning of Allen's noncompliance with the terms of his conditional release, Respondent should have "without unnecessary delay" taken Allen before the circuit court.

4. On March 19, 2012, claimant Jason Bowmaster was dispatched with other first responders to the scene of an accident. Allen drove into the crowd of first responders, which left Jason Bowmaster with severe injuries.

5. On August 15, 2012, Respondent filed a motion to revoke Allen's conditional release, which was granted on August 22, 2012.

6. Respondent moved to dismiss Claimants' claim, arguing that (a) Respondent is immune from civil liability under Ark. Code Ann. § 5-2-314(j)(3) and that (b) Respondent did not proximately cause Jason Bowmaster's injuries.

7. Claimants responded, arguing, *inter alia*, that the immunity from civil liability refers to sovereign immunity, which gives the Claims Commission jurisdiction over this matter. Claimants also argued that Act 911 immunity gives prosecutors immunity from a claim brought under 42 U.S.C. § 1983, as long as a prosecutor did not maliciously deprive the plaintiff of his or her civil rights. As to proximate causation, Claimants argued that Allen's attack on the first responders was both foreseeable and preventable, had Respondent complied with Act 911.

8. In Respondent's reply brief, Respondent stated that Act 911 is not necessary to shield prosecutors from § 1983 suits because prosecutors have "absolute immunity" from § 1983 suits, including the decision whether to prosecute. *Imbler v. Pachtman*, 424 U.S. 409, 424, 431 (1976). Additionally, Respondent is not a "person" subject to suit for damages under § 1983. *Will v. Michigan Department of State Police*, 491 U.S. 58, 71 (1989). As to proximate causation,

Respondent argues that Jason Bowmaster's injuries were not the natural and probable consequence of Respondent's alleged failure to file a motion to revoke Allen's conditional release.

Act 911 Immunity

9. Ark. Code Ann. § 5-2-314(j)(3) provides that "[r]epresentation under this subsection is part of the official duties of a prosecuting attorney or the Office of the Prosecutor Coordinator, and the prosecuting attorney or the Office of the Prosecutor Coordinator is immune from civil liability in the performance of this official duty."

10. After reviewing the pleadings and hearing the arguments of the parties at hearing, the Claims Commission finds that immunity from civil liability is separate and apart from sovereign immunity. The Claims Commission is not persuaded by Claimants' § 1983 argument. The Claims Commission finds that this immunity is exactly what the statute says that it is – an immunity from liability.

11. Act 911 is not the only situation in which the Legislature has granted statutory immunity. Ark. Code Ann. § 21-9-301 provides that:

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.

(emphasis added). This statute provides a qualified immunity, whereas Act 911 provides complete immunity from civil liability.

12. Claimants' claim is subject to dismissal pursuant to Respondent's Act 911 immunity.

Proximate Causation

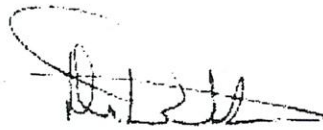
13. Because the Claims Commission has determined that Respondent's immunity from civil liability mandates dismissal, it need not address the issue of proximate causation.

Conclusion

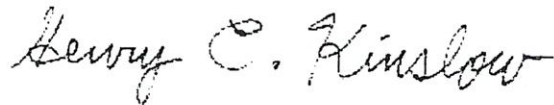
14. While the Claims Commission is deeply sympathetic to Claimants, Act 911 gives Respondent complete immunity from liability, and this immunity mandates dismissal of the claim.

15. Respondent's motion to dismiss is GRANTED pursuant to Ark. Code Ann. § 5-2-314(j)(3), and Claimants' claim is DENIED and DISMISSED.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Dexter Booth



ARKANSAS STATE CLAIMS COMMISSION
Henry Kinslow, Co-Chair



ARKANSAS STATE CLAIMS COMMISSION
Bill Lancaster

DATE: February 27, 2018

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).

MARTIN

LAW FIRM

MARK L. MARTIN
AARON L. MARTIN
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April 3, 2018

Arkansas State Claims Commission
101 East Capitol Avenue, Suite 410
Little Rock, AR 72201-3823

Sent Via Fax: 501-682-2823

RE: *Bowmaster v. State of Arkansas* (Claim No: 15-0599-CC)

NOTICE OF APPEAL TO GENERAL ASSEMBLY

To Whom it May Concern,

Please treat this letter as the Claimants' Notice of Appeal of the Commission's Order dated 2/27/18 in the above case pursuant to §19-10-211(b). Also, please let me know if the Claimants need to do anything else for this appeal.

Sincerely,

/s/Aaron L. Martin

cc: Patrick Hollingsworth (Patrick.hollingsworth@arkansasag.gov)

**Arkansas
State Claims Commission**

APR 03 2018

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