

BEFORE THE STATE CLAIMS COMMISSION

**ASHLEY STEWART,
ADMINISTRATRIX
OF THE ESTATE OF
VICKIE LYNN FREEMYER,
DECEASED**

CLAIMANT

CASE NO. _____

v.

**STATE OF ARKANSAS, acting through the
ARKANSAS STATE POLICE**

RESPONDENT

CLAIM NARRATIVE AND STATEMENT OF FACTS

COMES NOW the Claimant, Ashley Stewart, individually, and as Personal Representative of the Estate of Vickie Lynn Freemyer, Deceased, by and through her Attorneys, Reid, Burge, Prevaillet & Coleman, and submits the following Claim Narrative and Statement of Facts in support of her Complaint setting forth claims against the State of Arkansas, acting through the Arkansas State Police:

1. Ashley Stewart is now and was a resident of the City of Blytheville in the Chickasawba District of Mississippi County, Arkansas, at all times relevant to this claim.
2. Ashley Stewart is one of four daughters of the decedent, Vickie Freemyer, and is the duly appointed Personal Representative of the Estate of Vickie Freemyer, Deceased, having been appointed by the Circuit Court for the Chickasawba District of Mississippi County, Arkansas, on December 18, 2009.
3. The Claimant brings her Complaint on behalf of the Estate and on behalf of the following heirs and statutory beneficiaries of the Decedent:

<u>Name</u>	<u>Age</u>	<u>Relationship</u>	<u>Address</u>
Ashley Stewart	33	Daughter	Blytheville
Michah Sudbury	33	Daughter	Dallas, TX
Wesley Ann Freemyer	24	Daughter	Blytheville
Virginia Freemyer	18	Daughter	Blytheville
Bob Jackson	77	Father	Blytheville
Peggy Jackson	77	Mother	Blytheville
Valerie Kent	57	Sister	Arkadelphia

EXHIBIT
"A"

4. The Respondent is the Arkansas State Police, an agency/division of the State of Arkansas, whose Director is Colonel J.R. Howard, 1 State Police Plaza Drive, Little Rock, Arkansas 72209.

5. Andrew Rhew, was at all times pertinent to this case, a Trooper for the Arkansas State Police and was the driver of the patrol car owned by the Respondent agency, the Arkansas State Police. Rhew later resigned his position as a Trooper in 2011 after wrecking a car and being charged with DWI in Missouri, but at the time of the fatal car wreck, Rhew was driving his Arkansas State Police patrol car within the course and scope of his employment for the Arkansas State Police. As such, Andrew Rhew's actions are imputed to the Respondent under the doctrine of *Respondent Superior*.

6. Vickie Freemyer died in a tragic motor vehicle crash on November 3, 2009, in Manila, Arkansas, when Andrew Rhew, a Trooper for the Arkansas State Police, negligently and recklessly drove his police cruiser into a vehicle driven by Vickie Freemyer, causing her death.

7. On November 3, 2009, at approximately 9:47 A.M., Rhew was dispatched by radio to travel from Manila to the Driver's License testing site in Osceola in reference to a subject with an outstanding warrant and an additional subject who had a revoked driver's license. There was no indication in the radio dispatch call that either subject was a felon, that either had a history of violence, that anyone was in danger, or that there was any type of emergency.

8. Responding to the call, Rhew traveled South on State Highway 77 driving his patrol car, without the utilization of any lights or sirens, at speeds in excess of 100 miles an hour in a 45 mile per hour zone just prior to the collision.

9. Vickie Freemyer was traveling West in her Toyota Camry on Fleeman Street in Manila, Arkansas, on her way to visit her father in the hospital at Jonesboro. Witness statements and the Crash Data Recorder (CDR) in her Camry indicate that, at the intersection of Fleeman and Highway 77, Vickie Freemyer slowed to walking pace and came to a "partial stop," then entered the intersection of State Highway 77, without seeing Rhew's speeding cruiser, where she was struck by Rhew and killed.

10. According to information acquired from the Arkansas State Police under the Arkansas Freedom of Information Act, the Crash Data Recorder (CDR) or "Blackbox" in Rhew's police cruiser shows Rhew had been traveling in a 45 m.p.h. zone at a speed of 103

miles per hour approximately one (1) second before the crash and, after applying his brakes, was traveling at a speed of approximately 57 miles per hour approximately one-tenth (0.1) of a second before impact.

11. Rhew was guilty of fault consisting of negligent and reckless conduct, which was a proximate cause of the injury to and the death of Vickie Freeman, which acts of fault include, but are not limited to the following:

- (a) Failing to keep a proper lookout;
- (b) Failing to maintain proper control of his vehicle;
- (c) Driving the patrol car at a speed greater than that reasonable and prudent under the circumstances then existing;
- (d) Failing to operate the patrol car's emergency lights and audible signals when other vehicles were present;
- (e) Failing to exercise ordinary care for his own safety and for the safety of others using the highway;
- (f) Operating the patrol car in such an unsafe manner as to endanger the lives of other persons when he knew such conduct was unreasonably dangerous;
- (g) Failing to operate his police cruiser in compliance with Arkansas traffic laws and written policies of the Arkansas State Police;
- (h) Failing to operate his police cruiser in compliance with Manila city ordinances; and,
- (i) Failing to otherwise exercise ordinary care.

12. The Arkansas State Police was guilty of institutional negligence which was a proximate cause of the crash and the resulting death of Vickie Freeman, which negligence includes, but is not limited to:

- (a) Failing to properly train and supervise Troopers, including Andrew Rhew, to assure that they drive in a safe and reasonable manner in accordance with the law;
- (b) Failing to maintain and enforce safe driving practices, including driving at a safe speed and the use of lights and sirens;
- (c) Failing to investigate, discipline, or take other appropriate action to prevent Troopers who speed or otherwise drive in a dangerous and reckless manner;
- (d) Failing to properly staff and provide security at the Drivers License Testing Center;
- (e) Failing to have back-up officers in the vicinity and available at the Drivers License Testing Center to respond to calls for assistance by Testing Center personnel;
- (f) Failing to provide proper and complete dispatch information to Troopers, such as Andrew Rhew, will know whether the dispatch involves an urgent or emergency situation;

(g) Failing to seek support and assistance from local law enforcement, such as the Sheriff's Office, the Osceola Police, or the Arkansas Highway Police, rather than directing Rhew to drive 25 miles from Manila to Osceola to issue a citation or make an arrest; and

(h) Failing to otherwise exercise ordinary care.

13. The above-described acts of fault on the part of Rhew and the Arkansas State Police were the proximate cause of the fatality described above, the resulting death of Vickie Freemyer, and damages as more particularly described herein.

14. On November 3, 2009, at the time of Vickie Freemyer's death, she was gainfully employed as an elementary school teacher in the Gifted and Talented program at Osceola, earning a livelihood for herself and contributing to her family. She was fifty-two (52) years of age.

15. Vickie Freemyer left surviving her four daughters: Virginia Freemyer, Wesley Ann Freemyer, Ashley Stewart, and Micah Sudbury; two elderly parents, Bob and Peggy Jackson; and a sister, Valerie Kent, each of whom have suffered and will continue to suffer mental anguish by reason of the wrongful death of Vickie Freemyer.

16. The Claimant, as Personal Representative of the Estate of Vickie Freemyer, Deceased, is entitled to recover on behalf of the Estate, the heirs of the decedent, and the statutory beneficiaries, the following elements of damage, all of which were proximately caused by fault chargeable to the Respondent:

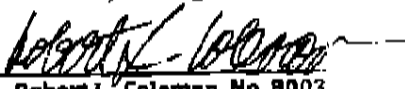
- (a) Pain and suffering of Decedent prior to death;
- (b) Loss of life of the decedent;
- (c) Pecuniary injuries sustained by her four daughters: Virginia Freemyer, Wesley Ann Freemyer, Ashley Stewart, Micah Sudbury; two elderly parents, Bob and Peggy Jackson; and loss of contributions;
- (d) Mental anguish suffered by her four daughters, Virginia Freemyer, Wesley Ann Freemyer, Ashley Stewart, and Micah Sudbury; two elderly parents, Bob and Peggy Jackson; and sister, Valerie Kent;
- (e) Reasonable funeral and burial expenses of the Decedent;
- (f) Property damage, including damages to the 2010 Toyota Camry.

WHEREFORE, the Claimant, Ashley Stewart, individually, and as Personal representative of the Estate of Vickie Freemyer, Deceased, requests entry of judgment against the Respondent for compensatory damages in the sum of Eight Million Dollars (\$8,000,000.00).

or such additional amount as the Commission determines is fair and reasonable, along with all costs, and all other proper relief to which she may be entitled.

Respectfully Submitted,

REID, BURGE, PREVALLET & COLEMAN
417 North Broadway, P. O. Box 107
Blytheville, Arkansas 72316-0107
Telephone: (870) 763-4586
Fax: (870) 763-4642
E-Mail: rbpc@sbcglobal.net

BY: 
Robert L. Coleman, No. 8003
ATTORNEYS FOR CLAIMANT

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CLERK

FORM 01/02

ARKANSAS STATE CLAIMS COMMISSION

JAN 06 2012

RECEIVED

Please Read Instructions on Reverse Side of Yellow cover
Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

Do Not Write In These Spaces	
Claim No.	12-0512-CC
Date Filed	January 6, 2012
Amount of Claim	8,000,000.00
Type	ASP

Mr.
 Ms.
 Mx.
 Other
Melissa Ashley Stewart, Administratrix Claimant
 of the Estate of Vickie Lynn Freeman
 vs.
 State of Arkansas, Respondent
 State Police

Wrongful Death

COMPLAINT

Ashley Stewart by above named Claimant of 3231 E.R. 262 Blytheville
 (City) (State)
 (County) (City) (State)
 AR 72315 County of Mississippi represented by Reid, Burge, Prevallist & Coleman
 (City) (County) (City) (State) (Firm Name)
417 N. Broadway Blytheville AR 72315 870-763-4586 870-763-4546
 (City and State) (City) (County) (Phone No.) (Fax No.)
 State Agency Involved: Arkansas State Police Amount sought: \$8,000,000.00

Month, day, year and place of incident or service: November 2, 2009
 Applicable law: A Claim Narrative and Statement of Facts is attached as Exhibit "A," as well as the Motor Vehicle Report attached as Exhibit "B," along with the following supporting documents:

1. List of witnesses to accident and witness statements.
2. Arkansas Motor Vehicle Report.
3. Funeral bill - Cobb Funeral Home - \$8,162.05 -- Paid
4. Monument bill - McHenry Monuments - \$2,875.00 -- Paid
5. Total Loss Report Decedent's 2010 Toyota Camry - \$21,289.00 less \$800.00 deductible paid by Bourbarn Farm Bureau Casualty.
6. Check of Farm Bureau for death benefit under auto policy of \$5,000.00.
7. Check of Farm Bureau for funeral benefit under auto policy of \$5,000.00.

The attorney for Claimant was advised by Ken Scoll, attorney for the Arkansas State Police, that the Arkansas State Police did not have liability insurance and that the policy maintained by Andrew Shaw would not apply because the wreck occurred while Andrew was driving a state owned vehicle. Farm Bureau contends no other benefits are payable under the decedent's policy.

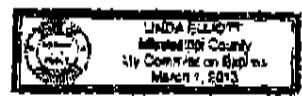
Report of this complaint, the claimant under the Arkansas, and answer to the following questions on September 11. The claimant has provided the following information on the above report:
 Yes No from December 2009. Ken Scoll and Greg Downs, attorneys for Arkansas State Police included the following notice on their demand: No settlement has been reached and no payment has been made as of January 4, 2012.
 and that \$ N/A was paid (Amount) (If any, state how and when) (Date)

and the amount of damages is as follows: (Amount) (If any, state how and when) (Date)

THE UNDERSIGNED under oath depose that the contents hereof are true and correct to the best of my knowledge and belief, and that I am the party named above.
Melissa Ashley Stewart/Robert L. Coleman Melissa Ashley Stewart/Robert L. Coleman
 (Print Claimant/Respondent's Name) (Signature of Claimant/Respondent)

SWORN TO and subscribed before me at Blytheville Arkansas
 (City) (State)
 on this 4th day of January 2012
 (Date) (Month) (Year)
Linda Elliott
 (Notary Public)
 My Commission Expires March 1 2013
 (Month) (Day) (Year)

SP-6099



ARKANSAS STATE CLAIMS COMMISSION
MOTOR VEHICLE ACCIDENT REPORT FORM

SECTION I
CLAIMANT Ms. Lege Ashley Stewart ADDRESS 3231 ECR 262
Blytheville CITY & STATE Arkansas ZIP CODE 72315

DATE OF ACCIDENT: November 3, 2009 TIME: 9:45 A.M.

MOTOR VEHICLE DAMAGED: TYPE Toyota MAKE CAROLY YEAR 2010

DRIVEN BY: Vickie Freeman ADDRESS 3231 ECR 262, Blytheville,
Arkansas 72315

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

See attached Claim Narrative and Statement of Facts. The vehicle was totaled as set out in the attached Total Loss Report.

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. The vehicle was a total loss.	<u>Southern Farm Bureau</u>	\$ _____
2. Casualty Insurance Company totaled the car and paid its value.		
3. \$20,000.00 plus taxes, less the \$500.00 deductible.		

SECTION III
Was vehicle covered by insurance? Yes (X) No () Liability Only ()

Comprehensive: Yes (X) No () What is your deductible? \$ 500.00
Collision: Yes (X) No () What is your deductible? \$ 500.00

NAME OF INSURANCE CARRIER Southern Farm Bureau Casualty Insurance Company ADDRESS _____

SECTION IV
Type of State Vehicle Involved 2006 Dodge Charger License No. 06217

Driver Andrew Rhee Property of which State Agency Arkansas State Police

If accident was investigated by the State Police, give name of investigating officer: Sgt. Wesley Smith 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.

Lege Ashley Stewart
Signature of Claimant

(Notary Seal) Sworn to and subscribed before me at Blytheville Arkansas City, State
on this 4th day of January 2010 year

My Commission Expires March 1, 2013

Linda Schmitt
Notary Public

