

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



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

**CLAIM FORM**

Please note that all sections must be completed, or this form will be returned to you, which will delay the processing of your claim.

**1. Claimant** *(If there are additional claimants, please fill out an additional form for each)*

Mr Morrow Chad [REDACTED]  
 \_\_\_\_\_  
 (title/last name/first name or company) (email)  
 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 \_\_\_\_\_  
 (address) (city) (state) (zip) (primary phone)

**2. Claimant's Legal Counsel** *(If not represented by an attorney, you may skip this section)*

Burks Chris chris@wh.law  
 \_\_\_\_\_  
 (last name) (first name) (email)  
 1 Riverfront Place, Suite 745 North Little Rock AR 72114 (501) 891-6000  
 \_\_\_\_\_  
 (address) (city) (state) (zip) (primary phone)

Arkansas Bar Number: 2010207 *If not licensed to practice law in Arkansas, please contact the Claims Commission for more information.*

**3. State Agency Involved** Arkansas Department of Parks and Tourism

*(If this section is not completed, the claim will be returned to you as deficient. Please note that the agency or agencies involved must be state agencies. The Claims Commission has no jurisdiction over claims against counties, cities, school districts, or other municipalities.)*

**4. Incident Date** 5/29/2021

**5. Claim Type**

Negligence--Personal Injury

**5a. Location of Incident** \_\_\_\_\_

**5b. Explanation of Incident** *If your claim does not involve property damage or damage to a motor vehicle, you may skip to Section 6."*

We went to devils den state park. I ensured I had electric as I am disabled law enforcement officer and disabled former marine. I was using disability stall and sat on the stool which then broke from the wall slamming me down on ground and my face. I waited for help as there is no signal in horse camp (which was all that was left). I had to crawl across nasty floor to changing area and drag myself up on the bench. I then used the walls to get out to the main door. Our camper was close to restroom due to my disabilities. I used the wall and door to get in front of the light to waive for easier visibility and yell for my wife and son to bring the shove and get to me. I used the shovel as a cane and my other arm was around my wife were she was able to get me back to the camper. Due to seizures and NO signal my wife didn't want to leave me so we waited for a park personal to come by. We got the trash

man and he sent a ranger down to take an incident report. My wife had gone back in to get my belongings and took pictures of the screws that had just come out of a wall (which according to two separate rangers at separate times said the wall had rotted out) my wife then took me to the VA hospital where I was treated and given a wheel chair. Upon arrival at camp a ranger came and helped my wife tear down the camper. We left earlier then we had paid for and since then have not been able to speak to anyone for a copy of the report nor were we reimbursed for the nights we did not stay. A Message has been left with no contact back. Considering contacting an attorney and the ADA and DAV

5c. CHECK HERE if this claim involves damage to a motor vehicle.

5d. CHECK HERE if this claim involves damage to property other than a motor vehicle.

**5e. Insurance Coverage**

- If your property was covered by insurance on the date of the incident, you must provide a copy of the insurance declarations in effect at that time. This is not the same as your insurance card. You may obtain a copy of your insurance declarations from your insurer or insurance agent.

-If you did NOT have insurance coverage in effect on your property on the date of the incident, CHECK HERE

**5f. Additional Required Documents for Property Damage Claims**

You must submit invoice(s) documenting repair costs OR three estimates for repair OR an explanation why this documentation cannot be provided.

**6. If a state vehicle was involved, please provide the following information**

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(type of state vehicle involved)

(license number)

(driver)

7. If your claim involves personal injuries, please CHECK HERE

- All personal injury claims require a copy of your health insurance information in place at the time of the incident.

- If you did NOT have health insurance on the date of the incident, CHECK HERE

8. Amount Sought: \$0.00 \_\_\_\_\_

**IMPORTANT**

Please note that we are happy to answer questions about the claim process, but we cannot give legal advice. Please also note that your claim is essentially a lawsuit filed against a state agency (the Claims Commission is the courthouse for such lawsuits), and the commissioners collectively serve as the judge deciding this lawsuit.

For questions please contact us through email at: [ascc.new.claims@arkansas](mailto:ascc.new.claims@arkansas).

Arkansas  
State Claims Commission

JUN 11 2021

ARKANSAS STATE CLAIMS COMMISSION

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



KATHRYN I. [RECEIVED]  
DIRECTOR

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

CLAIM SUBMISSION SIGNATURE PAGE

The undersigned certifies that to the best of my knowledge, information, and belief, this claim is not being presented for any improper purpose; this claim is warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law; and the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery.

Chad A Morrow

Claimant Name (must be printed legibly)

Chad A Morrow

Claimant Signature

Acknowledgement

State of Arkansas

County of Sebastian

On this the 8th day of June, 2021, before me, the undersigned notary, personally appeared Chad A Morrow known to me (or satisfactorily proven) to be the person whose name is subscribed to this instrument and acknowledged that he/she executed the same for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

Jean Sterling  
Signature of Notary Public

[Seal of Office]

My Commission expires: 1-22-2031



**BEFORE THE ARKANSAS STATE CLAIMS COMMISSION**

**CHAD MORROW**

**CLAIMANT**

**V.**

**CLAIM NO. 211300**

**ARKANSAS DEPARTMENT OF  
PARKS AND TOURISM**

**RESPONDENT**

**ORDER**

Now before the Arkansas State Claims Commission (the “Claims Commission”) is the claim filed by Chad Morrow (the “Claimant”) against the Arkansas Department of Parks and Tourism (the “Respondent”). At the hearing held October 14, 2022, Claimant was represented by Chris Burks, and Rosalyn Middleton appeared on behalf of Respondent.

1. Claimant filed his claim on June 7, 2021, seeking damages related to an incident where Claimant fell in the shower stall of a bath house at Devil’s Den State Park (the “Park”) on May 29, 2021.

2. Respondent denied liability.

3. In opening, Claimant’s counsel noted that the parties have agreed to the authenticity of the submitted medical records and Facebook records. Claimant is a Marine who became a deputy sheriff. His medical bills are not part of this claim, as those bills were covered by the Veterans Administration (VA). However, the VA did not cover Claimant’s massage therapy and psychological services. Claimant’s back was injured when he fell in a shower stall on property owned by Respondent. However, Respondent did not maintain the shower stall. Had Respondent performed regular inspection and maintenance, the condition of the wall behind the shower stall would have been discovered. Claimant was not totally and permanently disabled after this fall. He continued trying to live his life, which does not preclude a recovery in this claim.

4. Upon a question from a commissioner as to the amount that Claimant is seeking, Claimant's counsel confirmed that there are less than \$10,000.00 in bills for massage therapy and that Claimant is seeking five times that amount in noneconomic damages including pain and suffering and loss of consortium.

5. Upon a question from a commissioner, Respondent confirmed its stipulation to the authenticity of the medical records and Facebook records.

6. In opening, Respondent argued that, to prevail, Claimant must show that Respondent knew or would have known through the exercise of reasonable care that there was a risk to Claimant. Respondent also stated that the shower stall was regularly maintained, although there are no maintenance records, and that Claimant must connect his damages to the fall.

7. Claimant testified that on May 29, 2021, he was camping at the Park with his family. When Claimant went to take a shower in Respondent's facilities, he sat on the seat in the shower stall, and the seat came out of the wall, pinning his knees to the ground and slamming his face into the wall (the "Incident"). Claimant's counsel showed pictures of the shower stall and the screws that were in the wall. *See* Claimant's Exhibit A. After the Incident, Claimant crawled across the floor to put on shorts and to yell for help. The maintenance man who came to Claimant's campsite the next day said that dry rot was the issue, given the wood material on the screws. Following the Incident, Claimant utilized acupuncture, chiropractic, and massage therapies that were not covered by the VA. *See* Claimant's Exhibits B–D. After the Incident, he was referred for chiropractic care because nothing was helping with the pain in his back, hips, knees, and right shoulder. *See* Claimant's Exhibit B. Claimant had gone to a psychologist prior to the Incident because of things that he had seen in his work involving children, but he went to a psychologist after the Incident because the worst thing for a veteran is to stay home and stare out of the window. Claimant stated that his PTSD is worse after the Incident and that he does not want to go anywhere.

The VA pays for part of Claimant's massage therapy. *See* Claimant's Exhibit E. Claimant's injuries from the Incident were muscular, not skeletal. *See* Claimant's Exhibit F. Claimant also had nerve damage and saw changes to the muscles in his back. *See id.* Claimant does not dispute that he had health issues prior to the Incident and stated that he was attacked while serving as a law enforcement officer. *See* Claimant's Exhibit G. Claimant had been doing much better prior to the Incident, meaning that he could walk upright and did not have a "burning needle" sensation in his feet. The fact that he was doing better prior to the Incident is the reason Claimant and his family were going camping at the Park. Claimant has gone camping after the Incident because his therapist told him that he needs to get out and do things. Claimant did not call the park rangers when he fell because there was no signal, and Claimant's children were young. Claimant's wife's priority was getting Claimant to the camper and keeping an eye on him. The next morning, Claimant's wife saw a trash man and reported the incident to him.

8. On cross-examination, Claimant stated that he was using a cane and a C-Pap machine when he came to the Park. Claimant explained how he sat down on the shower seat. He is seeking damages for the injury to his back, as well as his mental damages. Claimant has a history of back injuries and multiple back surgeries. Prior to the Incident, Claimant had a temporary spinal stimulator, which was removed right before the trip to the Park. Claimant now has a permanent spinal stimulator. Claimant's hospital bed was covered by the VA. Following the Incident, Claimant has attended various VA groups and a family reunion. Claimant reviewed pictures from the family reunion, where he is standing and where his cane is not visible. He purchased a new camper with a bathroom so that he does not have to rely on faulty state equipment. There was an incident on June 25, 2022, where the camper was scraped. Claimant tried to kill himself, which is why he is therapy. Claimant stated that he brought a chair and walker to the birth of his grandson.

He uses his walker when his shoulders are not causing him pain. Claimant reviewed a Facebook post, where he talked about having a great three days.

9. Claimant's wife, Shallen Morrow, testified that Claimant's testimony was true and accurate to the best of her knowledge. Mrs. Morrow stated that Claimant's back pain increased after the Incident. Claimant received a wheelchair from the VA to use for mobility. Prior to the Incident, Claimant had PTSD and was on medication. Claimant's original injuries occurred prior to Claimant's and Mrs. Morrow's marriage, and she does not know the details. Mrs. Morrow knows that Claimant has been diagnosed with PTSD. Prior to the Incident, Claimant could walk with a cane. After the Incident, he was given a wheelchair and a walker to be used as needed depending on his pain. He was unable to walk unassisted after the Incident. When Respondent's maintenance man and ranger met with Claimant and Mrs. Morrow, they noted the wood particles on the screws and stated that the incident was "on us." Inspection and maintenance records were requested, but none were disclosed. Claimant and Mrs. Morrow were camping in the part of the Park known as "Horse Camp." That area of the Park does not seem to be maintained as much, given that the grass is high, the campsites do not have tables and fire pits, and the parking is not very clear. Claimant's pain has definitely increased since the Incident, and Claimant does not get out like he did before the Incident. In the pictures of the family reunion, Claimant hid his cane because he does not like it to be seen.

10. On cross-examination, Mrs. Morrow stated that they had not previously stayed at the Horse Camp. They were going to stay three nights, but they left after the first night. Claimant has seizure episodes when his pain and stress are increased. Mrs. Morrow did not see Claimant fall. She does not believe that he had a seizure before the Incident because his affect would have been different, and it would have taken him longer to get to the door. Claimant is taking pain management medications, seizure medications, and psychological medications. In May 2021,



Claimant was taking oxycodone and morphine, and his dosages were increased after the Incident. Those medications do not cause adverse reactions or falls.

11. Dustin Spradlin testified that he has worked at the Park as a maintenance assistant for five years. His job duties include carpentry, mowing, and mechanic work. Mr. Spradlin spoke with Claimant and Mrs. Morrow on May 30, 2021, but he does not remember a lot of the conversation. He does not recall looking at the shower seat and would not have said that the Incident was “on us.” The bathroom at Horse Camp is cleaned every day, but not by him. Mr. Spradlin has not done any maintenance at the Horse Camp bath house in a few years. There have not been any complaints about maintenance. No cleaning records are kept.

12. On cross-examination, Mr. Spradlin stated that he does not personally clean the Horse Camp bath house. He has no knowledge of the cleaning or inspection of the bath house. He has not done any maintenance on that bath house in a couple of years. When asked why he would not go and look at the broken shower seat, Mr. Spradlin said that it was above his pay grade and that he would have left that to the uniformed staff. It is possible that two other people, not including him, went with Claimant and Mrs. Morrow to look at the shower stall.

13. Tim Scott testified that he worked as acting superintendent of the Park, where his job included responding to incidents, checking in on campers, and other customer service duties. At Horse Camp, the camping fees are \$20 per night. Campers who are 100% ADA disabled get a 50% discount, although Mr. Scott does not know whether Claimant asked for this discount. The maintenance guy reported the Incident, and Mr. Scott went to speak with Claimant and Mrs. Morrow at their camper for five to ten minutes. Mr. Scott looked at the shower stall. He does not recall saying anything about rotten wood. He has not received any complaints about the shower stall. Visual inspection and cleaning of the shower stall should happen every day. The cleaning process involving lifting the shower seat, so if there was an issue, the maintenance staff would

have seen it. Mr. Scott stated that the Horse Camp bath house was built around 1997 and that the same type of shower seat is used in other bath houses.

14. On cross-examination, Mr. Scott stated that he was called to Horse Camp by Mr. Spradlin. The maintenance staff is responsible for cleaning the shower stall every day. Either Blake Smith or Mark McBryde or Mr. Spradlin would have been responsible for cleaning that bathroom. There are no records of inspection or maintenance for the bath house. Blake Smith is the supervisor of Mark McBryde and Mr. Spradlin. Blake Smith reports to Mr. Scott. Mr. Scott stated that the shower seat was removed after the Incident and that there is no longer a shower seat there.

15. On redirect. Mr. Scott confirmed that he supervises the maintenance staff.

16. Jeremy Bruce testified that he has worked at the Park as a park ranger since 2000. He is a law enforcement officer and enforces local, state, and federal regulations. He provides customer service assistance and helps with medical emergencies and public relations. Mr. Bruce went to visit with Claimant and Mrs. Morrow and to get a statement after he received a telephone call from Mr. Scott. He took black and white photographs of the bath house. He did not say anything to Claimant about the Incident being Respondent's fault.

17. On cross-examination, Mr. Bruce confirmed that he does not have anything to do with the maintenance or cleaning of the shower stall.

18. Monty Fuller testified that he has worked at the Park as park superintendent since 2006. The shower seat was installed when the bath house was constructed. There are six bath houses and 24 shower seats in the Park. There have been no complaints about the Horse Camp shower seat. Mr. Fuller explained how the shower seat is attached to the wall and that the frame and screws are stainless steel. He has not seen any documentation about the lifespan of the shower seat and does not know whether there is a weight limit. The shower seat is very durable. The

shower seat is visually inspected, although there are no written inspection records. Mr. Fuller does not know whether that shower seat is used in other parks.

19. On cross-examination, Mr. Fuller stated that he is the manager of the Park. The bath house should be inspected daily. It is not Mr. Fuller's job to inspect the bath house. He has not visually inspected the wall to see if it is rotted or not. The Horse Camp is on the southern end of the Park. He cannot recall whether anyone has complained about the condition of the Horse Camp. When asked why the other maintenance people are not present at the hearing, Mr. Fuller stated that they were not asked to be at the hearing.

20. Upon a question from a commissioner regarding the thickness of the wood wall, Mr. Fuller stated that he did not know. The bath house was built before he started working at the Park. The surface of the shower stall is fiberglass-reinforced plastic, which is attached to studs in the wall.

21. Upon a question from a commissioner as to who was cleaning this shower stall, Mr. Fuller stated that he did not know. The Incident occurred when Mr. Fuller was not at work, but he read the report. There was no evidence that Claimant ripped the shower seat out of the wall. Mr. Fuller has not visually inspected the shower stall.

22. In closing, Claimant stated that there are specific dollar amounts in the documents, but he has given rounded numbers because it is hard to differentiate preexisting injuries from new injuries. Claimant argued that the witnesses present at the hearing did not clean the shower stall.

23. In closing, Respondent argued that the Incident was unfortunate but that Claimant has not met his burden of proof that Respondent breached its duty to Claimant. Claimant's damages were not proximately caused by Respondent.

24. The Claims Commission finds that Claimant's testimony regarding the Incident was credible and persuasive, as was Mrs. Morrow's testimony regarding the changes she has observed in Claimant since the Incident.

25. The Claims Commission finds that Claimant's claim against Respondent is a negligence claim. The elements of a negligence claim are duty, breach of duty, and damages proximately caused by the breach. *Chambers v. Stern*, 347 Ark. 395, 406, 64 S.W.3d 737, 744 (2002).

26. The Claims Commission finds that, as both parties stated in their prehearing submissions, Claimant was an invitee at the Park. See Claimant's Proposed Findings at p. 3 and Respondent's Pre-Trial Filings at p. 4-5. As an invitee, Respondent owed Claimant a duty to exercise ordinary care to maintain the premises in a reasonably safe condition. *Dollar Gen. Corp. v. Elder*, 2020 Ark. 208, 600 S.W.3d 597; *AutoZone v. Horton*, 87 Ark. App. 349, 354, 192 S.W.3d 291, 295 (2004). As stated by Respondent in its Pre-Trial Filings, "[o]rdinary care means that the Respondent must protect the Claimant from dangers that could have been, or reasonably should have been foreseen." See Respondent's Pre-Trial Filings at p. 6 (citing to *Little v. Jonesboro County Club*, 92 Ark. App. 214, 217, 212 S.W.3d 57, 59 (2005)).

27. The Claims Commission finds that Respondent did not exercise ordinary care to maintain the premises in a reasonably safe condition. Respondent's witnesses testified that the shower stall should have been inspected and cleaned daily. Mr. Scott, the park superintendent, testified that the daily cleaning and inspection of the bath house would have included lifting the shower seat. However, the maintenance staff present at the hearing, Mr. Spradlin, stated that he did not clean the Horse Camp bath house and had not done any maintenance there in several years. The other maintenance staff members were not called to testify. There are no records regarding the cleaning, inspection, or maintenance of the shower stall, and Respondent was unable to produce

any information about who was assigned to clean, inspect, or maintain the shower stall prior to the Incident. The Claims Commission finds that had Respondent exercised ordinary care, Respondent's staff would have performed the daily cleaning and inspection tasks that each of Respondent's witnesses said should have been done (although not by any of the witnesses present, apparently). The Claims Commission further finds that if Respondent had done the daily cleaning and inspection tasks, the fact that the shower seat was so tenuously attached to the wall would have been known to Respondent.

28. With regard to the issue of damages, the Claims Commission finds that Claimant's prior back injuries do not preclude an award here. *See* AMI 2203 (Measure of Damages—Aggravation of Pre-Existing Condition); *see also Primm v. U.S. Fid. & Guar. Ins. Corp.*, 324 Ark. 409, 922 S.W.2d 319 (1996). Applying the “eggshell plaintiff” rule analyzed in *Primm* to the instant claim, Respondent must take Claimant as it finds him and cannot escape damages by highlighting Claimant's susceptibility to injury.

29. The Claims Commission appreciates Claimant's counsel's candor in discussing the difficulty in differentiating costs between the injuries associated with the Incident and the preexisting injuries. The Claims Commission finds that an award of \$7,500.00 in medical bills is appropriate here, given Claimant's persuasive testimony about the massage, chiropractic, and other therapies utilized by Claimant to get relief from the pain after the Incident, which were not covered by the VA.

30. Regarding Claimant's pain and suffering, the Claims Commission finds Claimant's testimony about the Incident and the time following the Incident to be sincere and persuasive, as was Mrs. Morrow's testimony about the changes she observed in Claimant following the Incident. As such, the Claims Commission finds that Claimant should be awarded \$22,500.00, which is three times the amount of his economic damages.


31. The Claims Commission unanimously AWARDS Claimant \$30,000.00 and REFERS this award to the General Assembly for review and placement on an appropriations bill pursuant to Ark. Code Ann. § 19-10-215(b).

IT IS SO ORDERED.



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ARKANSAS STATE CLAIMS COMMISSION  
Courtney Baird



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ARKANSAS STATE CLAIMS COMMISSION  
Henry Kinslow, Chair



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ARKANSAS STATE CLAIMS COMMISSION  
Sylvester Smith

DATE: December 12, 2022

**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).