

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

SEAN LYNN AND
LAURA HAMMETT
CLAIMANTS

V.

NO. 250191

UNIVERSITY OF ARKANSAS
FOR MEDICAL SCIENCES
RESPONDENT

RESPONSE TO MOTION TO PLACE CASE IN ABEYANCE

Sean Lynn and Laura Hammett (“Lynn” and “Hammett,” collectively referred to as “Claimants”), appearing *pro se*, respectfully submit this Response in opposition to UAMS’s Motion to Place Claims in Abeyance.

1. There are four primary reasons why placing these claims in abeyance is inappropriate. First, UAMS Counsel Sherri Robinson informed Hammett that she intends to invoke sovereign immunity on behalf of a broad category of personnel who were not required to retain medical malpractice insurance. If that defense is successful, liability for those employees’ actions would revert to UAMS and thus properly fall within the jurisdiction of the Claims Commission. Second, UAMS acted in bad faith, rendering the Claimants’ efforts to exhaust potential insurance remedies futile. Third, the only insurance agent who communicated with the Claimants explicitly stated that Hammett’s claims will not be covered. Fourth, by condoning and covering up the negligent and malicious conduct at issue, UAMS has effectively adopted that conduct as its own.

The State must not be shielded from accountability where it allows its agents to engage in false imprisonment and battery against private citizens.

2. UAMS has requested that the Commission remove the motions currently set for hearing on November 7, 2025, and place this claim in abeyance pending the Claimants' exhaustion of all potential claims against insured providers.

3. UAMS bases its request on a single authority: Arkansas Code Annotated § 25-44-302(a), which was recodified without substantive change from § 19-10-302(a). The statute provides in full: "The Arkansas State Claims Commission shall not dismiss a claim with prejudice on grounds that the claimant has received or is due benefits under a policy of insurance. However, the commission shall hear no claim until the claimant has exhausted all remedies against insurers, including the claimant's insurer."

4. A state agency cannot assert the doctrine of sovereign immunity as a defense to claims properly presented against it before the Arkansas State Claims Commission. Accordingly, the Claimants are acting prudently in seeking to establish liability under the theory of *respondeat superior* against the individual actors for whom UAMS is expected to seek immunity.

5. The Claimants' inability to identify potential insurance coverage for the individual defendants who are not entitled to sovereign immunity results directly from UAMS's obstructionist and dilatory tactics, which violate its duty to act in good faith and to promote the efficient use of resources on behalf of the State and its citizens. These tactics are described in detail in the accompanying brief. Accordingly, UAMS should be estopped from seeking to delay resolution of this dispute on the basis of its own misconduct.

6. Hammett's claims arise from the same underlying conduct alleged in Lynn's claims but do not constitute a "medical injury." As a result, the insurance agent has stated that coverage for

Hammett's claims will be denied. It would therefore be unjust to require Hammett to delay discovery while evidence continues to be lost or destroyed over time.

7. The sole insurance agent identified by UAMS in September 2025 has been uncooperative and evasive, as detailed in the attached brief. UAMS appears to be acting in concert with this agent to frustrate the Claimants' efforts to engage in meaningful negotiations by systematically misdirecting communications. These coordinated tactics seem calculated to delay, confuse, and obstruct the claims process, thereby undermining transparency and the good-faith resolution that the Claims Commission process is intended to promote.

8. In conclusion, all claims—and at a minimum, Hammett's claims—should proceed before the Claims Commission for the following reasons: (1) UAMS has expressed its intent to seek dismissal of court claims against individual defendants on the basis of sovereign immunity, which would return liability to UAMS; (2) UAMS's delay in disclosing relevant insurance information has prejudiced Lynn's claims, and UAMS continues to withhold information regarding any general liability policy that could provide coverage for Hammett's claims; (3) the insurer's representative, Gallagher, has indicated an intent to deny coverage for Hammett's potential claims against the individual defendants; and (4) UAMS has further prejudiced the Claimants' ability to pursue claims against individual actors by withholding required disclosures and providing incomplete interrogatory responses that would otherwise identify and narrow the class of potential defendants.

9. Accordingly, the Claimants respectfully request that the Arkansas State Claims Commission: (1) deny UAMS's Motion to Place the Claims in Abeyance; (2) compel UAMS to produce all insurance policies that it asserts may provide coverage for any portion of the claims;

and (3) order a settlement conference including the Claimants, UAMS, and all insurers that UAMS anticipates may be responsible for any portion of the damages at issue.

Brief in Support

I. UAMS Should Be Required to Demonstrate the Existence of Insurance Coverage for Potential Individual Defendants

The Claims Commission should compel UAMS to disclose any applicable insurance policies that may provide coverage for claims against individual defendants before requiring the Claimants to proceed against those individuals. Under Arkansas law, individual state employees are generally immune from liability for actions taken within the scope of their employment unless there is insurance coverage, or the Claimants can establish malice. However, proving malice may render any applicable insurance coverage inapplicable, as insurance policies often exclude coverage for intentional or malicious acts. *Marziale v. Brown*, 2025 Ark. App. 468, 9.

Without clear evidence of insurance coverage, the Claimants would be forced to pursue claims against individual defendants who are likely to assert sovereign immunity, resulting in unnecessary delays and inefficiencies. “The primary non-judicial mechanism that has been created by law for the presentation and establishment of claims against the state is the Arkansas State Claims Commission, which was created in its current form by Act 276 of 1955. The legislature created the Claims Commission as a means of requiring the state to pay its valid debts and obligations, while preserving its sovereign immunity. See ARK. CONST., art. 16, § 2; *Fireman's Insurance Co. v. Ark. State Claims Commission*, 301 Ark. 451, 784 S.W.2d 771 (1990).” 1997 Ark. AG LEXIS 62, *6.

II. UAMS acted in bad faith, which made Claimants' attempts to exhaust insurance futile.

While knowing a civil action was imminent and after the case against UAMS as Respondent superior was filed, UAMS failed to inform Claimants about potential insurance. UAMS was required to make appropriate disclosures of insurance carriers and should not be allowed to prolong the Claimants recovery by over a year without consequences.

Arkansas law provides that state officers and employees are immune from liability and suit for non-malicious conduct, except to the extent that they are covered by liability insurance for acts or omissions occurring within the course and scope of their employment. This statutory immunity is codified in Arkansas Code Annotated § 25-44-305(a), which limits liability to the extent of insurance coverage. *Marziale v. Brown*, 2025 Ark. App. 468. Under A.C.A. § 23-79-210, when liability insurance is carried by a state agency or similar entity, a direct cause of action may be brought against the insurer to the extent of the insurance coverage, even if the state agency itself is immune from suit A.C.A. § 23-79-210. Claimants cannot, however file a direct action against an insurance carrier who is not disclosed to them.

In the Third Set of Interrogatories and Requests for Production Propounded by Claimants, RFP No. 40, the Claimants requested UAMS to:

Produce a copy of the professional liability insurance issued for coverage of Residents for the period of January 13, 2024 through January 27, 2024 pursuant to the Resident/Fellow Agreement of Appointment, Ntracts 9834 entered into between the Board of Trustees of the University of Arkansas acting for and on behalf of the University of Arkansas for Medical Sciences ("UAMS") and the trainees who ordered or administered drugs to, ordered or performed procedures on, or ordered or applied physical restraints on Sean Lynn during that period.

UAMS responded: “ANSWER: UAMS object[s] to this interrogatory as overly broad, unduly burdensome, argumentative, and not reasonably calculated to lead to the discovery of admissible evidence.” No document was offered. None.

The affidavit of Associate Dean of Finance and Administration for UAMS, Deanna Stiles, mentioned a nameless medical malpractice insurance policy, but no general liability policy. UAMS finally informed Claimants of a representative to contact, A.J. Gallagher Risk Management Services LLC, the third-party administrator for potentially named individual providers and their professional liability carrier, The Doctors Company—but waited from January 2024 until September 2025 to do so.

No general liability insurance has been disclosed, even though a general liability policy may indemnify UAMS for damages against Hammett. UAMS has not expressed any attempt to contact a third-party insurance company that would cover the EMT who wrote an unattributed declaration that purported Lynn’s fall was 30 to 35 feet. The EMT’s error would be inconsequential but for UAMS failing to have Lynn verify the mechanism of his initial injury at the time they asked Lynn about his mental health over the past to weeks; Nor would the EMT’s error be consequential if the UAMS medical providers used the ordinary and reasonable care of a layperson to observe that Lynn’s injuries were inconsistent with a fall from over 20 feet.

There is no disclosure of payments made on behalf of UAMS to either Gallagher or The Doctor’s Company in the UALR Open Checkbook for 2024 or anywhere else on the internet.

Gallagher wrote to Hammett in a letter postmarked September 24, 2025, stating: “Neither our involvement nor TDC’s policy extends to claims or litigation involving UAMS as an institution.” (A true and correct copy of this letter is filed contemporaneously as Exhibit “A.”)

Gallagher further wrote:

“While I understand and acknowledge the theory you are advancing regarding your loss, I must respectfully confirm that your claim(s) would not be part of our investigation or evaluation at any time, as you were not the recipient of medical care.”

Mr. Lynn did not receive any communication from Gallagher until he returned home from a trip to Texas in early October 2025. Two envelopes addressed to Mr. Lynn’s residence on Theresa Drive were postmarked October 1, 2025 (with \$1.03 postage) and October 2, 2025 (with \$0.74 postage). (True and correct copies of these letters and/or the unopened envelopes are filed contemporaneously as Exhibits “B” and “C,” respectively.)

On October 2, 2025, two envelopes were also postmarked to Hammett, both with \$0.74 postage. (True and correct copies of these letters are filed contemporaneously as Exhibits “D” and “E,” respectively.) The letters enclosed copies of Gallagher’s September 24 correspondence to Hammett, along with a two-page authorization letter addressed to Mr. Lynn. However, the longer letter originally sent to Mr. Lynn was omitted—accounting for the difference in postage.

Each letter identified Gallagher’s address as “17000 Chenal Parkway” in Little Rock. After a signed authorization form allowing Gallagher to communicate with Hammett as Mr. Lynn’s ADA accommodator was returned marked “No Such Number” and “Unable to Forward,” Claimants located Gallagher’s correct address online: **17500 Chenal Parkway**. (A true and correct copy of the returned envelope is filed contemporaneously as Exhibit “F.”) Notably, 17000 Chenal Parkway is a car wash, not Gallagher’s office. Gallagher’s correspondence used a P.O. Box on the envelopes but omitted it from the letters themselves, creating further confusion.

This discrepancy, combined with Gallagher’s refusal to provide an email contact and insistence on written correspondence only, materially impeded timely communication and frustrated

Claimants' efforts to negotiate in good faith. These inconsistencies suggest a deliberate effort to obscure the insurer's true location and hinder the claims process.

It also appears that UAMS counsel, Sherri Robinson, collaborated with the insurance representative in a manner that caused further confusion and delay. Claimants sent a signed copy of the ADA accommodation authorization to the incorrect address provided for Gallagher, while Hammett sent a courtesy copy of the unsigned PDF version to Ms. Robinson. Gallagher subsequently enclosed that same unsigned PDF in his correspondence to Mr. Lynn (Exhibit "B") but did not disclose that it had been received from Ms. Robinson.

Such conduct is unethical and undermines the integrity of both the discovery and claims processes. However, disciplinary proceedings through insurance boards or professional conduct committees would take years and would not make Mr. Lynn or Hammett whole. Claimants therefore urge the Claims Commission to act decisively to expedite recovery and to reject UAMS's attempts to prolong this matter further.

III. Hammett's claims for which Gallagher denied coverage summarily should proceed against UAMS.

The single insurance agent who communicated with the Claimants thus far declared that Hammett's claims will not be covered by the potential individual defendants' insurance. Therefore, Hammett should be allowed to proceed at the Claims Commission.

In the alternative, UAMS should be compelled to disclose if it is self-insured or has a general liability policy that will cover Hammett's damage.

IV. UAMS's litigation conduct is intended to obstruct justice, therefore UAMS should be held liable in full for the negligence it refused to cure.

Despite requests for preservation, UAMS Security deleted surveillance videos that would have shown the actions of medical providers whose conduct forms the basis of this claim, thereby depriving the Claimants of critical evidence.

Rather than investigating the evidence provided, UAMS Police Department personnel instructed Hammett to stop submitting evidence implicating UAMS medical providers in alleged battery in the second degree and false imprisonment.

Despite being informed of the factual error, UAMS refused to amend the medical record to accurately reflect that Mr. Lynn fell approximately ten feet, rather than thirty to thirty-five feet. Mr. Lynn was the only individual present when the ladder on which he was standing slipped away from the house.

The medical providers at UAMS failed to document any imminent threat to life or limb in Mr. Lynn's medical record. Nevertheless, UAMS now invokes the emergency exemption to patient autonomy, relying solely on conclusory assertions made by counsel rather than contemporaneous medical judgment.

UAMS counsel misquoted statutory law in an effort to "amend and substitute" discovery responses rather than properly correcting or supplementing deficient ones. For example, in its *Response to Claimants' Motion to Remove Objections, Compel Discovery Responses, and Impose Sanctions* (page 4, ¶ 3), UAMS quoted Rule 26(e)(1) of the Arkansas Rules of Civil Procedure as follows: "A party is under a duty seasonably to **amend** a prior response to an interrogatory, request for production, or request for admission if the party learns that the response

is in some material respect incomplete or incorrect.” [Bold and underscoring of “amend” was added by UAMS attorney Sherri Robinson.]

However, the actual text of Rule 26(e)(1) provides:

“A party who has [] responded to an interrogatory, request for production, or request for admission—must supplement or correct its disclosure or response: (A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or (B) as ordered by the court.”
Fed. R. Civ. P. 26.

This alteration materially misstates the Rule’s language and intent. Rule 26(e)(1) imposes a duty to *supplement or correct* prior responses—not to *amend and substitute* them. UAMS’s modification of the Rule’s wording changes its meaning and improperly attempts to justify replacing earlier discovery responses rather than supplementing them as required.

Having deleted critical evidence and refused to produce complete discovery responses, UAMS now argues that Claimants must somehow do more to exhaust insurance coverage before the Commission addresses the pending motion to compel and for sanctions.

Claimants respectfully request that the Claims Commission uphold the rule of law and ensure substantial justice by denying UAMS’s motion and compelling alternative dispute resolution that includes all insurance providers who may bear responsibility for restitution to the Claimants, thereby relieving the financial burden on the State of Arkansas.

Respectfully submitted,

/s/ Sean Lynn October 13, 2025 (manually signed original available)

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CERTIFICATE OF SERVICE

I, Laura Hammett, do hereby certify that a copy of the foregoing Response to Motion to Place Claim in Abeyance has been served on the respondent herein by sending a copy via email on this 13th day of October, 2025, to:

Sherri L. Robinson Senior Associate General Counsel

University Of Arkansas for Medical Sciences

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/s/ Laura Hammett (manually signed original available)

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