EXHIBIT E.2

Arkansas
State Claims Commission

MAY 18 2017

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Please Read Instructions on Reverse Side of Yellow copy

Please print in ink or type

BEFORE THE STATE CLAIMS COMMISSION
Of the State of Arkansas

☐ Mr.
☒ Mrs.
☐ Ms.
☐ Miss

Melissa Roth, **Claimant**

vs.

State of Arkansss, Respondent

AR, Department of Finance & Administraion

Do Not Write in These Spaces

Claim No. 17-0728-CC

Date Filed May 19 2017 (Month) (Day) (Year)

Amount of Claim $ 3325.40

Fund DFA

Refund of Expenses

COMPLAINT

Melissa Roth, the above named Claimant, of (Name) Fort Smith (Street or R.F.D. & No.) (City)

AR 72916 501 472-0956 County of Sebastian represented by (State) (Zip Code) (Daytime Phone No.) (Legal Counsel, if any, for Claim)

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

State agency involved: Dept of Finance Administration/Benefits Amount sought: $3325.40

Month, day, year and place of incident or service: 2/27/17, February 27, 2017

Explanation: My husband was added to my state insurance as of January 1st 2017. After his insurance through Ambetter was renewed, I requested my husband's removal February 27, 2017. This was approved with email and confirmation number February 27, 2017. I received a notice by mail 10 days later asking for documentation already provided and found he was added back to my insurance without my consent or request. I supplied the documentation requested and have been denied any relief or cooperation from the Employee Benefits Division. This is group coverage, the benefit letter is dated as of January 1st. This is dual coverage by a state agency. Both are policy for the removal of my husband's removal from my insurance. I have all documentation to support this request. I have been denied appeals through Employee Benefits. I am requesting the cost of premiums as of March 1st to Dec 31st and the additional $500.00 deductible required for spouse to receive benefits. Without relief, this could cause my bankruptcy which is an additional qualifying event for his removal from my insurance. Employee Benefits is at no risk of paying any claims for my husband. There is also no merit in the cost of premiums being almost quadruple that of a single employee. I am paying for services

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 (Yes or No); when? May 15 2017 (Month) (Day) (Year); to whom? Dept of Human Services and Dept of Labor (Department); and that the following action was taken thereon: I was advised to file a claim with the state claims commission

and that $ 0 was paid thereon: (2) Has any third person or corporation an interest in this claim? No; if so, state name and address

(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

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

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

Melissa Roth
(Print Claimant/Representative Name)

Melissa Roth
(Signature of Claimant/Representative)

SHEILA DOLAN
MY COMMISSION # 12394987
EXPIRES: August 25, 2023
Sebastian County
(SEAL)

SWORN TO and subscribed before me at Ft Smith (City) AR (State)

on this 15th (Date) day of May (Month), 2017 (Year)

Sheila Dolan
(Notary Public)

My Commission Expires: August (Month) 25 (Day) 2023 (Year)

SF1- R7/99

IN THE ARKANSAS STATE CLAIMS COMMISSION

CLAIM NO. 17-0728-CC

MELISSA ROTH

VS.

STATE OF ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION

REQUEST TO AMEND ORGINAL COMPLAINT

I, Melissa Roth (Claimant), representing myself in this matter, respectfully state the following as my request to amend my original complaint.

1. The Claimant contends that all allegations made in the original complaint have been supported as true by the documentation and arguments presented and the claims for compensation are justified.

2. The original complaint made the humble request for the reimbursement of premiums for no services rendered by the Respondent in addition to the additional $500 deductible as a result of the Claimant's husband being placed on my insurance against my request. No additional costs to the Claimant, compensatory damages, or punitive damages were addressed in the original complaint. This amendment is to address those damages, losses, and reimbursement not covered in the proposed settlement by the Respondent to the original claim.

3. The Claimant is requesting a compensatory award for specific and general damages for breach of contract and negligence in the amount of $10,000 to cover: the $500 deductible within the original complaint; what would be legal fees, for the Claimant's time, work, postage, gas, research, materials, and other expenses for the Claimant in the pursuit of fair treatment by the Respondent; any and all fees and monetary losses incurred as a result of financial distress resulting for all circumstances presented in this and the original complaint; and pain and suffering due to hindrance and interference with access to health

services for the Claimant as well as the effect to the Claimant's health as a result of the Respondent's negligence. General Damages are defined as the monetary recovery (money won) in a lawsuit for injuries suffered (such as pain, suffering, and inability to perform certain functions) or breach of contract for which there is no exact dollar value which can be calculated.

a. The Claimant informed the Respondent in writing and by phone in February and March 2017 that the high costs of the premiums for employee and spouse would result in the claimant not being able to afford to go to the doctor when needed. The Claimant continued to receive charges for premiums causing financial strain to the home despite every effort by the Claimant for a peaceful resolution with the Respondent. In addition, the Claimant requested several times the justifications of the cost of these premiums and never could get an answer. The Claimant has been referred for ongoing treatment and evaluation as a result of problems with both feet since December of 2016. The Claimant has not been able to afford any appointments to address this issue at any time this year. The Claimant has had maintenance appointments and follow-up appointments that have been cancelled or missed due to the financial distress caused by the costs of these premiums including appointments to address surgical procedures and other ongoing medical issues. The Claimant limited herself to only immediate and extremely necessary appointments (appointments for significant injury, significant illness, or necessary medications). The appointments completed have resulted in medical bills, mostly unpaid at this time. The very small payments completed have been from personal efforts or payment arrangements to collection agencies as a result caused by the financial losses to the Claimant. The Claimant would otherwise have the bills paid in full.
b. The Claimant informed the respondent both in writing and by phone both in February and March 2017 that their actions would cause significant financial strain that could have resulted in the loss of the Claimant's home and did result is several fees (late, over the limit, etc.) incurred on several of the Claimant's accounts. The stress caused by the financial strain to the Claimant has resulted in the Claimant being placed on medication for stress, depression, and anxiety in

April 2017. While being treated for an infection, the Claimant informed her doctor of the stress suffered by the Claimant and the fears of financial ruin as caused by the actions of the Respondent which resulted in recommendations and cost for medication to help the Claimant. The Claimant has worked in the most overwhelmed county in the state of Arkansas as a family service worker for over seven years and has not received a recommendation for medication for stress, anxiety, or depression prior to this date.

c. The Respondent was informed both in writing and by phone that Travis Roth was removed from the Claimant's insurance at the Claimant's request and was added back to the Claimant's insurance without the Claimant's consent in February 2017.

d. The Claimant has been representing herself in this matter and has had the expense of time, postage, gas, loss of leave, research, materials, and work towards this matter ongoing since February of 2017. The Claimant has tried to resolve this matter peacefully through several avenues less evasive than legal action prior to this claim to the Arkansas Claims Commission that were disregarded by the Respondent throughout 2017.

e. The Claimant incurred several fees that have been paid to maintain the Claimant's home, property, and family. The effects of the Respondent's actions towards the Claimant will affect the Claimant for years following these proceedings in the form of the Claimant's credit rating, access to loans, and affected interest rates.

4. The Claimant is requesting a separate compensatory award for punitive damages in the amount of $30000 due to malicious intent by the Respondent. Punitive Damages are defined as the (exemplary) damages for punishment and to set an example when malice, intent or gross negligence was a factor.

    a. The Respondent was informed clearly both in writing and by phone in February and March of 2017 that:

        i. The Claimant was being charged premiums for no services whatsoever and that the Respondent would not be responsible for any medical claims. The Respondent continued to collect these premiums knowingly without

any financial obligation. The Respondent never received any claims for services to Travis Roth.

ii. The Respondent had removed the Claimant's husband from her insurance policy at the Claimant's request and added the Claimant's husband to the Claimant's policy without the Claimant's consent in February 2017. Furthermore, the Respondent refused to answer the multiple requests for the legal justification that allowed the Respondent to do so and continue charging the Claimant.

b. The Claimant has been fair in her dealings with the Respondent throughout the year, but the Claimant cannot agree that the same can be said of the Respondent being fair to the Claimant.

i. The Claimant has requested in writing multiple times the documentation, records, and recordings produced by the Respondent of phone calls between the Claimant and Respondent through these proceedings that have not been received at this time.

ii. The Claimant requested information both in February and March that was not provided by the Respondent including the justification for costs of the premiums and any laws that would allow the Respondent to continue charging those premiums after removing the spouse from the policy and the multiple requests by the Claimant for those charges to stop.

iii. The Claimant requested information to appeal the decision of the Employee Benefits Division. The information provided by a supervisor with Employee Benefits was incorrect and misleading. The Claimant requested a phone number to speak with the Board that handled the appeals and was told there was not one. The Claimant requested the supervisor's last name and was told no. The Claimant asked for the supervisor's supervisor and was only provided a first name. The requested supervisor turned out to be the director. The Claimant requested a return call from the director on at least four separate occasions. The Claimant received no return call from the director at any time.

iv. The Claimant attempted other methods of peaceful resolution that did not result in resolution of this matter with the same information provided within the original complaint and response by the Claimant. The Claimant was advised to pursue assistance through the Claims Commission by the Arkansas Department of Labor.

v. There was no offer made of any other expenses incurred by the Claimant nor were there any acknowledgement of the other financial and physical expenses to the Claimant. It was actually stated to the Claimant on two occasions that anything otherwise provided to the Claimant would cost the Respondent as an affirmative defense.

vi. The Claimant was offered a reimbursement of premiums paid and the removal of her spouse from the Claimant's insurance policy. The Claimant inquired as to how the offer was to be disbursed. It was stated the Claimant would receive the offer through her regular pay check. The Claimant asked specifically if it would result in more taxes being taken from the Claimant that would not have been taken otherwise. The Claimant was told no by the counsel to the Respondent. The Claimant consulted with Payroll to confirm and was informed that the method resulted in more taxes being taken out than would have been taken out if the Claimant paid taxes on the income throughout the year as it would have been received as regular income. The Claimant informed counsel of this and recommended other methods of disbursement that were ignored or met with contention. The funds were released through the Claimant's paycheck and the funds were taxed by approximately forty percent.

vii. The offer was disbursed without agreement and the Claimant was threatened to sign the written agreement or counsel to the Respondent would petition to have the Claimant's complaint dismissed for "mootness".

viii. The Claimant is a layman and unable to afford legal counsel in this matter. It is the belief that this fact in addition with the Claimant's peaceful constitution throughout this year is being and has been exploited by the Respondent as evident in all dealings with the Respondent stated above

and in the course of these proceedings by the immediate "Motion to Dismiss", "Request for Admission", and the threat to coerce the Claimant to sign a written document.

5. The Claimant's spouse was removed from the Claimant's insurance policy in October of 2017. The Claimant is not asking for him to be returned on the Claimant's policy. The Claimant has submitted no new requests in writing or by phone for Travis Roth to be placed on the Claimant's insurance policy since the original request made in December of 2016.

6. The compensatory awards requested in this petition would make the Claimant whole in that the Claimant would have full restitution for all the expenses incurred (physically, financially, mentally, and emotionally) as a result of the gross negligence made by the Respondent and detour the Respondent from any other inappropriate or malicious conduct that would result in the suffering of a state employee. The Claimant could financially stabilize due to the restitution for all the costs and expenses incurred by the Claimant. The Claimant would be fully relieved of the stressors that have required medication. The Claimant could pursue medical treatment for ongoing physical issues and pay the medical expenses that could not have be addressed as a result of these circumstances.

7. The previous offer was a reimbursement of money the Respondent had already received from the Claimant, nothing more. The offer that has been made up to this point is at absolutely no expense to the Respondent while the Claimant still has expenses, losses, and continues to suffer the consequences of the Respondent's actions. The Claimant then incurred additional costs as a result of the Respondent's actions as those funds were overtaxed. This was acknowledged and disregarded as no further offer would be at the expense of the Respondent.

8. The Claimant respectfully requests the materials previously requested to the Counsel for the Respondent for those proceedings.

9. The Claimant reserves the right to amend my response and to request a hearing on this matter.

WHEREFORE, The Claimant prays a thorough review of all documentation supplied and leniency of my ignorance towards the law the foregoing Arkansas State Claims Commission grants a judgement for the Claimant, to which the requested relief is justified.

Respectfully Submitted,

Melissa Roth, Claimant

Fort Smith, AR 72916

Certificate of Service

I, Melissa Roth, on this 6th day of November, 2017, do hereby certify that in accordance with the Arkansas Civil Procedure have sent a true and correct copy of the above and foregoing document via certified mail to:

Chris McNeal, #2012129
Office of Revenue Legal Counsel
Attorney for the Respondent
PO Box 1272, Room 2380
Little Rock, AR 72201

Arkansas State Claims Commission
101 E. Capitol Avenue, Suite 410
Little Rock, AR 72201

Melissa Roth

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MELISSA ROTH **CLAIMANT**

V. **CLAIM NO. 17-0728-CC**

ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION **RESPONDENT**

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is a motion filed by the Arkansas Department of Finance and Administration (the "Respondent") seeking summary judgment as to the claim of Melissa Roth (the "Claimant"). At the hearing held July 12, 2018, the Claims Commission heard argument from the parties regarding this motion. Claimant appeared *pro se*. Chris McNeil Based upon a review of the motion and the arguments of the parties, the Claims Commission hereby finds as follows:

1. Claimant filed the instant claim on May 18, 2017, seeking $3,325.40 in damages from Respondent's refusal to remove Claimant's spouse from her insurance policy.

2. On January 1, 2017, Claimant's spouse was added to her insurance policy. In February 2017, Claimant attempted to remove her spouse from her insurance policy (also referred to herein as the "Summary Plan Description" or the "Contract"). While Respondent initially approved the request, that approval was rescinded upon Respondent's determination that Claimant's spouse's insurance coverage did not qualify as "group coverage" that would permit Claimant to drop her spouse prior to the next enrollment period. Claimant then filed this claim to recover incurred and expected premium payments, as well as the $500.00 deductible applicable to her spouse's insurance coverage.

3. In October 2017, Respondent offered to reimburse Claimant for her 2017 monthly premiums, less the amount that Claimant would have paid for her own insurance coverage under

the Contract, in order to resolve the claim. As part of that proposed agreement, Respondent stated that it would rescind Claimant's spouse's coverage, and it asked for Claimant to dismiss her claim.

4. However, due to an internal miscommunication, Respondent paid Claimant the difference between her individual coverage and her individual-and-spouse coverage, less withholdings for income, Social Security, and Medicare taxes (the "Reimbursement Amount") prior to a formal agreement between the parties.

5. However, after receiving the Reimbursement Amount, Claimant amended her claim to seek $10,000.00 to cover the following alleged damages:

> . . . the $500 deductible within the original complaint; what would be legal fees for the Claimant's time, work, postage, gas, research, materials, and other expenses for the Claimant in pursuit of fair treatment by the Respondent; any and all fees and monetary losses incurred as a result of financial distress resulting for [sic] all circumstances presented in this and the original complaint; and pain and suffering due to hindrance and interference with access to health services for the Claimant as well as the effect to the Claimant's health as a result of the Respondent's negligence.

Claimant also asserted that the Reimbursement Amount was "overtaxed." Additionally, she asked the Claims Commission to award $30,000.00 in punitive damages "due to malicious intent by the Respondent."

6. Respondent denied liability as to the additional amounts and subsequently filed the instant motion for summary judgment.

7. In the motion, Respondent argued that Claimant's spouse was not enrolled in group coverage to permit removal from Claimant's policy; that Claimant cannot recover punitive damages or special damages as a matter of law; that Claimant has already recovered the full amount of damages that she could receive under the contract; that Claimant's special damages are the result of her lack of due diligence; and that, as a non-attorney, Claimant is not entitled to recover "would be legal fees."

8. In her response, Claimant disagreed with each of Respondent's points. Claimant focused significantly on her belief that Claimant's spouse was removed from her policy on February 27, 2017, and then added back on February 28, 2017, without her consent. Claimant also argued that Respondent exhibited malicious intent and gross negligence because it continued to collect premiums from Claimant despite her statements that doing so would cause her financial harm.

9. Respondent filed a reply brief arguing, *inter alia*, that Claimant failed to set forth genuine issues warranting denial of Respondent's motion for summary judgment.

10. Pursuant to Rule 56(c)(2), summary judgment is appropriate when there are no genuine issues as to any material fact, and the moving party is entitled to judgment as a matter of law. *See Hisaw v. State Farm Mutual Auto Insurance Co.*, 353 Ark. 668, 122 S.W.3d 1 (2003). Summary judgment motions are subject to a shifting burden, in that once the moving party has made a *prima facie* showing of entitlement to summary judgment, "the burden then shifts to the nonmoving party to show that material questions of fact remain." *Flentje v. First National Bank of Wynne*, 340 Ark. 563, 569, 11 S.W.3d 531, 536 (2000). Summary judgment is useful "when there is no real issue of fact to be decided." *Hughes Western World, Inc. v. Westmoore Manufacturing Co.*, 269 Ark. 300, 301, 601 S.W.2d 826, 826 (1980).

11. The Claims Commission finds that Respondent made a *prima facie* showing that it was entitled to summary judgment. Regardless of whether Respondent should have granted Claimant's request to drop her spouse from her coverage, Respondent paid the difference in premiums—the Reimbursement Amount—to Claimant in October 2017. While Claimant stated that she is claiming "gross negligence" on the part of Respondent, Claimant's claim is for breach of contract because it is based solely upon Claimant's allegations that Respondent did not perform

as it was required to do under the Contract. As argued by Respondent, the Contract does not provide for any of the special damages claimed by Claimant.

12. The Claims Commission finds that Claimant did not demonstrate that material questions of fact remain. As for Claimant's allegation that Respondent added her spouse back to her policy without her consent, the documents attached to Claimant's response to the motion for summary judgment show that Claimant was notified that changes to coverage take effect on "the first of the month following date of application and following your qualifying event," i.e. March 1, 2017. *See* Cl's Resp. to MSJ, Exhibit 2. As such, the Claims Commission is not persuaded by Claimant's argument that Respondent removed her spouse from her policy then added the spouse back without her consent. Instead, in the time between Claimant's request and the effective date of such coverage changes, Respondent re-analyzed the request and rescinded the approval that Claimant received on February 27, 2017. *See* Cl's Resp. to MSJ, Exhibit 4. Even if the rescission was in violation of the Contract, Respondent has paid the Reimbursement Amount to Claimant.

13. The Claims Commission finds one undisputed fact to be especially significant in this claim, which is that Claimant never asked Respondent or researched Respondent's website to determine the cost of adding Claimant's spouse to her policy. As stated in Claimant's deposition:

> Q: At the time you added your spouse, did you know how your monthly premium would change?
>
> A: No.
>
> Q: Did you know that it would change?
>
> A: Yes.
>
> Q: Did it ever occur to you to find out how much it would change?
>
> A: I had asked coworkers.
>
> Q: These coworkers you asked, were they individuals who worked for Employee Benefits Division?

A: No.

Q: Did you ask anyone within Employee Benefits Division how your premium would change?

A: No.

Q: Did you ever consult the Employee Benefits Division website to verify how your premium might change?

A: No.

See Resp's MSJ at Exhibit A, p. 7–8. The Claims Commission is unpersuaded by her explanation that she preferred to ask coworkers "about their experiences with having their spouses on their policies." *See* Resp.'s MSJ at Exhibit A, p. 8. Had Claimant determined the pertinent details prior to adding her spouse to her coverage, she could have made an informed financial decision. The fact that Claimant made Respondent aware of the subsequent financial distress caused by having her spouse on her policy does not excuse Claimant's lack of diligence or mandate that Respondent should have deviated from its stated policy regarding qualifying events or create an issue of material fact.

14. As to the special damages claimed by Claimant, the Claims Commission finds, as a matter of law, that Claimant is not entitled to special damages. *See K.C. Properties of N.W. Ark., Inc. v. Lowell Inv. Partners, LLC*, 373 Ark. 14, 24, 280 S.W.3d 1, 10 (2008) ("In order to recover consequential damages in a breach-of-contract case, a plaintiff must prove more than the defendant's mere knowledge that a breach of contract will entail special damages to the plaintiff. It must also appear that the defendant at least tacitly agreed to assume responsibility."). Claimant has alleged no facts regarding Respondent's assumption of responsibility for her special damages.

15. As to the punitive damages claimed by Claimant, the Claims Commission finds, as a matter of law, that Claimant is not entitled to punitive damages. *See McClellan v. Brown*, 276 Ark. 28, 30, 632 S.W.2d 406, 407 (1982) ("Punitive damages are not ordinarily recoverable for

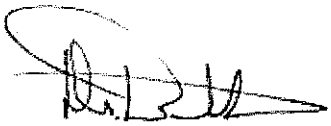
breach of contract . . . To support a claim for punitive damages there would have to be a willful or malicious act in connection with a contract . . . ."). Although Claimant used the word "malice" or "malicious" several times in her pleadings, Claimant did not allege any facts regarding willfulness or malice on the part of Respondent. The fact that Claimant's spouse did not make any claims for insurance benefits does not demonstrate malice on Respondent's part for collecting the premiums. Similarly, the fact that Claimant notified Respondent that Claimant's spouse would not be using the insurance does not demonstrate malice on Respondent's part for collecting the premiums.

16. As to the "would be legal fees," Claimant is not an attorney and has stated no basis or legal precedent for an award of attorney's fees. The Claims Commission finds, as a matter of law, that Claimant is not entitled to attorney's fees.

17. The Claims Commission declines to address whether the Reimbursement Amount was overtaxed because issues of taxation are outside of the Claims Commission's jurisdiction. *See* Ark. Code Ann. § 19-10-204.

18. The Claims Commission hereby GRANTS Respondent's motion for summary judgment and DENIES and DISMISSES Claimant's claim.

IT IS SO ORDERED.



ARKANSAS STATE CLAIMS COMMISSION
Dexter Booth

ARKANSAS STATE CLAIMS COMMISSION
Bill Lancaster

ARKANSAS STATE CLAIMS COMMISSION
Mica Strother, Co-Chair

DATE: August 1, 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).

BEFORE THE ARKANSAS STATE CLAIMS COMMISSION

MELISSA ROTH **CLAIMANT**

V. **CLAIM NO. 17-0728-CC**

ARKANSAS DEPARTMENT OF FINANCE AND ADMINISTRATION **RESPONDENT**

ORDER

Now before the Arkansas State Claims Commission (the "Claims Commission") is a motion filed by Melissa Roth (the "Claimant") for reconsideration of the Claims Commission's August 1, 2018, order denying and dismissing Claimant's claim against the Arkansas Department of Finance and Administration (the "Respondent"). Based upon a review of Claimant's motion, the arguments made therein, and the law of Arkansas, the Claims Commission hereby unanimously finds as follows:

1. On May 18, 2017, Claimant filed a claim seeking $3,325.40 in damages from Respondent's refusal to remove Claimant's spouse from her insurance policy.

2. On January 1, 2017, Claimant's spouse was added to her insurance policy. In February 2017, Claimant attempted to remove her spouse from her insurance policy (also referred to herein as the "Summary Plan Description" or the "Contract"). While Respondent initially approved the request, that approval was rescinded upon Respondent's determination that Claimant's spouse's insurance coverage did not qualify as "group coverage" that would permit Claimant to drop her spouse prior to the next enrollment period. Claimant then filed this claim to recover incurred and expected premium payments, as well as the $500.00 deductible applicable to her spouse's insurance coverage.

3. In October 2017, Respondent offered to reimburse Claimant for her 2017 monthly premiums, less the amount that Claimant would have paid for her own insurance coverage under the Contract, in order to resolve the claim. As part of that proposed agreement, Respondent stated that it would rescind Claimant's spouse's coverage, and it asked for Claimant to dismiss her claim.

4. However, due to an internal miscommunication, Respondent paid Claimant the difference between her individual coverage and her individual-and-spouse coverage, less withholdings for income, Social Security, and Medicare taxes (the "Reimbursement Amount") prior to a formal agreement between the parties.

5. However, after receiving the Reimbursement Amount, Claimant amended her claim to seek $10,000.00 to cover the following alleged damages:

> . . . the $500 deductible within the original complaint; what would be legal fees for the Claimant's time, work, postage, gas, research, materials, and other expenses for the Claimant in pursuit of fair treatment by the Respondent; any and all fees and monetary losses incurred as a result of financial distress resulting for [sic] all circumstances presented in this and the original complaint; and pain and suffering due to hindrance and interference with access to health services for the Claimant as well as the effect to the Claimant's health as a result of the Respondent's negligence.

Claimant also asserted that the Reimbursement Amount was "overtaxed." Additionally, she asked the Claims Commission to award $30,000.00 in punitive damages "due to malicious intent by the Respondent."

6. Respondent filed a motion for summary judgment. The motion was argued by the parties at a hearing on July 12, 2018, and was subsequently granted by the Claims Commission on August 1, 2018.

7. Claimant then filed the instant motion for reconsideration. While it is hard to determine Claimant's exact arguments, the Claims Commission summarizes them as follows: (1) the "would be legal fees" should be awarded to compensate Claimant for the "time, work,

materials, loss of paid leave, postage, mileage, etc." that Claimant incurred as a result of this claim; (2) Respondent committed fraud by removing Claimant's spouse from the policy then "return[ing] [Claimant's spouse] to the policy without the Claimant's consent or request;" (3) the Reimbursement Amount was overtaxed; (4) there was no evidence presented by Respondent other than Claimant's deposition, Chris Howlett's affidavit, and Terri Freeman's affidavit, and Claimant disputes the affidavits; (5) Claimant's deposition was obtained "without proper notice," and "Claimant was told that she was legally required to attend;" and (6) Claimant does not understand how Respondent added Claimant's spouse back to her policy and believes Respondent's actions to be malicious, knowing, and willful.

8. Respondent responded to the motion for reconsideration, adopting its motion for summary judgment and reply brief to address her arguments.

9. In analyzing a motion for reconsideration, Rule 7.1 of the Claims Commission Rules and Regulations states that motions for reconsideration "will only be entertained if they set forth new or additional evidence which was not [previously] available . . . ."

10. The Claims Commission finds that the motion does not set forth new or additional evidence not previously available.

11. Had Claimant thoroughly researched the costs involved with adding her spouse to her policy prior to doing so, she could have made an informed financial decision. However, Claimant did not.

12. Claimant also puts an enormous amount of weight on her misconception that her spouse was removed from her policy and then added back on without her consent. However, the documents show that this did not happen. Instead, Respondent initially approved the request to drop her spouse from coverage on the first day of the next month, but before the coverage change

took effect, Respondent rescinded its approval. *See* Cl's Resp. to MSJ, Exhibits 2, 4. Where Claimant apparently views the rescission as fraud, the Claims Commission views it as evidence of Respondent's good business practices and stewardship of state resources, especially in light of the fact that the error was caught prior to the date that the coverage change would have become effective.

13. To the extent that Claimant believes the Reimbursement Amount was overtaxed, that issue is outside the jurisdiction of the Claims Commission, as stated in its August 10, 2018, order.

14. Claimant's motion for reconsideration is DENIED, and the August 1, 2018, Claims Commission order remains in effect.

Henry C. Kinslow

ARKANSAS STATE CLAIMS COMMISSION

Dexter Booth
Henry Kinslow, Co-Chair
Bill Lancaster
Sylvester Smith
Mica Strother, Co-Chair

DATE: October 26, 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).

IN THE ARKANSAS STATE CLAIMS COMMISSION

CLAIM NO. 17-0728-CC

MELISSA ROTH

VS.

STATE OF ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION

MOTION FOR APPEAL

I, Melissa Roth (Claimant), representing myself in this matter, humbly request the appeal of the summary judgement in this matter for the following reasons and justifications.

1. A Request for Admission was submitted by the Claimant in this matter. If any statement is admitted, the statement is considered to be true for all purposes of the current trial. The Respondent admitted the removal of Travis Roth from the policy. This is true and cannot be found untrue to the matter. In addition to the Request for Admission. There was other supporting evidence provided that also showed that Travis Roth was removed from the policy and additional evidence showing that the removal was justified. Nothing was presented by the Respondent in the benefit policy or law that provided the Respondent with the authority to place Travis Roth on the policy again under any circumstances.
    a. Claimant's Exhibit 4 – approval letter received on February 27th 2017 and phone transcription of the Claimant's call to the Respondent on February 28th 2017.
    b. Claimant's Exhibit 5 – the Respondent's answers to the Claimant's Request for Admission. The Request for Travis Roth to be removed from the policy was approved on February 27th 2017. The only request to add Travis Roth to the policy was received by the Claim's Commission was in December of 2016.
    c. Claimant's Exhibit 7 – The Respondent's call log states on February 28th the Claimant was enrolled in Employee Only coverage.
    d. The Respondent's proposed Findings of Fact claiming that the removal was an "accident" still does not deny that Travis Roth was removed from the policy.

e. The Claimant interviewed Chris Howlett, Terri Freeman, and Andrew Carle the day of the illegally obtained deposition. Notes from those interviews were submitted to the Claims Commission with permission and each individual admitted that Travis Roth was removed from the policy.

f. There has been no documentary evidence of any kind that states when Travis Roth was added to the policy. Claimant's exhibits 4 and 7 show that Travis Roth was not on the policy as of February 27th 2017 and February 28th 2017.

2. There were matters unaddressed or not set forth in a hearing. I had placed before the Commission requests and evidence to the matter that were unaddressed and also requested hearing to address such matters.

   a. I had asked for a finding to the credibility of the Respondent due to the repeated contradictions, misleadings, and fraud committed by the Respondent. There is a difference between a trick and a lie. The legal definitions of terms used in law are not always the same or similar as when terms are used in common speech. This was learned by the Claimant in the course of this whole process. For this reason, the Claimant requested the legal definition of "fraud" during the court proceedings which was not provided. Fraud is a serious allegation to which the Claimant takes very seriously. The Claimant does not wish to unintentionally inflict damages to another person without correct and fair justification. The Claimant was aware the actions of the Respondent were unlawful and this has been previously stated in multiple responses by the Claimant. Based on further research, placing Travis Roth on the policy without knowledge or consent is in itself fraud and is further supported by repeated misrepresentation of the truth by the Respondent and Counsel for the Respondent.

   b. Counsel for the Respondent has alleged that the Claimant received a full reimbursement. Documentary evidence illustrates this is untrue. Claimant's Exhibit 9 shows clearly that the Claimant was not fully reimbursed the amount of premiums the Claimant would have received naturally throughout the year. The comparison of the two paystubs in the same exhibit show a significant increase in the taxes paid at a higher percentage of the income. Additionally, the Counsel for the Respondent attempted to force the Claimant to sign a legal document not

agreed to by Claimant. On October 5th 2017, the written agreement presented to the Claimant for "the reimbursement" was responded to exactly 65 minutes following receipt. It was evident that there was not an agreement at that point and the amount the Respondent considered a reimbursement was dispersed. The Claimant has never agreed to the amount dispersed and the amount was overtaxed.

c. The only "evidence" presented by the Respondent has been the Claimant's deposition and affidavits completed by Chris Howlett and Terri Freeman. The deposition was obtained without proper procedure while under legal threat and therefore obtained fraudulently. The factual documentary evidence presented by the Claimant contradicts the affidavits presented by the Respondent resulting in no real evidence presented by the Respondent at all. The Claimant has also stated throughout the proceedings in their entirety that there are multiple areas of the Respondent's inconsistency with fact and the misconduct by the Counsel for the Respondent in several responses throughout these proceedings, including the Claimant's Response to the Motion for Summary Judgement of these proceedings. The Claimant has made requests for a finding of credibility of the Respondent and sanctions for misconduct in prior responses and recommended a hearing to the matter, which was not addressed in this order or in these proceedings. The Claimant did not bring them up for the hearing or request witnesses that would exemplify the lack of the credibility of the Respondent as the focus of the hearing was the Respondent's motion only.

    i. The Deposition was obtained without proper notice as evident in Claimant's exhibit 8. Furthermore, the Claimant was told that she was legally required to attend, also in exhibit 8.

    ii. The Claimant objected to the admission of the Deposition and both Affidavits in the Claimant's Response to the Motion. There have been inconsistencies made throughout these proceedings by the Respondent and Counsel for the Respondent. These inconsistencies contradict the Affidavits of both Chris Howlett and Terri Freeman.

iii. The documentary evidence presented above by Claimant refutes that the Affidavit of Terri Freeman. No documentary evidence has been presented of when Travis Roth was added back to the policy. The Affidavit is also contradicted by the response for the Request for admission by Counsel on behalf of the Respondent and the interviews completed by Terri Freeman with the Claimant, submitted for the original April hearing. Additionally, the Respondent's Response to the Amended complaint stated that Travis Roth was returned to the policy in the same day which is also untrue.

iv. Exhibit 9 presented by the Claimant refutes the Affidavit of Chris Howlett. The amount provided to the Claimant was overtaxed. No ruling was made to this. There is also no evidence presented by the Claimant or the Respondent that all of the damages described in the original or amended complaint that fell solely on the Claimant have been fully recouped in any way. Several statements in both Affidavits are untrue resulting in the request for a finding as to the credibility of the Respondent.

d. The Claimant has asked more than once how the Respondent added Travis Roth to the policy legally at the time the event occurred, repeatedly following the event through phone and appeal, through other parties (Payroll, Better Business Bureau, and a senator), and still to this day. Prior to the claim filed with the Commission, this request was ignored intentionally as no effort was performed by the Respondent prior to filing of this claim while the Claimant's "lack of efforts" noted in the order were purely unintentional. The Respondent intentional lack of efforts were malicious and resulted in the circumstances that led to the entirety of these proceedings. While the Claimant made all efforts to remedy this mistake, all parties interviewed by the Claimant stated that no legal counsel or supervisor was consulted to this matter. Absolutely no due diligence or effort was performed by the Respondent. The Respondent was malicious by the definition presented in Arkansas the Constitution. The Arkansas Constitution uses the language "absence of all care" in association with "wantonness and conscious indifference to the consequences." The Claimant also used the term knowingly, as a layman, and would not distinguish as a layman between knowingly and willfully. Otherwise

the Claimant would have claimed already the actions of the Respondent were knowing and willful. The term "willfully" means no more than that the forbidden act was done deliberately and with knowledge, and does not require proof of evil intent. *McClanahan v. United States*, 230 F.2d 919, 924 (5th Cir. 1955), *cert. denied*, 352 U.S. 824 (1956); *McBride v. United States*, 225 F.2d 249, 255 (5th Cir. 1955), *cert. denied*, 350 U.S. 934 (1956). The Respondent added Travis Roth to the policy intentionally and willfully without further request by the Claimant providing the legal consent. This has resulted in these proceedings in their entirety and the damages to the Claimant. The Respondent knew what the consequences would be to the Claimant as the Respondent was informed in writing and verbally to those consequences and disregarded the Claimant's plight. Furthermore to this day, there has not been a law or policy that provides the Respondent with the authority to have added Travis Roth to the policy following his removal from the policy under **any** circumstances. With all facts presented by documentary evidence, punitive damages are justifiable in this case based on the willful and malicious actions of the Respondent.

3. The Claimant is not an attorney. The request for "what would be legal fees" were to compensate the Claimant for the all the time, work, materials, loss of paid leave, postage, mileage, etc. that the Claimant has and will continue to expel to acquire justice for the actions taken and lack of action of the Respondent against the Claimant. These fees were a portion of the Compensation for General Damages requested. The damages to the Claimant's credit, finances, and overall physical and mental health will cost the Claimant both physically and financially for several years to come and are also a direct result of the Respondent illegally placing Travis Roth to policy without the Claimant's consent or request. The claim for General Damages was conservative and calculated based at the time the claim was made. The Claimant to this day has been unable to remedy the damages created by the Respondent's actions. The purposes of the Amended Claim were to make the Claimant whole as in any civil suit of this kind. The damages resulting from this incident and the prolonging of the circumstances, a direct result of the Respondent's actions, have not been addressed.

WHEREFORE, The Claimant prays a thorough review of all documentation supplied and leniency of my ignorance towards the law the foregoing Arkansas State Claims Commission grants a judgement for the Claimant, to which the requested relief is justified.

Respectfully Submitted,

Melissa Roth

Melissa Roth, Claimant

Fort Smith, AR 72916

Certificate of Service

I, Melissa Roth, on this 19th day of November, 2018, do hereby certify that in accordance with the Arkansas Civil Procedure have sent a true and correct copy of the above and foregoing document via certified mail to:

Chris McNeal, #2012129
Office of Revenue Legal Counsel
Attorney for the Respondent
PO Box 1272, Room 2380
Little Rock, AR 72201

Arkansas State Claims Commission
101 E. Capitol Avenue, Suite 410
Little Rock, AR 72201

Melissa Roth

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