

## **MINUTES**

### **JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE**

October 7, 2015  
Room 218-N—Statehouse

#### **Members Present**

Representative James Todd, Chairperson  
Senator Dan Kerschen, Vice-chairperson  
Senator Terry Bruce  
Senator David Haley  
Representative Mike Houser  
Representative Craig McPherson  
Representative Kathy Wolfe Moore

#### **Staff Present**

Cindy Lash, Kansas Legislative Research Department  
Natalie Teemer-Washington, Kansas Legislative Research Department  
Andy Chiamopoulos, Kansas Legislative Research Department  
Mike Heim, Office of Revisor of Statutes  
Daniel Yoza, Office of Revisor of Statutes  
Deb Burns, Committee Assistant

#### **Conferees**

Libby Snider, Kansas Department of Corrections  
Judy Baldwin  
Joseph Ledbetter, Attorney  
David Martin Price  
Elizabeth Reimer, Office of Judicial Administration

#### **Others in Attendance**

Sarah Washburn, Kansas Highway Patrol  
K. A. Roehl, Kansas Department of Corrections

#### **Morning Session**

Chairperson Todd called the meeting to order at 9:00 a.m. Members introduced themselves; new members and staff were welcomed.

*Representative McPherson moved to readopt existing Rules as written; Senator Kerschen seconded the motion; the motion carried.*

*Representative Houser moved to approve the January 7, 2015, minutes; Senator Kerschen seconded the motion; the motion carried.*

**Claim No. 6707, Claimant, Edgar Livingston #63746**

**v. Respondent, Department of Corrections (Department)  
due to property loss in the amount of \$34.95**

Claimant stated his newly purchased gym shoes were worn down and allowing water to enter after only three to four weeks of wear. He stated he tried to communicate with authorities at the facility that he needed help to get his money reimbursed to buy a new pair, but they did not help him reach a solution.

**Respondent, Department  
represented by Libby Snider, Legal Counsel, Department**

Respondent stated the facility investigator responded that this was “not a canteen issue or a property claim as these shoes were claimed to be defective by the offender due to normal wear and tear.” The State is not an insurer of inmate property; negligence as the cause of the loss must be shown to establish liability. There is none shown in this instance, and the Department recommends the claim be denied.

*Following discussion, the Joint Committee recommended Claim No. 6707 be denied.*  
(See section captioned “Committee Action and Recommendation.”)

**Claim No. 6715, Claimant, Ray Floyd Garcia, Jr. #6002627**

**v. Respondent, Department of Corrections (Department)  
due to property loss in the amount of \$17.10**

Claimant stated he was approved by the facility to purchase ten watch batteries; he used one and was told by a corrections officer that the remainder would need to be placed in storage until needed. Later when he requested another of the stored batteries, he was told the batteries were destroyed because he failed to respond to a removal notice. He claims he never received a removal notice and officers were negligent in destroying his property.

**Respondent, Department  
represented by Libby Snider, Legal Counsel, Department**

Respondent stated Department policy specifies inmates may have one wristwatch and one battery, and there is no provision for extra batteries. The Department recommends the claim be denied.

*Following discussion, the Joint Committee recommended Claim No. 6715 be denied.*  
(See section captioned “Committee Action and Recommendation.”)

**Claim No. 6716, Claimant, Ray Floyd Garcia, Jr. #6002627**  
**v. Respondent, Department of Corrections (Department)**  
**due to property loss in the amount of \$15.64**

Claimant stated he was approved for purchase and received a tattoo book, but the facility later told him it was not allowed due to inappropriate content and that he would need to dispose of it. He arranged with the facility mail room to send the book back to the vendor for a refund, but the vendor claimed they never received the book. He has proof that he paid to mail it out and he feels the mail room lost his property.

**Respondent, Department**  
**represented by Libby Snider, Legal Counsel, Department**

Respondent stated when mailing property out of a facility, inmates assume the risk of loss or damage of property when they do not purchase insurance. Because there is no showing the claimed loss was the direct result of staff negligence, the Department recommends this claim be denied.

*Following discussion, the Joint Committee recommended Claim No. 6716 be denied.*  
*(See section captioned "Committee Action and Recommendation.")*

**Claim No. 6718, Claimant, Arthur Bowles #58959**  
**v. Respondent, Department of Corrections (Department)**  
**due to property damage in the amount of \$13.62**

Cindy Lash summarized the claim: Claimant alleges that during a routine shakedown of his cell an officer dropped his radio after which it did not work. Claimant seeks reimbursement for loss of the radio and battery.

**Respondent, Department**  
**represented by Libby Snider, Legal Counsel, Department**

Respondent stated while the facility claims investigator was able to confirm the claimant had purchased a radio in May, 2014, the radio did not appear on any subsequent inventory of Claimant's property. In addition, the officer who conducted the search indicated the radio had been taped together before the search deeming it contraband. It is not clear the claimed loss was the direct result of staff negligence. As such, the Department recommends this claim be denied.

*Following discussion, the Joint Committee recommended Claim No. 6718 be denied.*  
*Representative Wolfe Moore voted "no." (See section captioned "Committee Action and Recommendation.") Representative Houser suggested the Department begin photographing and recording serial numbers of electronic property to provide better tracking.*

**Claim No. 6727, Claimant, Raymond Boothe #79444**

**v. Respondent, Department of Corrections (Department)  
due to property damage in the amount of \$4.00**

Claimant stated he was removed from his cell during a shakedown and when he returned he found his headphones laying broken on the floor. He immediately summoned one of the head officers to witness the loss. The officer told him to file a property claim.

**Respondent, Department**

**represented by Libby Snider, Legal Counsel, Department**

Respondent stated the officer, who conducted the shakedown, indicates the claimed property was not damaged when he left the cell, and Claimant's allegation could not be substantiated. Absent the required showing that the claimant suffered a loss as the direct result of staff negligence, the Department recommends this claim be denied.

*Following discussion, the Joint Committee recommended Claim No. 6727 be allowed in the amount of \$4.00. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6698, Claimant, Andrew Hansen #99999**

**v. Respondent, Department of Corrections (Department)  
due to personal injury in the amount of \$1,000.00**

Natalie Teemer-Washington summarized the claim: Claimant was walking back from the facility cafeteria when he suffered an injury to his knee due to a fall on a slippery walkway.

**Respondent, Department**

**represented by Libby Snider, Legal Counsel, Department**

Respondent stated, based on the limited information available, it appears the claimed injury was limited to swelling. Claimant was treated and had no further complaints. Absent the required showing that the claimed injury was the direct result of staff negligence, the Department recommends this claim be denied.

*Following discussion, the Joint Committee recommended Claim No. 6698 be dismissed without prejudice under Rule 2. (See section captioned "Committee Action and Recommendation.") A Committee member suggested the Department clear the sidewalks of snow.*

**Claim No. 6688, Claimant, Diego Garcia #94981**

**v. Respondent, Department of Corrections (Department)  
due to property loss in the amount of \$207.00**

Claimant stated he was ordered to segregation and an officer seized his television while his property was packed out, citing another inmate's name and number on the television. He protested that as incorrect; his name and number were on the seized property.

**Respondent, Department**  
**represented by Libby Snider, Legal Counsel, Department**

Respondent stated the claim investigator confirmed the Claimant had purchased a television but was unable to verify the television in question was the property confiscated. The investigator was unable to locate the confiscation notice and found no property belonging to the claimant in the storage area. The Department recommends this claim be denied.

*Following discussion, the Joint Committee recommended Claim No. 6698 be dismissed without prejudice under Rule 2. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6689, Claimant, Judy M. Baldwin (appeared with her attorney)**  
**v. Respondent, Department of Corrections (Department)**  
**due to personal injury in the amount of \$4,563.87**

Claimant stated while visiting an inmate in the facility visitation room, she was struck on the head by a free-standing partial partition wall when it was accidentally knocked over by a small child. She filed an injury claim with the facility the same day; several days later she went to the emergency room and was treated for a concussion; she was told to stay home from work for one week.

On behalf of his client, Claimant's attorney amended the total amount claimed to a lower sum of \$3,277.89, having found that some medical expenses originally claimed do not apply to this claim.

**Respondent, Department**  
**represented by Libby Snider, Legal Counsel, Department**

Respondent stated the partition in question is designed specifically to be freestanding and mobile, not anchored. Use of the partition was reasonable and consistent with its design and its intended purpose. It had functioned well for several years, and any danger posed by it was equally knowable by the Claimant. There is no showing of negligence on the part of any state employee, and the Department recommends this claim be denied.

*Following discussion, the Joint Committee recommended Claim No. 6689 be dismissed without prejudice under Rule 2. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6714, Claimant, Lansco Colors**  
**v. Respondent, Kansas Correctional Industries/Department of Corrections due to bill**  
**not presented in proper fiscal year in the amount of \$6,506.21**

Andy Chiamopoulos summarized the claim: Claimant seeks reimbursement of the monetary difference between the amount billed and the amount contracted.

**Respondent, Department  
represented by Libby Snider, Legal Counsel, Department**

Respondent stated Claimant contracts with Kansas Correctional Industries to provide yellow pigment for use in traffic coatings. The contract in effect between March 13, 2013, and December 31, 2014, included a unit price of \$3.49 per pound of pigment. Between April 8, 2013, and September 8, 2014, Lansco invoiced the product at a rate of \$3.35 per pound. The Department recommends this claim be paid.

*Following discussion, the Joint Committee recommended Claim No. 6714 be allowed in the amount of \$6,506.21. Senator Haley voted “no.”(See section captioned “Committee Action and Recommendation.”)*

**Claim No. 6694, Claimant, David Martin Price**

**v. Respondent, Kansas Courts  
due to violation of constitutional rights/obstruction of justice/improper billing/more in  
the amount of \$18,080,000.00**

Claimant stated Kansas Courts severed his parental rights when his child entered the foster care system, alleging abuse. The Court later removed the allegation but failed at any attempt to re-integrate the child back to him. He was prevented from accessing any records (school, medical, or other) pertaining to his child in order to make clear and accurate decisions on behalf of the child.

**Respondent, Kansas Courts  
represented by Elizabeth Reimer, Office of Judicial Administration (OJA)**

Respondent stated Claimant's legal arguments have been subject to court scrutiny multiple times. Claimant disagrees with the decisions made by the courts but the disagreement does not give rise to a monetary claim against the courts. This Committee is not a forum for the litigation or re-litigation of state district court or appellate court cases or decisions. The OJA recommends this claim be denied.

*Following discussion, the Joint Committee recommended Claim No. 6694 be denied. (See section captioned “Committee Action and Recommendation.”)*

**Claim No. 6691, Claimant, Randy Pioletti #39725**

**v. Respondent, Department of Corrections (Department)  
due to property loss in the amount of \$233.21**

Claimant stated while he was at work, another inmate entered his cell at a time when officers had the door open and took his television, radio, and coaxial cable. He says there is no reason his cell should have been left open while he was not in it.

**Respondent, Department**  
**represented by Libby Snider, Legal Counsel, Department**

Respondent stated officers reviewed the security camera video and found no one entering Claimant's cell during the alleged time frame. "Mass movement" is a common practice in these facilities, during which all cell doors are opened and all inmates present are moved to another area, such as meals, recreational yard, and work call. The State is not an insurer of inmate property; negligence as the cause of the loss must be shown to establish liability. There is none shown in this instance, and the Department recommends this claim be denied.

*Following discussion, the Joint Committee recommended Claim No. 6691 be allowed in the amount of \$233.21. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6695, Claimant, James Tackett #59193**  
**v. Respondent, Department of Corrections (Department)**  
**due to property loss in the amount of \$30.00**

Claimant stated he was placed in segregation and an officer packed out his property, but did not pack two of his books he claims did not contain a property stamp on the inside covers. Claimant provided receipts for his property and claims this was a negligent act or omission on the part of facility staff by not properly stamping the claimed items when they were received by the facility through mail order.

**Respondent, Department**  
**represented by Libby Snider, Legal Counsel, Department**

Respondent stated the officer reported any books that did bear a stamp were packed-out. Claimant's ownership of the books is not in question. The question is whether they were present in the cell at the time of the pack-out. There was nothing to substantiate Claimant's loss or that any loss was the direct result of staff negligence. The Department recommends this claim be denied.

*Following discussion, the Joint Committee recommended Claim No. 6695 be allowed in the amount of \$30.00. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6696, Claimant, Wyatt Parnell #91845**  
**v. Respondent, Department of Corrections (Department)**  
**due to property loss in the amount of \$192.05**

Claimant stated while he was at work, officers left his unoccupied cell door open and inmates stole his property. He claims negligence on the part of the officers for opening the unoccupied cell for others to gain access.

**Respondent, Department**  
**represented by Libby Snider, Legal Counsel, Department**

Respondent stated the claim investigator reviewed security video and was able to verify that a theft had occurred. The individual responsible was identified and charged through the disciplinary process. Restitution was sought based upon the claimed items that could be identified as legitimately purchased by Mr. Parnell. Because there was no showing of staff negligence, and because Claimant would recover through the disciplinary process, the Department recommends this claim be denied.

*Following discussion, the Joint Committee recommended Claim No. 6696 be denied. Senator Haley voted “no”. (See section captioned “Committee Action and Recommendation.”)*

**Claim No. 6706, Claimant, Chilo Hernandez #71264**  
**v. Respondent, Department of Corrections (Department)**  
**due to property loss in the amount of \$966.00**

Claimant stated his property was donated by the facility without his written authorization. His requests for the laws associated with the questions on the Property Form 9 went unanswered or ignored, therefore he demands the return of monetary loss for his property.

**Respondent, Department**  
**represented by Libby Snider, Legal Counsel, Department**

Respondent stated Claimant failed to file his claim within the required 15 days of the discovery of the loss. Claimant’s assertion that all of his questions were ignored is incorrect as the original notice indicated he was required to remove the property based on failure to progress in incentive level. In addition, the Department’s liability shall not exceed the established value limit; there is no established value limit for sketches or paintings, therefore Claimant is not entitled to compensation for any such items.

*Following discussion, the Joint Committee recommended Claim No. 6706 be denied. (See section captioned “Committee Action and Recommendation.”)*

**Claim No. 6721, Claimant, Ronnie Sanders #85527**  
**v. Respondent, Department of Corrections (Department)**  
**due to property loss in the amount of \$230.00**

Claimant stated his cell was broken into and his television was stolen. The facility agrees a theft took place and restitution is being sought, but he will not receive any money until the facility can collect it from the responsible inmates. He would like to have the money now so he can purchase a replacement television and leave the perpetrator to repay the state.



**Respondent, Department  
represented by Libby Snider, Legal Counsel, Department**

Respondent stated facility staff investigated the matter, the theft was substantiated, and the perpetrator was charged. Restitution was imposed and Claimant has received at least one payment toward the restitution, equal to half the amount of the claim. The State is not an insurer of inmate property; negligence as the cause of the loss must be shown to establish liability. There is none shown in this instance, and the Department recommends this claim be denied.

*Following discussion, the Joint Committee recommended Claim No. 6721 be denied.*  
*(See section captioned "Committee Action and Recommendation.")*

**Claim No. 6728, Claimant, Jeremy Way #107329**  
**v. Respondent, Department of Corrections (Department)**  
**due to property loss in the amount of \$19.77**

Claimant stated after a lengthy chain-of-approval process, he received facility approval for art supplies he ordered, which later were taken from him as deemed contraband. He made numerous inquiries about the items but they were destroyed before he received answers. He states the facility should not have donated his items without his permission, nor without providing required documentation of its donation.

**Respondent, Department  
represented by Libby Snider, Legal Counsel, Department**

Respondent stated Claimant was provided an opportunity to have the items returned to the vendor for a refund, or to have them mailed out or picked up by a visitor. His failure to exercise any of these options is the direct cause of his loss. Staff acted in accordance with Department policy. The Department recommends this claim be denied.

*Following discussion, the Joint Committee recommended Claim No. 6728 be denied.*  
*Senator Haley recused himself from the vote. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6713, Claimants, Lois Shuck and Tim Nedeau**  
**v. Respondent, Department of Wildlife, Parks and Tourism**  
**due to failure to return deer antlers in the amount of \$75,000.00**

Claimants withdrew the claim.

*Following discussion, the Joint Committee recommended Claim No. 6713 be dismissed without prejudice.* (See section captioned "Committee Action and Recommendation.")

**Claim No. 6686, Claimant, William Holt, II #101740**

**v. Respondent, Department of Corrections (Department)  
due to property loss in the amount of \$87.95**

Claimant withdrew the claim.

*Following discussion, the Joint Committee recommended Claim No. 6686 be dismissed without prejudice. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6687, Claimant, William Holt, II #101740**

**v. Respondent, Department of Corrections (Department)  
due to property loss in the amount of \$12.77**

Claimant withdrew the claim.

*Following discussion, the Joint Committee recommended Claim No. 6687 be dismissed without prejudice. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6692, Claimant, Patrick Lynn #64377**

**v. Respondent, Department of Corrections (Department)  
due to property loss in the amount of \$244.00**

Claimant withdrew the claim.

*Following discussion, the Joint Committee recommended Claim No. 6692 be dismissed without prejudice. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6700, Claimant, Justin Rice #99543**

**v. Respondent, Department of Corrections (Department)  
due to property loss in the amount of \$38.28**

Claimant withdrew the claim.

*Following discussion, the Joint Committee recommended Claim No. 6700 be dismissed without prejudice. (See section captioned "Committee Action and Recommendation.")*

The meeting adjourned at 3:00 p.m.

Prepared by Deb Burns  
Edited by Cindy Lash, Natalie Teemer-  
Washington and Andy Chiamopoulos

Approved by the Committee on:

November 9, 2015

Date