

MINUTES OF THE HOUSE COMMITTEE ON APPROPRIATIONS.

The meeting was called to order by Chairperson Representative Kenny Wilk at 9:00 a.m. on March 29, 2002, in Room 514-S of the Capitol.

All members were present except: Representative Newton, Excused  
Representative Peterson, Excused  
Representative McCreary, Excused

Committee staff present: Amy Kramer, Legislative Research  
Alan Conroy, Legislative Research  
Deb Hollon, Legislative Research  
Becky Krahl, Legislative Research  
Audrey Nogle, Legislative Research  
Jim Wilson, Revisor of Statutes  
Mike Corrigan, Revisor of Statutes  
Nikki Feuerborn, Committee Secretary

Conferees appearing before the committee: Bob Alderson, Attorney

**Hearing on SB 517—Claims Against the State**

Dr. Bill Wolff, Legislative Research, presented an explanation for the claims in the bill passed by the Senate. Staff distributed copies of a distribution sheet of claims with a breakdown by agency (Attachment 1). The Committee questioned why claims against the Department of Corrections by inmates who had received false positive drug tests, suffered the consequences of this test, and then found to be drug-free after outside testing at their own expense, were not paid by the Department of Corrections or the correctional facility responsible.

Bob Alderson, attorney representing Beverly Probasco, appeared before the Committee with an amendment requesting that her claim for expenses related to her car being damaged while parked on the statehouse grounds be considered for payment (Attachment 2).

The meeting was adjourned at 9:25 a.m. The next meeting is scheduled for Monday, April 1, 2002.

2002 SB 517 - As Amended by Senate Committee

Section	Agency	SGF	All Other Funds	All Funds
2	Department of Revenue	\$ -	\$ 100,194	\$ 100,194
3	State Fair	0	291	291
4	Sentencing Commission	0	121	121
5a	SRS	5,781	2,659	8,440
5b	SRS	16,509	7,592	24,101
5c	SRS	2,115	0	2,115
5d	SRS	12,762	5,869	18,631
6a	Department of Revenue	0	1,148	1,148
6b	Department of Revenue	0	63,590	63,590
7a	Lansing Correctional Facility	287	0	287
7b	El Dorado Correctional Facility	26	0	26
7c	El Dorado Correctional Facility	10	0	10
7d	El Dorado Correctional Facility	129	0	129
7e	El Dorado Correctional Facility	87	0	87
7f	Lansing Correctional Facility	1,000	0	1,000
7g	Lansing Correctional Facility	1,175	0	1,175
8a	Department of Administration	0	1,864	1,864
8b	Department of Administration	0	92	92
		<u>\$ 39,881</u>	<u>\$ 183,420</u>	<u>\$ 223,301</u>

HOUSE APPROPRIATIONS

DATE 3/29/02

ATTACHMENT 1

SB 517

**ALDERSON, ALDERSON, WEILER,  
CONKLIN, BURGHART & CROW, L.L.C.**  
ATTORNEYS AT LAW

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LL.M., TAXATION  
LICENSED TO PRACTICE IN  
KANSAS AND MISSOURI

**TESTIMONY OF BOB ALDERSON**

**ON BEHALF OF BEVERLY J. PROBASCO**

**BEFORE THE HOUSE COMMITTEE ON APPROPRIATIONS**

**March 29, 2002**

Chairman Wilks and Members of the Committee:

I am Bob Alderson, and I am appearing today on behalf of Beverly J. Probasco, to request an amendment to Senate Bill No. 517, concerning certain claims against the state. The amendment sought by Ms. Probasco would compensate her for damages sustained earlier this legislative session. Ms. Probasco and I attend the same church in Topeka, and I have agreed to assist her pro bono in pursuing this claim.

Ms. Probasco is employed by the legislature during this session and works as a secretary in Senator Kerr's office. This is Ms. Probasco's only employment, and her only other income derives from federal disability retirement payments which she was awarded as a result of a neck injury suffered in an automobile accident several years ago. In addition, Ms. Probasco has undergone double leg bypass due to vascular disease. As a result of these conditions, Ms. Probasco has been permitted to park her vehicle on the Statehouse grounds in a handicapped parking space (stall No. 36).

On February 6, 2002, Ms. Probasco's automobile was parked in her assigned parking space. About mid-day, an extremely large chunk of ice slid from the Statehouse roof, landing upon Ms. Probasco's vehicle. The security officer (Jeff Lee) who was on duty on the Statehouse grounds at that time witnessed this incident. He estimated that the block of ice which struck Ms. Probasco's vehicle weighed approximately 3 tons. The ice struck the windshield and front part of the vehicle's roof, but it struck the vehicle with such force that it blew

HOUSE APPROPRIATIONS

DATE 3/29/02  
ATTACHMENT 2

out the rear window. Ms. Probasco's vehicle was totally demolished.

As you probably recall, in the early days of February of this year, parts of northeast Kansas (including Topeka) was subjected to freezing rain and an ice storm. As temperatures warmed, ice on the roof of the Statehouse was dislodged, including the large chunk of ice which struck Ms. Probasco's vehicle. A copy of the incident report prepared by Officer M. S. Hendricks of the Capitol Police is attached to this testimony.

Ms. Probasco's vehicle was a 1994 Chrysler Concorde automobile. She presented a claim to her automobile insurance company (State Farm), and an adjuster declared that the vehicle was a total loss. Accordingly, Ms. Probasco's insurer paid her \$6,415.50 in consideration of her total loss.

During the time that Ms. Probasco looked for a replacement vehicle to purchase, it was necessary for her to rent a vehicle. Her expenditure for a rental vehicle was approximately \$644.00, an expense which was not covered by her insurance policy.

Although Ms. Probasco sought to find a vehicle of the same model and year and similarly equipped as the vehicle which was demolished, she was unable to do so. Eventually, Ms. Probasco's son-in-law, who lives in Alexandria, Virginia, was able to find her the same model vehicle (Chrysler Concorde) but the year of its manufacture was 1999. Ms. Probasco purchased that vehicle at a price of \$10,300.00.

Attached to this testimony is a chart prepared by Ms. Probasco showing her actual, out-of-pocket expenses incurred in connection with this incident, as well as the amount of compensation she is requesting. On the chart, the expenses incurred are shown in the left hand column, and the portion of those expenses she is requesting as compensation are shown in the right hand column. You will note that Ms. Probasco's actual out-of-pocket expenses are \$7,575.09, but she is seeking compensation of only \$5,266.60.

I have discussed with Ms. Probasco the fact that the significant portion of compensation she is requesting is due to the fact that the replacement vehicle she acquired was five model years newer than the one which she previously owned that was destroyed by the falling ice. She understands that \$3,884.50 of the compensation she is requesting is due to the differential in value of the replacement vehicle and her prior vehicle, and she understands the probable hesitancy of the legislature to compensate her for this differential. However, Ms. Probasco argues with some logic that she should be compensated for this amount, because:

- Ms. Probasco's prior vehicle was in extremely good condition. It had only 65,000 actual miles on it, and it was extremely well equipped (all leather interior, power doors, windows and locks, computer data systems, remote locks, etc.). Because of its condition, Ms. Probasco did not anticipate having to acquire a replacement vehicle for some time, and it only became necessary for her to do so because of the ice which fell from the Statehouse roof onto her vehicle.
- Ms. Probasco was unable to find in the Topeka area car market, either from personal inspection or from searching the internet, a similarly equipped, low-mileage vehicle of comparable condition. She did not limit her search to a Chrysler Concorde, but also looked for comparable models of other car manufacturers.
- The price paid by Ms. Probasco for the replacement vehicle was a wholesale price obtained for her by her son-in-law. Comparing the vehicle she acquired to Chryslers of the same model and year in Topeka, the price she paid for the replacement vehicle was approximately \$4,000.00 less than the advertised price for the two comparable vehicles which she found in the Topeka area, and neither of these was comparably equipped.
- Ms. Probasco is not seeking compensation for all of the expenses incurred in connection with her acquisition of a replacement vehicle. As can be seen from the attached chart, she is not seeking to recover approximately \$1,159.59 of actual, out-of-pocket expenses incurred in this transaction.

Ms. Probasco is a 71 year old single woman on a relatively fixed income. As previously noted, she was not interested at all in acquiring a vehicle to replace the one which was destroyed by the falling ice. She was placed in the position of doing so by the falling ice, a reasonably foreseeable consequence of the warming temperatures which followed the winter storm which placed several inches of ice on the Statehouse roof.

For the foregoing reasons, I would respectfully request on behalf of Ms. Probasco that the House Appropriations Committee give favorable consideration to Ms. Probasco's request to be compensated for this incident in the amount of \$5,266.60, by an amendment to SB 517, directing payment of that amount to Ms. Probasco from the appropriate state fund.

Thank you for your attention to this request. I will be happy to respond to any questions you might have.

Report Date  
2/07/2002

Case Number  
200201924

**Offense/Arrest - Narrative**  
**Capitol Police**  
KSKHP0800

Officer Badge No.  
1061

Page 1

INCIDENT DATE 02/06/2002	VICTIM / ARRESSTEE Probasco, Beverly/ Felciano JR, Paul	OFFENSE / DESCRIPTION(S) Vehicle damage
SUSPECT(S)		LOCATION OF OFFENSE / ARREST 300 W 10th Street State House

THE FOLLOWING LIST OF CATEGORIES ARE FOR THE OFFICERS REFERENCE ONLY. CHECK EACH BOX WHEN THAT SECTION IS COMPLETE.

- |   |                                     |                                      |  |
|---|-------------------------------------|--------------------------------------|--|
| <input type="checkbox"/> Initial Observations | <input type="checkbox"/> Interviews | <input type="checkbox"/> Evidence    | <input type="checkbox"/> Additional comments |
| <input type="checkbox"/> Officer's Actions    | <input type="checkbox"/> Injuries   | <input type="checkbox"/> Attachments | <input type="checkbox"/> Disposition of Case |

REPORTING OFFICER M. S. Hendricks	REVIEWED BY	REVIEWED DATE	TYPED BY
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On February 6, 2002 at 1145 hours I was dispatched to 300 W 10th street to take a report for vehicle damage. I was advised by Officer Lee that a large piece of ice fell off the North East side of the capitol landing on a parked vehicle. I arrived at 1148 hours and observed a silver Chrysler bearing Kansas tag SBB498 parked in stall 36. The vehicle's roof and windshield was caved in and the rear window was broke out. As I looked for damage to other vehicles I observed a blue Chrysler bearing Kansas tag ROM810 parked next to the first vehicle. I found minor damage to the front passenger side quarter panel. I called both tags into dispatch. Dispatch advised that SBB498 showed on a 1994 Chrysler to Beverly J. Probasco. The tag ROM810 showed on a 1997 Chrysler to Paul V. Feleciano Jr. Officer Tyrell contacted the owners of both vehicles. I took photographs of the damage. I spoke with Probasco and Feleciano and wrote down their information. Feleciano was able to move his vehicle to another parking stall. AAA towing was contacted to tow Probasco's vehicle by her request.

On February 7, 2002 I spoke with Probasco and informed her to speak with Legislative Services about being compensated for the damage to her vehicle. I left a message with Feleciano's office about contacting Legislative Services for his vehicle damage.

Received  
FEB 14 2002  
Capitol Police

LAW ENFORCEMENT  
OFFICIAL USE ONLY  
NOT TO BE REPRODUCED

negs rec'd 2/19

ACTUAL EXPENSES

CLAIM

10,300.00	Wholesale cost of car	10,300.00
5.00	Title	5.00
20.60	Dealers Tax	20.60
1,435.00	Extended Warranty	XXXXXXXXXXXXXXXXXX
11,760.60	<b>TOTAL</b>	10,325.00
801.22	Personal Prop Tax - Sales Tax - Fees	712.73 (without pp tax)
12,561.82	<b>TOTAL</b>	11,038.33
99.10	Car Rental - 2/6 to 2/8	99.10
200.67	Car Rental - 2/9 to 2/16	200.67
200.67	Car Rental - 2/16 to 2/23	200.67
143.33	Car Rental - 2/23 to 2/27	143.33
13,205.59	<b>TOTAL</b>	11,682.10
10.00	Highway Patrol Inspection	XXXXXXXXXXXXXXXXXX
775.00	Delivery of Car from Virginia	XXXXXXXXXXXXXXXXXX
13,990.59	<b>TOTAL</b>	11,682.10
6,415.50	Amount Insurance Company Paid for Car	6,415.50
7,575.09	<b>OUT OF POCKET EXPENSE</b>	
	<b>Expected Reimbursement</b>	5,266.60