

## MINUTES

### JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

November 3, 2010  
Room 548-S—Statehouse

#### Members Present

Senator Thomas C. Owens, Chairperson  
Representative Mitch Holmes, Vice-chairperson  
Senator Terry Bruce  
Senator Kelly Kultala  
Senator Ty Masterson  
Senator Dennis Pyle  
Representative Bill Feuerborn  
Representative Rocky Fund  
Representative Broderick Henderson  
Representative Steve Huebert  
Representative Jeff King  
Representative Joe Patton

#### Member Absent

Representative Bob Grant

#### Staff Present

Cindy Lash, Kansas Legislative Research Department  
Dylan Dear, Kansas Legislative Research Department  
Mike Heim, Office of the Revisor of Statutes  
Daniel Yoza, Office of the Revisor of Statutes  
Kathy Letch, Committee Secretary

#### Others Present

Libby Snider, Legal Counsel, Kansas Department of Corrections  
Charles Simmons, Deputy Secretary, Kansas Department of Corrections  
Kris Van Meteren, Claimant  
Judy Moler, Kansas Governmental Ethics Commission  
Glenn Kerbs, Kansas Governmental Ethics Commission  
Carol Williams, Kansas Governmental Ethics Commission

Charlotte Esan, Public  
Colonel Terry Maple, Superintendent, Kansas Highway Patrol  
Lisa E. Janati, General Counsel, Kansas Highway Patrol  
Kim Grunewald, General Counsel, Attorney General's Office  
Laura Graham, General Counsel, Kansas Bureau of Investigation  
Andy Schlapp, Wichita State University  
Sue Schlapp, Public  
Dennis White, Attorney  
Dan Barrow, Claimant  
Katie Morgan, University of Kansas  
Daric Smith, Kansas Department of Health and Environment  
Gary Blackburn, Kansas Department of Health and Environment  
Randy Carlson, Kansas Department of Health and Environment

### **Morning Session**

Chairperson Owens called the meeting to order at 9:40 a.m.

*Representative Feuerborn moved that the Committee approve the Committee's August meeting's minutes; Representative Fund seconded the motion; the motion carried.*

### **BRIEFING ON CHANGING RULES AND STATUTES** **BY OFFICE OF THE REVISOR OF STATUTES**

The Chairperson opened the briefing on potential Committee rule changes and recognized Mike Heim, Office of the Revisor of Statutes. Mr. Heim stated that at the August meeting there were a few issues he was asked to investigate:

- Implementing a rule putting a limit on the time allowed for requests for reconsideration after the initial claim has been put before the Committee;
- Implementing a minimum dollar limit rule; and
- Establishing a filing fee to dissuade some of the small claims.

Mr. Heim mentioned that he had visited with Jim Wilson and Norm Furse, both of the Office of the Revisor of Statutes, and they agreed that there would need to be a statutory change for a filing fee to be charged, a fund created in which to put the paid filing fees, and a purpose for the fund. Implementing a rule establishing time limits and for a minimum dollar limit would be a simple procedure.

The Committee members discussed the present situation with the small claims that come in from correctional facility inmates. The inmates used to have a mediator in the Ombudsman, but that position no longer exists. It was discussed if there could be a subcommittee of three Committee

members to deal with the small claims, up to a given amount. Mr. Heim stated the Legislative Coordinating Council would have to create the subcommittee.

The suggestion was made that it may be helpful to have a screening committee to make tentative recommendations to the Committee who would then be able to make final recommendations on a summary approach.

A Committee member said the current system is in place and Kansas Department of Corrections (KDOC) most likely has reasons for the current procedures. It may be good for the Committee to revisit the reasons the system works the way it does. There are probably behind-the-scenes reasons for the procedure, and the Committee should talk with KDOC to find out the goals and purposes for the current procedure and work with KDOC to make changes for the better.

### **BRIEFING ON MANDATORY SAVINGS** **BY KANSAS DEPARTMENT OF CORRECTIONS**

The Chairperson opened the briefing on mandatory saving and recognized Deputy Secretary Charles Simmons, KDOC. Deputy Secretary Simmons stated that the current procedure of mandatory or forced savings is that 10 percent of all inmates' funds are set aside in savings in preparation for the inmates' release, to provide for food, clothing, and gas money. No individuals are exempt from the forced savings. Even life-sentenced inmates are not exempt from this savings plan, as most of them are eventually released.

### **CLAIMS FROM INMATES AT** **EL DORADO CORRECTIONAL FACILITY**

The Chairperson opened the telephone hearings filed by inmates at El Dorado Correctional Facility.

**Claim No. 6274, Claimant, Darryl A. Payton #46603**  
**v. Respondent, El Dorado Correctional Facility**  
**due to loss of property in the amount of \$126.96**

**Claimant** summarized his claim. He stated that upon getting out of segregation, he was told he must sign the inventory sheet to receive his property. However, the original inventory sheets were missing, so he refused to sign the new inventory sheets. If the original inventory sheet was located, it would prove exactly what was packed out. The claimant said he was aware that he had consumed some of the items, but there is no way to know how much was missing when he was packed out. Inventory sheets are given back to the property room officers. They were negligent because the original inventory sheet no longer existed.

**Respondent, Kansas Department of Corrections (KDOC)**  
**represented by Libby Snider, Legal Counsel, KDOC**

**Respondent** stated that proof of purchase was provided, but there was no proof of how much was still in his possession when he was packed out and put in segregation. The loss attributable to staff negligence was not proven. Respondent recommended the claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6274 be denied.*  
*(See section captioned "Committee Action and Recommendation.")*

**Claim No. 6264, Claimant, Eugene Jackson #66395  
v. Respondent, Kansas Department of Corrections  
due to property damage in the amount of \$134.47**

**Claimant** summarized his claim. Upon being transferred from El Dorado Correctional Facility to Winfield Correctional Facility, Mr. Jackson was being assisted by an inmate porter pushing a dolly carrying all his property, due to his physical disability and walking with a cane; the dolly hit a curb, causing the television to fall from the dolly onto the pavement. The television is no longer operable.

**Respondent, Kansas Department of Corrections (KDOC)  
represented by Libby Snider, Legal Counsel, KDOC**

**Respondent** stated that the television was rendered inoperable after falling off the dolly in transport. The warden had recommended \$80.68 payment; however the Secretary denied payment as the damage was not due to staff negligence. Respondent recommended the claim be denied or, if it is allowed, that it be for a depreciated amount of \$80.68.

Claimant stated that the inmate porter is when an inmate acts as porter for assisting another inmate. It is not activity that inmates do on their own, but by instruction or order, which they must obey. Assignment or work performances are when each inmate is directed by officials. This porter was given direction to perform this assistance. The warden and A and D officer wrote that the damage was caused by their porter.

*Following discussion, the Joint Committee recommended that Claim No. 6294 be allowed for \$80.68.* (See section captioned "Committee Action and Recommendation.")

**Claim No. 6296, Claimant, Alphonso Graham Briscoe #66034  
v. Respondent, Hutchinson Correctional Facility  
due to loss of property in the amount of \$16.33**

**Claimant** summarized his claim. While in segregation, he was only given his hygiene items. He was then transferred to El Dorado Correctional Facility without getting the rest of his property. Upon getting his property after being transferred, a number of items were missing. None of the missing property was listed on the inventory sheets.

**Respondent, Kansas Department of Corrections (KDOC)  
represented by Libby Snider, Legal Counsel, KDOC**

**Respondent** stated that Mr. Briscoe's property was packed out from Mr. Briscoe's single-man cell. There was no evidence that they neglected to pack out anything. Mr. Briscoe signed two property lists without noting any missing items. Respondent recommended the claim be denied.

Claimant said that he told the officers that property was missing. They told him if he did not sign, he could not get any of his property. He did what he was told.

A Committee member asked if, on the property form, there is a place for missing item notation. Respondent said the inmates know the rules. They are given the same form twice; they should note missing items. The Committee member asked that the Respondent provide the Committee with a copy of the form.

*Following discussion, the Joint Committee recommended that Claim No. 6296 be denied.*  
*(See section captioned "Committee Action and Recommendation.")*

### **CLAIMS FROM INMATES AT LANSING CORRECTIONAL FACILITY**

The Chairperson opened the telephone hearings filed by inmates at Lansing Correctional Facility.

**Claim No. 6272, Claimant, Joseph Carlos Jones #59134  
v. Respondent, Lansing Correctional Facility  
due to loss of property in the amount of \$59.90**

**Claimant** summarized his claim. He stated his new brown boots were lost by Lansing Correctional Facility (LCF) when he was sent to segregation and they packed out his property. When his property was returned to him, the boots were black; the boots were a different size; they were not his boots.

**Respondent, Kansas Department of Corrections (KDOC)  
represented by Libby Snider, Legal Counsel, KDOC**

**Respondent** recommended payment of \$47.92, which is a depreciated amount. The officer corrected his previous statement and, therefore, the denial of the internal claim by the warden should now be corrected. Respondent recommended allowance of the claim at the depreciated amount of \$47.92.

*Following discussion, the Joint Committee recommended that Claim No. 6272 be allowed for \$59.90.*  
*(See section captioned "Committee Action and Recommendation.")*

**Claim No. 6278, Claimant, Austin T. Mason #80464  
v. Respondent, Lansing Correctional Facility  
due to loss of property in the amount of \$18.00**

**Claimant** summarized his claim. The mail room destroyed claimant's property that had been held. He did not have time to send the property home.

**Respondent, Kansas Department of Corrections (KDOC)  
represented by Libby Snider, Legal Counsel, KDOC**

**Respondent** stated that the Claimant did receive notice of mail censorship and was then to make a decision for disposition of property. Claimant did submit a censor protest, but it is not clear where it went; it did not get to the Secretary's designee. It was returned to him, though. He should

have been informed upon his requests that no appeal had been received. Respondent recommended this claim be allowed for \$18.00.

Following discussion, the Joint Committee recommended that Claim No. 6278 be allowed for \$18.00. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6277, Claimant, Antonio Toro #91574  
v. Respondent, KDOC  
due to loss of property in the amount of \$13.50**

**Claimant** requested an interpreter. No interpreter was present.

**Respondent, Kansas Department of Corrections (KDOC)  
represented by Libby Snider, Legal Counsel, KDOC**

**Respondent** recommended payment of \$13.50 to this Claimant.

Following discussion, the Joint Committee recommended that Claim No. 6277 be allowed for \$13.50. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6263, Claimant, Clyde L. Sullivan, Jr. #44512  
v. Respondent, Lansing Correctional Facility  
due to loss of property in the amount of \$83.89 and**

**Claim No. 6273, Claimant, Clyde L. Sullivan, Jr. #44512  
v. Respondent, Lansing Correctional Facility  
due to loss of property in the amount of \$13.20**

Chairperson Owens referred the Committee members to the minutes of the August meeting to remind them of the details of these two carried-over claims.

**Respondent, Kansas Department of Corrections (KDOC)  
represented by Libby Snider, Legal Counsel, KDOC**

**Respondent** stated information was received from Lansing Correctional Facility stating that the \$70.70 has now been taken from the Crime Victims' Fund and sent to satisfy the Claimant's restitution account, as the Claimant requested. Therefore, the Respondent recommended the claim be denied.

**Claimant** asked about the whereabouts of the remaining \$26.39, because he still owes restitution to Reno County of \$183.00.

Respondent said the remainder would have gone to the Crime Victims' Compensation Fund. It could not be applied to a later restitution order.

Following discussion, the Joint Committee recommended that Claim Nos. 6263 and 6273 be denied. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6283, Claimant, Leonard C. Foster #57096  
v. Respondent, Lansing Correctional Facility  
due to loss of property in the amount of \$230.00**

**Claimant** had withdrawn the claim, as his property had been located and returned to him.

*Following discussion, the Joint Committee recommended that Claim No. 6283 be denied.*  
(See section captioned "Committee Action and Recommendation.")

**Claim No. 6284, Claimant, Scott Phillips #47937  
v. Respondent, Lansing Correctional Facility  
due to loss of property in the amount of \$236.70**

**Claimant** summarized his claim. He stated that going to county court from LCF, the county court released him from custody. At that time, Lansing Correctional Facility told him they would mail his property to him. His property and one paycheck were never sent to him.

**Respondent, Kansas Department of Corrections (KDOC)  
represented by Libby Snider, Legal Counsel, KDOC**

**Respondent** stated that the Claimant was released from LCF to county court. Nothing in the order showed that this was a final release, but he was released from custody. The business office does not handle property, only money. Claimant had signed a release for his property to be sent to his brother in Paola. KDOC cannot locate Claimant's property records. The paycheck for private industry wages was not cashed within 90 days, and was then voided; the funds were sent to the State Treasurer as unclaimed property. It has been two and one-half years since Claimant was released from custody. He did not submit his claim until he was back in custody. Respondent recommended the claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6284 be denied.*  
(See section captioned "Committee Action and Recommendation.")

### **REQUEST FOR RECONSIDERATION**

**Claim No. 5940, Claimant, Eldon L. Ray  
v. State Board of Technical Professions  
Punitive damages and out-of-pocket expenses of \$8,422.00**

Cindy Lash, Legislative Research Department, summarized the following request for reconsideration. During September of 2007, the Special Claims Committee recommended the claim be allowed for \$3,122.00. The Claim was removed from the 2008 Claims bill on the House floor. The money was not paid.

*Following discussion, the Joint Committee recommended that Claim No. 5940 be reconsidered at the December meeting.* (See section captioned "Committee Action and Recommendation.")

## HEARING

**Claim No. 6292, Claimant, Kristian D. Van Meteren  
v. Respondent, Kansas Governmental Ethics Commission  
due to reimbursement of legal expenses in the amount of \$12,647.18**

**Claimant** stated that he was present to recoup expenses he was forced to spend in the ordeal with the Ethics Commission, and added that he is the only person ever prosecuted under this law. The charges against him were dropped by the Governmental Ethics Commission after the Attorney General's Office advised them that what they were doing was unconstitutional.

**Respondent, Kansas Governmental Ethics Commission  
represented by Glenn Kerbs, Commissioner**

**Respondent** stated that within statutory jurisdiction of the Kansas Governmental Ethics Commission, it did not have authority to pay the Claimant's legal fees. Statutory provisions have not changed, but the Commission has since changed its rules and regulations to apply the provision of confidentiality to only staff and Commission members. The Commission acted in good faith and consulted with the Attorney General's Office, who then told them they may be on unconstitutional grounds. They, therefore, dismissed the allegations. The Commission defers to the Committee as to whether the state pays Mr. Van Meteren's legal fees.

Committee members asked about other states' laws, interpretation of the statute, at what point the case was dismissed, and if Mr. Van Meteren has invoices from Stegall Law Firm.

*Following discussion, the Joint Committee recommended that Claim No. 6292 be carried over to the December meeting. (See section captioned "Committee Action and Recommendation.")*

## **Afternoon Session**

The meeting reconvened at 1:35 p.m.

## CARRIED OVER HEARINGS

**Claim No. 6275, Claimant, Kansas University Physicians, Inc.  
represented by E. Lou Bjorgaard Probasco, Attorney and Agent  
v. Respondent, Attorney General's Office and Kansas Highway Patrol  
represented by Kim Grunewald, Attorney General's Office; and  
Lisa Janati, Kansas Highway Patrol  
due to medical bills on prisoners in the custody of KHP for \$12,477.14**

**Claim No. 6276, Claimant, University of Kansas Hospital Authority  
represented by E. Lou Bjorgaard Probasco, Attorney and Agent  
v. Respondent, Attorney General's Office and Kansas Highway Patrol**



**represented by Kim Grunewald, Attorney General's Office; and  
Lisa Janati, Kansas Highway Patrol  
due to medical bills on prisoners in the custody of KHP for \$112,938.90**

**Claimant's representative** summarized the claims, stating that suspects Barker and Martez were fleeing law enforcement at high speed while throwing weapons and objects from the vehicle. The chase ended in a collision, killing an innocent woman. The Kansas Highway Patrol (KHP) officers took custody of Barker and Martez. They were injured and were taken, in custody, to the hospital. The law states that the entity that has custody of a prisoner is responsible for paying the medical bills of that prisoner.

**Respondent's representative, Lisa Janati, KHP**, concurred with the description of the circumstances: the suspects, while fleeing KHP, crashed into an oncoming car, killing the passenger and injuring the driver; the suspects were injured, as well, and conveyed to KU Medical Center by ambulance. They are valid claims, but KHP and the Attorney General's Office has no funding mechanism to pay the medical bills. The FY 2011 budget for KHP has added a request for a funding mechanism for this type of fleeing felons injuries. The medical bills were negotiated down to the Medicaid rate, and that is the amount of the claims before the Committee.

A Committee member asked if there was a judgment entered against the state for a dollar amount, and if that is the case, is the state exempt from the usual collection processes that one goes through after judgment; and were there standard collection remedies.

**Respondent's representative, Kim Grunewald, Attorney General's Office**, stated the journal entry dismissing this case specifically says these are the amounts payable to the plaintiffs. The court ordered the parties to break down the amounts for each party to receive. This case was not brought under any tort action or civil rights action, but was a collection action. Because this judgment does not fall within the tort claims fund, the agency is unclear what fund it should come from. It is the Respondent's understanding that this is the first claim based upon this statute against the KHP for injuries; counties would have been responsible, previously.

The Committee discussed that having a state agency delve into funding to pay another state entity is concerning. Claimants' representative said the Hospital Authority is independent.

A Committee member asked if an action or decision was made to bring this out from under the Tort Claims Act. Respondent's representative for KHP stated the Tort Claims Act clearly requires that there had to be negligence on the part of the state agency or personnel. That scenario did not apply to this case.

When asked if the hospital used to write off this type of cost, the Claimant's representative stated Wyandotte County always used to take prisoners to KU Medical Center, and they always charged the counties. Insurance would cover some of the costs, but there is rarely health insurance on this type of suspect. If the suspect in custody has assets, they are usually not found.

*Following discussion, the Joint Committee recommended that Claim No. 6275 be allowed for \$12,477.14. (See section captioned "Committee Action and Recommendation.")*

*Following discussion, the Joint Committee recommended that Claim No. 6276 be allowed \$112,938.90. (See section captioned "Committee Action and Recommendation.")*

## HEARINGS

**Claim No. 6281, Claimant, Stormont-Vail HealthCare, Inc.**  
**represented by E. Lou Bjorgaard Probasco, Attorney and Agent**  
**v. Respondent, Attorney General's Office, Kansas Bureau of Investigation,**  
**and Kansas Highway Patrol**  
**represented by Kim Grunewald, Attorney General's Office; Laura Graham, Kansas Bureau**  
**of Investigation, and Lisa Janati, Kansas Highway Patrol**  
**due to medical bills on prisoners in the custody of law enforcement of \$32,980.89**

**Claim No. 6282, Claimant, Cotton-O'Neil Clinic**  
**represented by E. Lou Bjorgaard Probasco, Attorney and Agent**  
**v. Respondent, Attorney General's Office, Kansas Bureau of Investigation,**  
**and Kansas Highway Patrol**  
**represented by Kim Grunewald, Attorney General's Office; Laura Graham, Kansas Bureau**  
**of Investigation, and Lisa Janati, Kansas Highway Patrol**  
**due to medical bills on prisoners in the custody of law enforcement of \$8,731.60**

**Claimant's representative** summarized the claims and stated Mr. Dimmick was shot in the back by a Topeka Police Department (TPD) officer. Because it was a joint case, involving the TPD, KBI, and KHP, it was thought the state may also be liable. Evidence showed county and city involvement, not KHP.

**Respondent's representative for KHP** stated Mr. Dimmick was not in custody of KHP, but of TPD. Mr. Dimmick has now filed a civil law suit against the TPD.

*Following discussion, the Joint Committee recommended that Claim No. 6281 be denied.*  
*(See section captioned "Committee Action and Recommendation.")*

*Following discussion, the Joint Committee recommended that Claim No. 6282 be denied.*  
*(See section captioned "Committee Action and Recommendation.")*

## CARRIED OVER HEARING

**Claim No. 6257, Claimant, Board of County Commissioners of Ellis County**  
**represented by William W. Jeter**  
**v. Respondent, Attorney General's Office**  
**Reimbursement for expenses of sexually violent predator case of \$5,908.00**

Ellis County has been reimbursed for their expenses from the Sexually Violent Predator Expense Fund.

*Following discussion, the Joint Committee recommended that Claim No. 6257 be denied.*  
*(See section captioned "Committee Action and Recommendation.")*

**CLAIM FROM INMATE AT  
WICHITA WORK-RELEASE**

**Claim No. 6280, Claimant, Brien K. Hickman #87266  
v. Respondent, Kansas Department of Corrections  
due to loss of property in the amount of \$134.15**

**Claimant** summarized the claim. He stated that before he was taken to segregation, he consolidated his property, and was allowed to take a few things to segregation with him, such as his boots. He was then transferred to Hutchinson Correctional Facility (HCF) where they would not allow him to wear his boots. Upon receiving his property at HCF, he showed the officer the shoes were not his, nor were the boots. This was recorded on paper. On the packout property inventory from Lansing Correctional Facility (LCF), the boots and shoes were on the list.

**Respondent** said the claimant had signed as accurate the property inventories without noting any discrepancies. Later he did note discrepancies of the boots and shoes, but not the other items.

*Following discussion, the Joint Committee recommended that Claim No. 6280 be denied.*  
*(See section captioned "Committee Action and Recommendation.")*

**CLAIMS FROM INMATES AT  
WINFIELD CORRECTIONAL FACILITY**

**Claim No. 6293, Claimant, Edward Rojas #90533  
v. Respondent, Lansing Correctional Facility and Kansas Department of Corrections  
due to loss of property in the amount of \$175.00**

**Claimant** summarized the claim. He stated that when he was transferred from LCF to Norton Correctional Facility (NCF), his property was to be sent to him. His property was destroyed. IMPP 12-120 says he has 90 days, but they destroyed it after 31 days.

**Respondent** said when Claimant was transferred to court from LCF and returned to NCF, his wife was supposed to pick up the property from LCF. His wife did not pick up the property. He requested that NCF request LCF send the property to him at NCF. However, the property was destroyed prior to the request being received. He was given more than enough time for disposition of his property. Respondent recommended the claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6293 be denied.*  
*(See section captioned "Committee Action and Recommendation.")*

**Claim No. 6279, Claimant, Melvin Eric St. John #67461  
v. Respondents, Kansas Department of Corrections and Kansas Department of Wildlife  
and Parks (KDW&P)  
due to personal injury in the amount of \$5,000.00 or \$1,000.00 plus statement of medical  
responsibility**

**Claimant** summarized the claim. He was feeding panels into a shaper; he looked away and his hand got caught causing partial amputation of his left middle finger. Safety equipment was in place. He saw an orthopedist and a skin graft specialist. Claimant said his symptoms now mimic carpal tunnel with numbness and pain.

**Respondent** stated that Claimant did not claim negligence on the part of KDOC. He had no out-of-pocket expense. Mentioning any future loss would be totally speculative. Nothing in the claim had previously mentioned the chaotic environment, indicating it was not a workable environment. Respondent recommended the claim be denied.

Committee members asked questions of how he came to the figure of the claimed amount; what the work order/billing was to show; and if he was working for KDOC or a private contractor. Claimant discussed the possibility of future medical expenses; that the work order was to show how the labor was billed out hourly; and that he was working for a KDOC detail that was working for KDW&P, Butler County, and the City of El Dorado. The reasons that caused him to file the claim are from the numbness and pain issues that are ongoing.

*Following discussion, the Joint Committee recommended that Claim No. 6279 be denied. (See section captioned "Committee Action and Recommendation.")*

### **CLAIMS FROM INMATE AT LARNED CORRECTIONAL MENTAL HEALTH FACILITY**

**Claimant** summarized each of his six claims.

**Claim No. 6286, Claimant, Michael K. Mattox #75432  
v. Respondent, Kansas Department of Corrections  
due to personal injury in the amount of \$2.0 billion**

**6286** - During a pat search at Larned Correctional Mental Health Facility (LCMHF), **Claimant** states he was sexually assaulted by a male officer. He has not seen documentation that KDOC allows touching of an inmate's genitalia by officers. He stated he did not know how to put a dollar amount on reparation of a homosexual assault of this nature.

**Claim No. 6287, Claimant, Michael K. Mattox #75432  
v. Respondent, Kansas Department of Corrections  
due to personal injury in the amount of \$2.0 billion**

**6287** - During a pat search at LCMHF, Claimant states he was sexually assaulted.

Regarding both claims, **Respondent** stated that KDOC requires pat searches on a regular basis. The method used conformed with the officer's training. No excessive, unreasonably intrusive, or unprofessional touching is allowed, but it is necessary to confirm there is no contraband hidden in the genital and buttocks areas to insure safety of staff and other inmates. Respondent recommended the two claims be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6286 be denied. (See section captioned "Committee Action and Recommendation.")*

*Following discussion, the Joint Committee recommended that Claim No. 6287 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6288, Claimant, Michael K. Mattox #75432  
v. Respondent, Kansas Department of Corrections  
due to property damage in the amount of \$10.00**

**6288—Claimant** stated that KDOC has the recurring pattern of losing inmate property.

**Respondent** stated the Claimant's washcloth cost \$1, but the claim is for \$10. There is no substantiation the washcloth was in the possession of the claimant, or that it was not returned to the claimant. Respondent recommended the claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6288 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6289, Claimant, Michael K. Mattox #75432  
v. Respondent, Kansas Department of Corrections  
due to personal injury in the amount of \$2.0 million**

**6289—Claimant** stated he was improperly carried and handcuffs caused contusions in his arm, and numbness in his right hand and thumb. He said the injury is permanent nerve damage.

**Respondent** stated the claimant became belligerent at the clinic, preventing the nurse from closing the pill-room door; security was called; he refused to walk; he resisted; he thrashed; he refused medical treatment to the cut on his ear and did not complain of any damage to his wrist. Later, he still refused treatment. IMPP procedures were followed. Respondent recommended the claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6289 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6290, Claimant, Michael K. Mattox #75432  
v. Respondent, Kansas Department of Corrections  
due to property damage in the amount of \$45.27**

**6290—Claimant** stated his cell was left open by officers and his items were stolen.

**Respondent** stated Claimant has assumed his cell door was left open while officers were packing out his property. There is no record of him purchasing a fan or power strip. No evidence of other items still unconsumed at time of packout. No claim of losses could be substantiated or attributed to negligence on the part of KDOC staff. Respondent recommended the claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6290 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6291, Claimant, Michael K. Mattox #75432  
v. Respondent, Kansas Department of Corrections  
due to personal injury in the amount of \$4.0 billion**

**6291—Claimant** stated he was preparing for a new trial and was not allowed to speak with his lawyers, get a pen for notes, receive mail, get hygiene items, or anything else. He stated he experienced mental anguish.

**Respondent** stated the conditions of confinement during his time on crisis level; summarized day-to-day procedures while he was on crisis level; the inmate's psychiatrist determined what was allowed. Showers were allowed. In-cell items were limited to mattress and clothing. No sharps were allowed. There is no evidence that he suffered.

*Following discussion, the Joint Committee recommended that Claim No. 6291 be denied. (See section captioned "Committee Action and Recommendation.")*

### **HEARINGS**

**Claim No. 6285, Claimant, Dan Barrow Trading Co., Inc.  
represented by Dennis White, Attorney  
v. Respondent, Kansas Department of Wildlife and Parks  
represented by Chris Tymeson, KDW&P  
due to loss of property valued at \$5,280.00**

**Claimant's representative** summarized the claim. The Claimant is the largest fur trader in the state. The federally mandated tags were accidentally removed in the process of cleaning the pelts. Claimant asked Kansas Department of Wildlife and Parks (KDW&P) to come check on the tags. The bobcat pelts were confiscated and returned three years later without value due to improper care and storage.

**Respondent** stated that, at some point, the New York furrier cut tags off the shipment of bobcat pelts; he sent them to Iowa; they were then sold to a guy in Missouri; then to the claimant. He called KDW&P. When KDW&P contacted all those concerned and investigated, it was determined that the claimant was free of guilt. Three years later, the pelts were returned to him. During the investigation, the guy in Iowa said they were substandard pelts.

A Committee member asked why it took three years for the investigation and why were the pelts not properly cared for. Respondent stated that KDW&P is liable for those issues. KDW&P does not have enough freezers to store the pelts; however, they did have to be confiscated as possible evidence in a crime. The dilemma was that 45 of the 48 pelts originated outside the State of Kansas. The pelts cannot be retagged except in the state of origin or with a federal replacement tag, but it is illegal to export untagged pelts across state lines. Federal statute bars possession of an untagged pelt. When the 48 pelts were returned to Mr. Barrow, none of them were tagged. The Claimant could not have taken possession of them again if they had been in perfect condition; none were tagged.

*Following discussion, the Joint Committee recommended that Claim No. 6285 be allowed for \$5,280.00 from the Wildlife Fee Fund. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6295, Claimant, Jonathan C. Wesley  
v. Respondent, University of Kansas  
represented by Katie Morgan, KU  
due to personal injury in the amount of \$3,474.02**

**Claimant** was not present at hearing.

**Respondent** stated the Claimant claimed he slipped on ice on his way to work on University property. He does not allege any negligence on the part of the University. Respondent recommended the claim be denied based on the Kansas Tort Claims Act.

*Following discussion, the Joint Committee recommended that Claim No. 6295 be denied.*  
(See section captioned "Committee Action and Recommendation.")

**Claim No. 6232, Claimant, Teresa Kay Bowens  
v. Respondent, Wichita State University  
represented by Andy Schlapp  
due to personal injury in the amount of \$1,403.90**

**Claimant** was not present at hearing and was not reachable by telephone.

**Respondent** stated the Claimant was walking on University property when she tripped over a curb. According to the claim form, there was no allegation of negligence. Respondent recommended the claim be denied based on the Kansas Tort Claims Act.

*Following discussion, the Joint Committee recommended that Claim No. 6232 be denied.*  
(See section captioned "Committee Action and Recommendation.")

### **CARRIED OVER CLAIM**

**Claim No. 6236, Claimant, 66 Food Mart, Inc.  
v. Respondent, Kansas Department of Health and Environment  
represented by Gary Blackburn, KDHE  
due to reimbursement of cost of tank tests in the amount of \$6,769.21**

**Staff person**, Dylan Dear, KLRD, stated he researched the ability of the Committee to recommend KDHE pay the Claimant from the Underground Petroleum Storage Tank Release Trust Fund through the claims bill, and they do have this capability. Some "notwithstanding" language would have to be used for some of the KSAs that control how the money gets spent.

**Claimant** was present by telephone. He stated that when he left the last Committee meeting, he was under the impression that \$2,927.21 was going to be paid, but it had to be determined from what fund payment would come.

**Respondent** stated they had submitted a written response.

*Following discussion, the Joint Committee recommended that Claim No. 6236 be allowed for \$2,694.84.* (See section captioned "Committee Action and Recommendation.")

## REQUEST FOR RECONSIDERATION

**Claim No. 5049, Claimant, Richard L. Mundell, Jr.  
v. Respondent, Hutchinson Correctional Facility  
due to personal injury in the amount of \$10 million**

**Staff person, Dylan Dear, KLRD, summarized the original claim. The Claimant, incarcerated since 1993, was assaulted by another inmate at Hutchinson Correctional Facility's machine shop on April 19, 2000. He suffered a closed head injury, fractured skull, fractured facial bones, loss of hearing, loss of balance, contusions, and more. The original claim was heard during the 2001 Interim. According to Rule 3a, to reconsider a claim, new evidence is required and a vote of seven members. The 2001 Interim Committee recommendation was the claim be denied.**

When asked by a Committee member what new evidence the claimant was presenting, staff stated just the descriptions of what is going on in the Claimant's life at this time, such as his power being turned off.

*Following discussion, the Joint Committee recommended that Claim No. 5049 be denied for reconsideration. (See section captioned "Committee Action and Recommendation.")*

The meeting was adjourned at 4:45 p.m. The next meeting of the Joint Committee on Special Claims Against the State was scheduled to be held on December 20, 2010.

Prepared by Kathy Letch  
Edited by Cindy Lash and Dylan Dear

Approved by the Committee on:

December 20, 2010

(Date)



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

DATE November 3, 2010

**GUEST LIST**

<u>NAME</u>	<u>REPRESENTING</u>
Libby Snider	KDOC
Charles Simmons	KDOC
Kris Van Meteren	Self
Juday Molen	KGEC
Glenn Karbs	KGEC
Carol Wilman	KGEC
Charles Esan	Self
TETTY MAPK	KHP
Yvonne Janati	KHP
Kim Brunewald	AG
Laura Graham	KBI
Andy Schlapp	WSU
Sue Schlapp	
Dennis White	Attorney Don Berrow
Dan Berrow	claimant
Katie Morgan	KU
Doug Smith	KDHE
Gary Blackburn	
Randy Carlson	
Cary Blackburn	