

## MINUTES

### JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

September 15, 2011  
546-S—Statehouse

#### Members Present

Representative Joe Patton, Chairperson  
Senator Tim Owens, Vice-chairperson  
Senator Terry Bruce  
Senator Kelly Kultala  
Senator Ty Masterson  
Senator Dennis Pyle  
Representative Rob Bruchman  
Representative Bill Feuerborn  
Representative Bob Grant  
Representative Phil Hermanson  
Representative Mitch Holmes  
Representative Steve Huebert  
Representative Greg Smith

#### Staff Present

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

#### Conferees

Libby Snider, General Counsel, Kansas Department of Corrections

### Morning Session

Chairperson Patton called the meeting to order.

#### Adoption of the Committee Rules

*Representative Feuerborn moved to adopt the Committee rules; Representative Grant seconded the motion; the motion carried.*

## Reconsideration of Claim

The Committee discussed the request to reconsider Claim No. 6292. This claim was recommended by the Joint Committee on Special Claims Against the State to the 2011 Legislature to be paid in-part. The claim was not included in the 2011 appropriations bill.

Following discussion, the Joint Committee did not have an affirmative vote of seven Committee members to approve reconsideration of Claim No. 6292; Claim No. 6292 will not be reconsidered.

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

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

#### **Claim No. 6323, Claimant, Lester Thomas #45111** **v. Respondent, Lansing Correctional Facility** **due to personal injury in the amount of \$10,000.00**

**Claimant** summarized his claim. He stated, while wearing shower shoes and restraints, he slipped on icy exterior stairs and injured himself falling down several steps. He stated he should have been allowed to wear tennis shoes, instead of shower shoes. He stated he was provided with no physical rehabilitation to assist with the bruising, swelling, and inflammation. He claims the injury could have been avoided and the money would be to assist with his support once he is released from prison. He filed a grievance regarding officer conduct with this incident, but not an internal personal injury claim. He is not planning to file a law suit.

#### **Respondent, Lansing Correctional Facility/Kansas Department of Corrections (KDOC)** **represented by Libby Snider, Legal Counsel, KDOC**

**Respondent** stated the claimant filed a grievance and not a personal injury claim. In the investigation, it was reported there was no ice in the vicinity and the Claimant lost his footing and landed on his back. He did not mention anything in the claim about desiring further rehabilitation. The recommendation is this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6323 be denied. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6333, Claimant, Thomas L. Wilson #70525**  
**v. Respondent, Lansing Correctional Facility**  
**due to personal injury in the amount of \$1,500.00**

**Claimant** stated he desired dismissal of his claim.

*Following discussion, the Joint Committee recommended that Claim No. 6333 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6334, Claimant, Cesar Valenlin Ramos #93541**  
**v. Respondent, Kansas Department of Corrections (KDOC)**  
**due to personal injury in the amount of \$45,000.00**

Cindy Lash, Kansas Legislative Research Department (KLRD), summarized Mr. Ramos' claim. Mr. Ramos stated in his claim he was repeatedly attacked by a KDOC officer that caused him to be transferred to segregation and to sick call more than twelve times and the medication is not enough to control the ongoing pain.

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

**Respondent** stated there was no grievance or internal injury claim filed with the facility. Correspondence was found that stated he filed a grievance that was not responded to by KDOC; no grievance was found. Claimant mentioned filing a lawsuit. The records show the situation began with a disciplinary report (DR) for insubordination, behaving in a threatening manner, and striking an officer; the DR was because he was found guilty on two of the charges. The recommendation is this claim be denied.

Committee members asked for written information about security cameras, such as where the cameras are located within facilities and at which facilities.

*Following discussion, the Joint Committee recommended that Claim No. 6334 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6340, Claimant, Russell A. Carline #9036**  
**v. Respondent, El Dorado Correctional Facility**  
**due to personal injury in the amount of \$50,000.00**

Cindy Lash, KLRD, summarized the Claimant's claim. The Claimant stated in his paperwork he fell on a concrete floor while working in the canteen; his hip had to be replaced; he believes he will have hip issues in the future.

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

**Respondent** stated the Claimant did not file a personal injury claim. The facility did provide immediate medical care; his hip was fractured and was replaced. The recommendation is this claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6340 be denied. (See section captioned "Committee Action and Recommendation.")*

**CARRIED OVER CLAIM**  
**FROM INMATE AT**  
**LANSING CORRECTIONAL FACILITY**

**Claim No. 6307, Claimant, Craig Pittman #71340**

**v. Respondent, Lansing Correctional Facility  
due to Mistreatment of an inmate and abuse of process in the amount of \$7,500.00**

**Claimant** summarized his claim. He stated an officer filed disciplinary charges numerous charges against him without reason.

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

**Respondent** stated two DRs were dismissed due to lack of evidence. The Claimant received three DRs within three months, which is not considered excessive to show harassment; he was only found guilty on one charge. The recommendation is this claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6307 be denied. (See section captioned "Committee Action and Recommendation.")*

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

**Claim No. 6319, Claimant, Terry L. Scott #46163**

**v. Respondent, Lansing Correctional Facility  
due to loss of property in the amount of \$1,021.00**

**Claimant** summarized his claim. He stated he was put up on sanctions that were eventually reversed, however his property that was packed out of his cell was lost. The facility personnel refuses to review the video to see who packed his property. Some of the property was received at his house; however, his leather goods were not received. Because the sanctions were reversed, KDOC is paying him for the days of employment he missed, but are not addressing his missing property.

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

**Respondent** stated the conviction causing him to mail out his property was overturned by the Leavenworth District Court, as well as collateral consequences resulting solely from the conviction. DRs followed for unrelated charges, causing incentive level changes and property pack outs and mail outs. Claimant did not make notation of any missing property before any mail out. He had not purchased leather goods for more than the past 12 months. The recommendation is this claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6319 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6327, Claimant, Timothy Quinton Collins #6001034  
v. Respondent, Hutchinson Correctional Facility  
due to personal injury in the amount of \$50.00**

**Claimant** summarized his claim. He was incarcerated with possession of his glasses. During a shakedown of the cell, his glasses were confiscated due to the frames being wire-rimmed frames. He was told he could mail them out; he completed the form to do so; the glasses were not found.

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

**Respondent** stated KDOC is recommending payment for a lesser amount on this claim. Claimant did not note missing glasses on inventory; however, there was previous paperwork showing the glasses were confiscated and would be mailed to his home. There was no documentation showing they had been mailed out. KDOC is recommending that the claim be paid, however IMPP 12-120, Attachment A, limits the claim value of personal eyeglasses at the value of glasses purchased from the Health Authority in the amount of \$20.00. Therefore, KDOC is recommending payment of this claim in the amount of \$20.00.

*Following discussion, the Joint Committee recommended that Claim No. 6327 be allowed in the amount of \$20.00. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6358, Claimant, Timothy Quinton Collins #6001034  
v. Respondent, Lansing Correctional Facility  
due to personal injury and loss of property in the amount of \$5,000.00**

**Claimant** summarized his claim. He stated he had tied up his bed with his belt in order to have room to clean the cell; the belt broke, causing the bed to fall and smash his finger. His wedding band was lost during transport to and from the hospital.

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

**Respondent** stated Claimant does not claim negligence on the part of KDOC and Claimant did not file a property claim. IMPP 12-120 puts the value on a wedding band at \$50.00. The recommendation is this claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6358 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6332, Claimant, William James Harris, Sr. #79852  
v. Respondent, Lansing Correctional Facility  
due to loss of property in the amount of \$5.73**

**Claimant** summarized his claim. He stated upon returning from working, his cell was being searched; his powerstrip was taken because it was altered, but it was the officer that broke the powerstrip. Claimant states he has witnesses that will corroborate this testimony.

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

**Respondent** stated the surge protector/powerstrip was confiscated due to alteration to store contraband. Respondent found no witness statements that corroborated Claimant's statements. The recommendation is this claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6332 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6344, Claimant, Billie Elliott #44808  
v. Respondent, Kansas Department of Corrections  
due to loss of property in the amount of \$11.44**

**Claimant** summarized his claim. The Claimant purchased a television with a remote control. He stated IMPP 12-120 does not state inmates have to purchase television remote controls from KDOC. His purchase order was signed by KDOC personnel.

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

**Respondent** stated for inmates to purchase items not sold through the facility canteen, they must have written permission from the central property officer. The unit team evidently erroneously signed the account withdrawal request and the order was processed. But upon delivery, the Claimant was not allowed to possess the item; Claimant was informed he had to mail the item or sell it. The intent is to allow remotes; the Claimant did not go through proper channels to purchase the item. The recommendation is this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6344 be denied. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6345, Claimant, Larece Terrill Hutton #6006885**

**v. Respondent, Lansing Correctional Facility  
due to loss of property in the amount of \$1,300.00**

**Claimant** summarized his claim. He stated, when he went to the clinic, his property was packed-out of his cell; upon receipt of his property, his glasses were missing.

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

**Respondent** stated the glasses were not listed on the inventory sheet as missing. He had received state-issued glasses prior to this time; there was no documentation Claimant had purchased outside glasses. Claimant did not state a reason the amount of this claim is \$1,000 more than the amount previously claimed as the glasses' value. The recommendation is the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6345 be denied. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6349, Claimant, Delarick William Evans #67355**

**v. Respondent, Kansas Department of Corrections  
due to personal injury in the amount of \$550.00**

**Claimant** summarized his claim. He stated the claim is to pay him for the time, energy, and supplies it took to defend himself against a DR; the DR was reversed.

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

**Respondent** stated the claimant did not submit a grievance prior to submitting this claim. The charge was for taking a diet meal instead of a regular meal; he had previously been on a medically prescribed diet and had been taken off the prescribed diet, without his knowledge. Due to the fact the claimant had previously been on the prescribed diet, the DR was reversed; however, the recommendation is the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6349 be denied. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6350, Claimant, Joseph C. Jones #59134**  
**v. Respondent, Kansas Department of Corrections**  
**due to personal injury in the amount of \$590.00**

**Claimant** summarized his claim. He stated he received a disciplinary report (DR) that was dismissed. Upon dismissal of the DR, his property and legal papers were not returned to him. The property was said to still be in "evidence." He has not received his property or his legal transcripts. The amount of the claim is for the property, typing supplies, and time to prepare the legal transcripts.

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

**Respondent** stated the claimant did not file a grievance or property claim prior to filing this claim. His property was seized as evidence. It was found the property was altered and, therefore, destroyed.

The Claimant's statement in his claim regarding being strip-searched in the presence of a female officer is denied by all officers present. The recommendation is the claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6350 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6351, Claimant, Ernestar Martinez #51459**  
**v. Respondent, Lansing Correctional Facility**  
**due to loss of property in the amount of \$9.65**

**Claimant** summarized his claim. He stated, upon release from segregation, items were missing from his property. He stated the reason he did not sign the inventory sheet was because the officers do not allow inmates to check their property before signing.

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

**Respondent** stated the Claimant did not note any discrepancies on his inventory sheet upon packout; and he refused to sign the inventory. He mentioned the missing items and noted the discrepancies upon release from segregation. Most items he claims were missing were listed on the inventory sheet, but in different quantities; a magazine was confiscated due to alteration. The recommendation is the claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6351 be denied. (See section captioned "Committee Action and Recommendation.")*



**Claim No. 6366, Claimant, Ernestar Martinez #51459**

**v. Respondent, Lansing Correctional Facility  
due to loss of property in the amount of \$412.78**

**Claimant** summarized his claim. He stated his property was confiscated when he was put in segregation; he was not given the opportunity to send out his property and was told his property was put in storage.

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

**Respondent** stated there was no documentation that LCF had his property; it had either been destroyed or sent out. Claimant's internal property claim was not submitted within the time frame allowed. The recommendation is the claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6366 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6353, Claimant, William R. Webb #54087**

**v. Respondent, Lansing Correctional Facility  
due to loss of property in the amount of \$230.00**

**Claimant** summarized his claim. He stated upon returning to his cell from taking a shower, he discovered his television missing. The officers could not identify who may have entered his cell. The television did not fit in his locker to secure it. He would be satisfied to receive a used television.

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

**Respondent** stated the Claimant was signed up for the Interchange Freedom Initiative (IFI) program at LCF, which allows cell doors to remain unlocked during the day to permit inmates to come and go to classes throughout the day. Upon his reporting the loss, the unit was locked down and searched. The property was not located. The recommendation is the claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6353 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6368, Claimant, Marlin D. Long #6002628**

**v. Respondent, Kansas Department of Corrections  
due to loss of property in the amount of \$80.00**

**Claimant** summarized his claim. He stated he sent his property to Conrad Hall, but it was returned to the facility. He did not get the property. He did file the proper internal paperwork.

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

**Respondent** stated his two claim forms were incomplete and conflicting. His paperwork claims he sent his radio to Panasonic; it was sent back, but he claimed to having never received it. The internal claim was beyond the time limit, but it was investigated. It was found that he had mailed it out to Conrad Hall. It was returned, causing a DR. No explanations were provided by the Claimant. The recommendation is the claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6368 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6337, Claimant, Eddie R. Lowrance #62262**

**v. Respondent, Lansing Correctional Facility/Kansas Department of Corrections  
due to loss of earnings and property in the amount of \$262.00**

**Cindy Lash** summarized the claim. The Claimant stated in his paperwork he was laid-in from his job, but he should have received lay-in pay. Also, staff confiscated his radio due to it being altered.

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

**Respondent** stated the Claimant did not submit a property claim form for his radio or lay-in pay; he filed a grievance. Investigation found he had been terminated from his job, not laid-in. Due to lack of proper communication between Claimant's counselors and Impact, he was not reassigned a job. The radio was to be sent out; the Claimant did not do the paperwork to do so, so the radio was donated. The recommendation is the claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6337 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6343, Claimant, Sabastian Alsip Canon #54581**

**Representative/Attorney, Ron Waterman, Gogh, Shanahan, Johnson & Waterman, 33 S. Last Chance Gulch, Helena MT 59601**

**v. Respondent, Kansas Department of Corrections**

**due to loss of property in the amount of \$3,327.10 (\$3,541.25 minus \$214.15 paid by KDOC)**

**Claimant's attorney, Ron Waterman**, summarized the claim. He stated the claim came about when the Claimant was seeking to enforce an agreement he had with the State of Montana as to where to house the Claimant. The State of Montana agreed to comply with the agreement when the Claimant came to Kansas. The correctional facility in Kansas decided to move the Claimant without affording him the opportunity of packing up his property. Claimant was moved to the State of Montana, then to South Dakota. Some of his property caught up with him in South Dakota. Some of the missing money from his account was located and was deleted from the original amount of this claim.

This claim is due to the alleged negligence of KDOC as these items were known to be in the hands of the State of Kansas, and, to the best of the Claimant's knowledge, nothing more was sent out since the Claimant moved from Kansas.

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

**Respondent** stated the Claimant did not submit an internal claim. He was present at the inventory of his property, and he did sign the inventory sheet. The value he put on each item is the value due to the time he spent creating the items. The items lost cannot be substantiated. The recommendation is the claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6343 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6325, Claimant, Gail Martin #68919**

**v. Respondent, Topeka Correctional Facility**

**due to personal injury in the amount of \$100,000.00**

**Claimant** summarized her claim. She stated she had a medical restriction from climbing and being assigned a top bunk. They had changed her medical restriction without explanation; thereby, being given a top bunk, from which she fell. Her medical restriction had been due to the bullet in her leg and side-effects of the psychotropic medications she takes.

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

**Respondent** stated the Claimant's medical restriction was from and during a previous incarceration. The Claimant did not submit a grievance through internal processes. Investigation showed discrepancies in her medical needs and side-effects from medication. She claimed the side-effects from the medication had resolved. The recommendation is the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6325 be denied. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6354, Claimant, EagleMed, LLC**

**Representative, Joy Johncox**

**v. Respondent, State of Kansas (KHP)**

**due to transportation of patient in KHP custody in the amount of \$2,312.00**

**Claimant's representative** summarized the claim. She stated the claim was due to an inter-facility transport, hospital to hospital, from Goodland Regional Medical Center to the Swedish Medical Center-Columbia Emergency Room Trauma Room. At time of the transport, the patient was unconscious, chemically paralyzed and sedated, and on a ventilator (in a state of respiratory failure). It was noted that the victim had a gun shot wound. As the transport takes off and lands on an airstrip, there was ambulance support required at both ends of the flight.

**Respondent, State of Kansas (KHP)**

**Represented by Jeff Chanay, Deputy Attorney General, Office of the Attorney General**

**Respondent's representative** stated they have reviewed this claim and recommend the claim be granted. It occurred from a traffic stop, pursuit on I-70, and ending in gunfire and arrest by KHP. To receive appropriate medical treatment, determined by the attending physician, the air transport was required to Denver. It was noted the Kansas Highway Patrol would be responsible for the transport and medical needs when the patient was in their custody. There are no other medical funds available to the patient to contribute toward medical care or transport. The costs of the medical treatment have been determined to be at the Medicaid rate. The recommendation of the Respondent's representative was that the claim be paid, but not come out of KHP funds. There may be other expenses coming from this incident; no hospital bills or other medical providers are included in this claim, only transport expenses. KHP states they do not have funds to pay these claims.

Following discussion, the Joint Committee recommended that Claim No. 6354 be allowed in the amount of \$2,312.00 payable from Kansas Highway Patrol. (See section captioned "Committee Action and Recommendation.")

## **HEARING**

**Claim No. 6362, Claimant, David J. Sharp**

**v. Respondent, Kansas Department of Revenue**

**due to refund of income tax paid to Kansas – owed to Colorado in the amount of \$5,266.00**

**Dylan Dear**, Kansas Legislative Research Department, summarized the claim. The Claimant stated in his paperwork he had paid income tax to Kansas, which, in fact, he owed to Colorado. He did not realize the error until he received a letter from the Colorado Department of Revenue; the letter was received after the statute of limitations for the Kansas Department of Revenue (KDOR) refunds was expired, thereby, preventing KDOR from being able to refund the monies.

**Respondent, Kansas Department of Revenue  
represented by James Bartle, Kansas Department of Revenue (KDOR)**

**Respondent** stated the situation was correctly articulated; KDOR simply did not have authorization to pay the refund, because of the statute of limitations. The recommendation is the claim be allowed.

Discussion followed; and the Committee asked staff to get verification from the Colorado Department of Revenue as to the amount owed by the Claimant, prior to agreeing to pay.

*Following discussion, the Joint Committee recommended that Claim No. 6362 be carried over to the next meeting. (See section captioned "Committee Action and Recommendation.")*

## HEARING

**Claim No. 6328, Claimant, Voss Electric Co.  
represented by Sid Havekost  
v. Respondent, Kansas Department of Revenue  
due to sales tax remitted in error in the amount of \$6,172.40**

**Claimant** summarized his claim. He stated, upon a sales tax audit by the Missouri Department of Revenue, it was discovered that sales tax paid to Kansas should have been paid to the State of Missouri. The amount of overpayment to the State of Kansas is \$6,172.40.

**Respondent, Kansas Department of Revenue  
represented by James Bartle, KDOR**

**Respondent** stated KDOR was unable to pay the amount, simply due to expiration of the statute of limitations by which the Department must comply. The recommendation is the claim be allowed for the full amount of the claim.

*Following discussion, the Joint Committee recommended that Claim No. 6328 be allowed in the amount of \$6,172.40 from the Sales Tax Refund Fund. (See section captioned "Committee Action and Recommendation.")*

## HEARING

**Claim No. 6339, Claimant, TFMComm, Inc.  
represented by Jeff A. Wietharn, Coffman, Defries, and Nothern, PA  
v. Respondent, Kansas Department of Administration  
due to refund of overpayment under Site Lease Agreement in the amount of \$10,271.14**

**Claimant** summarized the claim. The Claimant has a Site Lease Agreement with the State of Kansas to split receipts a user pays to the Claimant for utilizing the tower on the top of the Eisenhower State Office Building. The moneys they are requesting the state refund is

money the Claimant paid the State of Kansas "in good faith" that the User would pay the Claimant, but failed to pay (ten months of use).

**Respondent, Kansas Department of Administration  
represented by Lane Hemsley, Department of Administration**

**Respondent** stated the Site Lease Agreement does not show that moneys paid to the Respondent should be refunded to the Claimant upon any occurrence. The Claimant paid the Respondent, as they should have because the roof was being utilized. The User was utilizing the tower. The Claimant's cause of action should be against the User, not the State of Kansas. Two years after the Respondent asked the Claimant to remove their equipment from the roof, their equipment was still in use on the roof. The Respondent did not receive payment for those two years. There is no viable reason a refund is due. The recommendation is the claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6339 be denied. (See section captioned "Committee Action and Recommendation.")*

**CLAIMS FROM INMATES AT  
TOPEKA CORRECTIONAL FACILITY**

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

**Claim No. 6322, Claimant, Jazztenya Nyagwegwe #93407  
v. Respondent, Topeka Correctional Facility  
due to personal injury and back wages in the amount of \$304,800.00**

**Claimant** summarized her claim. She stated she was removed from her job for erroneous reasons. She submitted grievances that have gone nowhere.

**Respondent, Topeka Correctional Facility  
represented by Libby Snider, Legal Counsel, KDOC**

**Respondent** stated the grievances were regarding another inmate, not about this claim topic. Inmates do not have rights to employment or a wage. Upon being moved, due to conflicts with another inmate, she was no longer eligible for the employment she previously held. The recommendation is this claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6322 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6324, Claimant, Carla Faye Strong #47663**

**v. Respondent, State of Kansas**

**due to personal injury in the amount of \$750,000.00**

**Claimant** summarized her claim. She stated it was a case of double jeopardy; her drug charges were dismissed – set aside; the charges were refiled again three weeks later with the same case number. She stated she was charged twice for the same crime. The amount of the claim was an arbitrary attention-getter.

**Respondent, Office of the Attorney General**

**represented by Jeff Chanay, Deputy Attorney General, Civil Litigation, Office of the Attorney General**

**Respondent** stated the Claimant was charged with possession of illegal drugs with intent to sell in 2005 and 2006. Both cases were dismissed and then refiled by the prosecutors; never went to hearing; never impaneled a jury. She then plead no contest to the majority of the charges in those cases; sentenced to consecutive sentences. Simultaneously to filing this claim, she filed suit in Shawnee County District Court for double jeopardy. The court denied her motion to have her sentence vacated and found her claims of double jeopardy to be without merit. No appeal has been made.

Kansas Supreme Court has looked at double jeopardy within the last two weeks. Jeopardy attaches only when a jury has been sworn in or, with a bench trial, when the judge begins to receive evidence. Double jeopardy may not occur without jeopardy. The recommendation is this claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6324 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6336, Claimant, Linda Reyes #92030**

**v. Respondent, Topeka Correctional Facility**

**due to personal injury in the amount of \$300,000.00**

**Claimant** summarized her claim. She stated she was coerced to submit the claim. She would like the claim withdrawn.

*Following discussion, the Joint Committee recommended that Claim No. 6336 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6356, Claimant, Nekedria Banks #86807**

**v. Respondent, Topeka Correctional Facility  
due to mental anguish, severe pain and suffering due to medical negligence in the  
amount of \$500,000.00**

**Claimant** summarized her claim. She stated she has a tumor and was told to lose weight, but must maintain some weight to keep her balance. She has never been sent to get MRIs or x-rays. She stated that when she was sentenced, she was told upon getting to TCF she would get the tumor removed.

**Respondent, Topeka Correctional Facility  
represented by Libby Snider, Legal Counsel, KDOC**

**Respondent** stated the Claimant claims she has a court order for removal of the tumor. If she does, it has not been seen by KDOC; she should seek remedy through the courts.

Claimant submitted a grievance. She lost weight to the point she claimed she lost her equilibrium. Upon consultation with the doctor, after seeking an appeal with the Secretary, it was deemed she was not a surgical candidate; an MRI was not an option, because her weight exceeded the limit on most MRI tables; the tumor appeared to be a lymphoma, a benign tumor, but difficult to assess due to her weight. Her case will be discussed with the Regional Contract Monitor. The recommendation is this claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6356 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6361, Claimant, Patricia Lemmie #47684**

**v. Respondent, Topeka Correctional Facility  
due to personal injury in the amount of \$300,000.00**

**Claimant** summarized her claim. She stated during treatment, after being diagnosed with cancer and neuropathy, the medical professionals at the facility told her they do not provide the specific medication prescribed by her diagnosing doctor. The followup care prescribed by her oncologist is not being followed.

The amount of the claim was chosen due to the probability of further needed treatment and the loss of the use of her feet. This issue should be about the quality of care, not whether or not proper procedures are followed.

**Respondent, Topeka Correctional Facility  
represented by Libby Snider, Legal Counsel, KDOC**

**Respondent** stated Claimant did not file a personal injury claim, but a grievance and appeal of the grievance. Health care providers stated Claimant requested the specific medication, but it had not been previously prescribed. If current medications are deemed ineffective, it will be reviewed in the future. The recommendation is this claim be denied.



*Following discussion, the Joint Committee recommended that Claim No. 6361 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6348, Claimant, Eloise Smith #67940**  
**v. Respondent, Topeka Correctional Facility**  
**due to personal injury in the amount of \$500,000.00**

**Claimant** summarized her claim. She stated she sustained head injuries from a broom handle when attacked by a maximum custody inmate while housed in a maximum unit as a new commitment. There was pervasive and well-documented evidence that they were putting her in a zone of danger.

**Respondent, Topeka Correctional Facility**  
**represented by Libby Snider, Legal Counsel, KDOC**

**Respondent** stated the Claimant has not submitted a personal injury claim. She was not perceived to be in any danger from the attacking inmate. She was given appropriate medical care upon the injury. The recommendation is this claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6348 be denied. (See section captioned "Committee Action and Recommendation.")*

**CLAIMS FROM INMATES AT**  
**NORTON CORRECTIONAL FACILITY**

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

**Claim No. 6326, Claimant, James R. Sager #90329**  
**v. Respondent, Norton Correctional Facility**  
**due to loss of property in the amount of \$7.76**

**Claimant** summarized his claim. He stated his sweats/shorts are not returned from the laundry; there is no documenting method for returning sweats or shorts to the correct inmate.

**Respondent, Norton Correctional Facility**  
**represented by Libby Snider, Legal Counsel, KDOC**

**Respondent** stated Norton Correctional Facility has no documentation that the Claimant turned in sweats or shorts for laundering. They do have laundry procedures. Sweats are to be turned in on one specific day of the week for laundering. It also is considered personal property, of which they own at their own risk. The recommendation is this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6326 be denied. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6346, Claimant, Mike C. Matson #59259**

**v. Respondent, El Dorado Correctional Facility  
due to personal injury in the amount of \$4,000.00**

**Claimant** summarized his claim. He stated he was subjected to a strip-search in front of the new digital video camera at the EDCF and this fed into the digitally recorded internet monitoring system, which is monitored by two female officers, as well as others female officers. The retaliation from submitting grievances has gotten worse. He intends to file a lawsuit.

Following discussion, the Joint Committee recommended that Claim No. 6346 be denied without prejudice. (See section captioned "Committee Action and Recommendation.")

**CLAIMS FROM INMATES AT  
ELLSWORTH CORRECTIONAL FACILITY**

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

**Claim No. 6321, Claimant, William Shawn Wright #54669**

**v. Respondent, Kansas Department of Corrections  
due to loss of property in the amount of \$2,500.00**

**Claimant** summarized his claim. Claimant stated he has a hernia. The appeal form for a disapproved grievance (regarding the hernia) was not given to him, even though they are to be readily available. The hernia has caused him severe pain. Upon transfer, there have been conflicting diagnoses. He has been diagnosed with a second hernia, as well. He has been given a hernia belt, told to stop working out, and to limit the weight he carries to five pounds. The hernia is a visible protrusion. The amount of the claim is for mental frustration and pain he has been caused.

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

**Respondent** stated the claimant filed a grievance, not a personal injury form. He did not file an appeal, according to documentation. The recommendation is this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6321 be denied. (See section captioned "Committee Action and Recommendation.") Staff was given direction to write a letter to the Department to check into the hernia and the remedy of surgery for this inmate.

**Claim No. 6360, Claimant, William Shawn Wright #54669**

**v. Respondent, Kansas Department of Corrections  
due to personal injury in the amount of \$2,500.00**

**Claimant** summarized his claim. He stated he was diagnosed with Iliotibial Band Syndrome. The doctor gave him stretching exercises, but they have not helped with the pain. The medical team has not responded to continued sick calls. They have not allowed him to see the medical staff when he has pain. Ibuprofen has not helped, so he has refused the medication. Surgery or deep tissue massage is required to correct this. The doctor at the facility says surgery will not help; they are not providing the appropriate tools for self-massage. There may be conflicts between the stretching exercises prescribed for this syndrome and the hernia status on the previous claim, No. 6321.

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

**Respondent** stated the inmate did not file a personal injury claim, but a grievance; he evidently has an appeal in process, which would make this claim premature. The warden has to rely on the health care provider for appropriate care information for inmates. The recommendation is this claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6360 be denied. (See section captioned "Committee Action and Recommendation.")*

**CLAIMS FROM INMATES AT  
WINFIELD CORRECTIONAL FACILITY**

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

**Claim No. 6342, Claimant, Matthew W. Mork #95803**

**represented by Martin K. Mork (father, power of attorney)  
v. Respondent, Kansas Department of Corrections  
due to personal injury in the amount of \$100,000.00**

**Claimant** was on the telephone and his **Representative** was present at the hearing. **Claimant's Representative** summarized the claim. He stated the Claimant called him on the telephone to tell him he was being threatened with a beating by a group of inmates in the correctional facility; asked his father to call the facility to have them intercede to protect him from the beating; and that a member of the group was sitting right next to him, listening in on the phone call, as they spoke. The Claimant's father gave the phone to his wife, while he called the facility from his cell phone to inform the warden of the eminent danger in which his son was. It took 45 minutes for anyone in the facility to check on the Claimant, by which time he had been beaten by four inmates. The inmates were attempting to extort \$10.00 a month in rent or they threatened more beatings.

The Chairperson stopped the Representative, at this point, to inquire of him and the Claimant whether the Claimant was planning to file a lawsuit on this matter. The Representative stated he did not want to pay legal fees to file a lawsuit. The Chairperson explained that the Committee is the “court of last resort,” and it may be in the Claimant's best interest to be able to have witness testimony, evidence, subpoena power, rebuttability, as well as any other details that assist a court case. The Claim could be continued, unless there was a motion citing Rule 2, but if they chose a lawsuit at a later time, a claim with the Committee would not be available at that time.

The Representative continued with the Claim, explaining the Claimant spoke with his grandmother about his injuries and pain; the Representative spoke with the warden who stated the Claimant was not injured; he then spoke with personnel from the “Department of Health,” who checked and stated the Claimant was bruised and going to the hospital. KDOC denied the Claimant's parents' visitation. Instead of being transferred to protective custody, he was put in the maximum security, which he found to be more threatening. Eventually, he was transferred back to WCF, where he had been beaten.

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

**Respondent** stated there appears to have been some issues presented during the hearing that were not in the Claim's documentation. The Department would like a chance to fully investigate those claims through a carry-over of the claim; otherwise, the recommendation is this claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6342 be denied without prejudice. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6367, Claimant, Demetrius Atkins, Sr. #57107  
v. Respondent, Kansas Department of Corrections  
due to personal injury in the amount of \$500,000.00**

**Claimant** summarized his claim. He stated he was assigned to a detail to climb a ladder while on medical restriction due to his bad knees. He fell five or six feet onto a concrete floor. He sustained some injuries: leg numbness, sciatic nerve damage, and hematomas on his head causing migraine headaches and partial blindness. He has been diagnosed as having no knee ligaments or cartilage, should have knee replacements, and was being given synthetic knee injections. He stated his options were to take a write up or go to work, even though he knew he was not able to do work on a ladder.

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

**Respondent** stated a photograph of the ladder the Claimant used was sent with the Respondent's recommendation. There may be a sticker on that top step that states it is not a step. The Claimant filed a grievance regarding improper treatment and care of an inmate. He claimed his medication should be changed. The facility's medical records on the Claimant show

a long history of chronic back pain, intermittent headaches, diabetes, hypertension, hyperlipidemia, gastroesophageal reflux disease, and obesity. Thoracic spine films showed mild degenerative changes; knee films showed mild medial and lateral-compartment osteoarthritis; cervical-spine film and lumbar-spine x-ray showed degenerative disease and sclerosis at the fascia joints, indicating fascia arthropathy. The Claimant fell when his knee gave out while mopping, at which point his knees were x-rayed and an MRI was taken on his left knee, his medication was changed, and he was given a cane. Claimant put in a personal injury claim for \$500,000 more than six months after the incident.

An incident report was located on the fall from the ladder, indicating the reason for the fall from the ladder was due to inattention to detail when coming down the ladder was cause for the fall; taken to the clinic; and held for observation. The only medical classification report in effect for the Claimant at the time of the incident indicated his only work restrictions were from aggressive sport activities which may cause adverse effects to the inmates medical condition. The recommendation is this claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6367 be denied. (See section captioned "Committee Action and Recommendation.")*

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

The Chairperson opened the telephone hearings filed by inmates at Larned Correctional Mental Health Facility.

**Claim No. 6317, Claimant, Louis G. Galloway, Sr. #35838**  
**v. Respondent, Kansas Department of Corrections**  
**due to personal injury in the amount of \$1,000.00**

**Claimant** summarized his claim. He stated his no pork diet was violated. Due to his religious beliefs, he does not eat pork, yet the facility continues to serve him pork bacon, while lying to him by telling him it is turkey bacon. According to the Claimant, one warden agreed it was pork. No one else cooperated in investigating the bacon.

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

**Respondent** stated the Claimant's claim was that "he could tell" that the bacon was pork, not turkey. There was no proof. Video films were reviewed; care was taken to substantiate his bacon came from the turkey bacon package. The recommendation is this claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6317 be denied. (See section captioned "Committee Action and Recommendation.")*

**Claim No. 6365, Claimant, Louis G. Galloway, Sr. #35838**

**v. Respondent, Kansas Department of Corrections**

**due to personal injury and damage to property in the amount of \$100,000.00**

**Claimant** summarized his claim. He stated he has been forced to be on psychotropic medication. He said he has done nothing out of anger, frustration, lack of self-control, or as a threat to security or any staff member. Because of getting a little angry during a staffing hearing, he was threatened with being sent to an involuntary forced medication hearing, after which he was put on psychotropic drugs.

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

**Respondent** stated his psychiatrist is keeping him on medication against his will. A hearing was held that determined psychotropic medications were called for; the decision was upheld upon appeal. The recommendation is this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6365 be denied. (See section captioned "Committee Action and Recommendation.")

A review of items requested follows:

- KDOC further investigation on Matthew Mork Claim No. 6342;
- William Wright Claim Nos. 6321 and 6360 – KLRD staff write letter to KDOC asking them to look into contradictory guidance regarding the feasibility of a surgery on his hernia and his overall situation;
- Voss Electric Claim No. 6328 – KLRD staff write a letter to the Secretary, KDOR, requesting information to the Committee (Senator Pyle); and
- David Sharp Claim No. 6362 – corroborate with Colorado Department of Revenue as to the amount due and when they notified him about the taxes due; and with KDOR as to the amount overpaid.

The meeting was adjourned.

Prepared by Kathy Letch  
Edited by Dylan Dear

Approved by Committee on:

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November 1, 2011  
(Date)