

REVISED
M I N U T E S

JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

November 14, 2007
Room 514-S, Statehouse

Members Present

Representative Steve Huebert, Chairperson
Senator Phillip B. Journey, Vice Chairperson
Senator Terry Bruce
Senator Mark Gilstrap
Senator Dennis Pyle
Senator Mark Taddiken
Representative Virginia Beamer
Representative Pat Colloton
Representative Bob Grant
Representative Rob Olson
Representative Dale Swenson

Staff Present

Cindy Lash, Kansas Legislative Research Department
Amy Deckard, Kansas Legislative Research Department
Mike Corrigan, Revisor of Statutes Office
Mike Heim, Revisor of Statutes Office
Shirley Higgins, Committee Secretary

Others Present

Shelly Starr, Special Assistant Attorney General, Kansas Department of Corrections
Kim Parker, Office of the District Attorney, 18th Judicial District, Sedgwick County
Ron Paschal, Office of the District Attorney, 18th Judicial District, Sedgwick County
Tricia Knoll, Office of the District Attorney, 18th Judicial District, Sedgwick County
Mark and Pam Jordan
Roberta Sue McKenna, J.D., Kansas Department of Social and Rehabilitation Services
Don Jordan, Secretary, Kansas Department of Social and Rehabilitation Services

November 14, 2007

The meeting of the Joint Committee on Special Claims Against the State was called to order at 10:15 a.m. by Representative Steve Huebert, Chairperson. The Committee's attention was turned to the minutes of the September meeting. Representative Grant moved to approve the minutes of the September 5-6, 2007, meeting of the Joint Committee on Special Claims Against the State, seconded by Representative Olson. The motion carried.

Due to a delay in reaching staff at El Dorado Correctional Facility for telephone hearings on inmate claims, Representative Huebert opened the hearings on claims on the agenda under the heading, "Claims Carried Over," Claims Nos. 5881, 5884, 5921, 5935, 5941, 5942, and 5946.

Claim No. 5881 was filed by Othello Johnson, an inmate at Norton Correctional Facility, against the Kansas Department of Corrections (KDOC) in the amount of \$314.12 for the loss of property, which included a pair of Georgia Giant boots. When the claim was heard in July, Shelly Starr, legal counsel for KDOC, stated that the Department would replace the boots. Ms. Starr submitted a written update on the claim on November 3, 2007, in which she reported that KDOC provided Mr. Johnson with a pair of Georgia Giant boots on September 19, 2007, and he subsequently signed a claim withdrawal form. A copy of the signed form was attached to Ms. Starr's update. Because Mr. Johnson's claim was settled to his satisfaction and withdrawn, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5881 be denied. (See section captioned "Committee Action and Recommendation".)

Claim No. 5884 was filed by Daniel L. Fitzpatrick, an inmate at Lansing Correctional Facility, against Hutchinson Correctional Facility in the amount of \$5,000.00 for a finger injury in a table saw accident. Shelly Starr, KDOC, recalled that Mr. Fitzpatrick suggested at the hearing on his claim that a severed piece of bone was floating in the end of his finger, and he complained that he experienced pain every time he used the injured finger because the end of the bone was quite sharp. She then reported that the contract monitor reviewed Mr. Fitzpatrick's case at her request after the hearing. Mr. Fitzpatrick's finger was x-rayed again. The x-ray revealed that there was no floating bone at the tip of the finger, and the reviewer found that the injury was treated appropriately. In light of the contract monitor's findings, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5884 be denied. (See section captioned "Committee Action and Recommendation".)

Claim No. 5921 was filed by Joshua Bush, an inmate at Lansing Correctional Facility, against El Dorado Correctional Facility in the amount of \$114.00 for property loss which occurred after his property was packed out when he was transferred to the segregation unit. Mr. Bush attached a copy of a letter from a corrections officer to his claim which indicated that the officer had

a conversation with property room staff about his property. At the hearing on the claim in September, the Committee asked Shelly Starr, KDOC, to contact the officer to see if he could provide additional information. Ms. Starr reported that she contacted the officer, but he had no recollection of Mr. Bush's situation. She reaffirmed her recommendation that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5921 be denied. (See section captioned "Committee Action and Recommendation".)

Claim No. 5935 was filed by James Watson, an inmate at Lansing Correctional Facility, against Lansing Correctional Facility in the amount of \$500.00 for property loss. At the hearing on the claim in September, the Committee asked Mr. Watson to provide receipts showing that he purchased the missing property. Copies of the receipts were received on September 12, 2007. The receipts, amounting to approximately \$470.00, were for the purchase of property between December 2003 and February 2006. Shelly Starr, KDOC, recalled that Mr. Watson was convicted of a disciplinary report, which was later overturned by the district court. In the meantime, he was told that he must send out his electronic property, but he insisted that the property should not be sent out due to the court case. After being told numerous times that the facility could not hold his electronics, the property was donated while his appeal was pending. Noting that Mr. Watson would still have ownership of his electronic property if he had sent it out to a relative pursuant to KDOC policy, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5935 be allowed in the amount of \$100.00 to be paid from the State General Fund. (See section captioned "Committee Action and Recommendation".)

Claim No. 5941 was filed by Melissa Minor, an inmate at Topeka Correctional Facility, against Topeka Correctional Facility in the amount of \$1,000.00 for inadequate medical treatment for seizures. At the hearing on the claim in September, Shelly Starr, KDOC, suggested that Ms. Minor be tested further. Subsequently, Ms. Starr requested that the contract monitor review Ms. Minor's issues. Ms. Minor was admitted to the facility infirmary for a week of observation, and no seizure activity was observed. Additionally, a mental health evaluation documented her behavior as "attention-seeking behavior." Ms. Starr assured the Committee that Ms. Minor would be monitored on an on-going basis, and any issues that arose would be addressed. With this, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5941 be denied. (See section captioned "Committee Action and Recommendation".)

Claim No. 5942 was filed by Christopher Clark, an inmate at Lansing Correctional Facility, against Lansing Correctional Facility, in the amount of \$100.00 for property loss occurring after he was taken to crisis level segregation for a suicide watch. At the hearing on the claim in September, Shelly Starr, KDOC, recommended that the claim be denied because there was no way to determine that the property he claimed was missing was in his possession at the time his property was packed

by officers. The Committee requested that Mr. Clark mail copies of purchase records showing that he owned the property. Staff informed the Committee that the Mr. Clark had not sent the purchase records.

Following discussion, the Joint Committee recommended that Claim No. 5942 be denied. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearings on claims filed by inmates at El Dorado Correctional Facility (EDCF), Claims Nos. 5948 and 5953.

Bradley Johnson, EDCF, discussed his Claim No. 5953 against KDOC in the amount of \$746.00 for the loss of two pairs of eyeglasses. He explained that the personal property in his cell was inventoried by an officer after he was taken to segregation at Hutchinson Correctional Facility on September 5, 2006. At that time, he had two pairs of wire-framed prescription eyeglasses. The eyeglasses were placed in storage because they were not allowed in segregation. He was transferred to EDCF on February 22, 2007, and discovered that both pairs of eyeglasses were missing after his property was returned to him on February 23. Mr. Johnson called attention to copies of receipts attached to his claim showing that he purchased the eyeglasses, and he also referred to copies of facility documents showing that the eyeglasses were placed in storage. He noted that, when he purchased the eyeglasses in 1999 and in 2000, inmates were allowed to have two pairs of eyeglasses. He informed the Committee that the unit manager who authorized the purchase of both of the eyeglasses was in the room with him and would be willing to answer any questions the Committee might have.

Shelly Starr, KDOC, called attention to copies of receipts showing that Mr. Johnson received a pair of state-issued eyeglasses in 2005 and in 2006. She explained that, per IMPP 12-120, inmates are allowed only one pair of eyeglasses. Additionally, wire frames are not allowed. She further explained that older, wire-framed eyeglasses would have been confiscated due to a safety issue. With this, she recommended that the claim be denied.

In response to Ms. Starr, Mr. Johnson explained that the eyeglasses issued to him in March 2005 were reading glasses, and they were "chewed up" by a lawnmower while he was working in the yard at Hutchinson Correctional Facility. The eyeglasses which were issued to him in June 2006 to replace the damaged pair were bifocals. He claimed that staff at Hutchinson Correctional Facility never informed him that possession wire-framed eyeglasses was in violation of an IMPP. Noting that he was required to submit a withdrawal form in order to purchase the wire-framed eyeglasses, he argued that facility staff had a duty to ensure that he did not purchase any items considered to be contraband.

Following discussion, the Joint Committee recommended that Claim No. 5948 be denied. (See section captioned "Committee Action and Recommendation".)

Gary A. Ditges, EDCF, discussed his Claim No. 5948 against EDCF in the amount of \$22.00 for the loss of his fan, which was confiscated during a mass shakedown in May 2007 because it had

been altered. Mr. Ditges explained that the fan vibrated after it was broken in a previous shakedown, and he tied a shoe string around the broken part to stop the vibration. After the fan was confiscated in 2007, he requested that it be donated to the dog program. He was told that it had to be destroyed because it was broken.

Shelly Starr, KDOC, clarified that the fan was not accepted as a donation for the dog program because a mounting bracket was broken. She explained that any damage to the fan increased the opportunity to break the parts and use them to make weapons. For reasons cited, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5948 be denied. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearings on claims filed by inmates at Lansing Correctional Facility (LCF), Claims Nos. 5947, 5954, and 5975.

Allen Jordan, LCF, summarized his Claim No. 5947 against EDCF in the amount of \$200.00 for the loss of his prescription eyeglasses. He noticed that his cell door was not closed just as he and his cell mate were about to leave the cell house to go to chow for persons in need of a special diet, not during a mass movement for meal time. He immediately asked an officer to close the door. When he returned, he discovered that his eyeglasses were missing. He estimated that the cell door was left open three to four minutes. He noted that he could not secure his eyeglasses before leaving his cell because he did not have a padlock. He explained that the officer who reviewed the video tape of the area for the relevant time period found that the tape did not focus on one spot long enough to show anyone entering his cell. The officer then suggested that he file a facility property loss claim. The facility claim was approved by Officer Travnicek in the amount \$180.00; however, Major Drago recommended that the claim be approved in the lesser amount of \$160.00. The designee for the Secretary of Corrections disapproved the recommendation. Mr. Jordan confirmed that he was given a pair of state-issued eyeglasses. He indicated that, rather than receiving money, he preferred that the eyeglasses he purchased be replaced.

Shelly Starr, KDOC, explained that KDOC policy states that a claim for replacement of eyeglasses is limited to the value of eyeglasses issued by the Health Authority; therefore, the original approval of the facility property loss claim was erroneous. In addition, she pointed out that the designee for the Secretary of Corrections disapproved the facility claim on the grounds that there was no evidence of negligence on the part of facility staff. Noting that inmates own property at their own risk and that KDOC provided Mr. Jordan with an adequate pair of eyeglasses, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5947 be denied. (See section captioned "Committee Action and Recommendation".)

Daniel Dias, LCF, summarized his Claim No. 5954 against LCF in the amount of \$1,500.00 for injury to his hip and knee. He claimed that, without provocation, an officer threw him against

a wall with excessive force, causing injury to his hip and knee. Mr. Dias clarified that he was on his way to his cell as ordered and had not threatened the officer.

Shelly Starr, KDOC, informed the Committee that the Use of Force report which was filed after the incident indicated that there were two officers present at the time, and Mr. Dias moved toward one of them aggressively and failed to follow an order to turn around and cuff up. Consequently, he was charged with a DR and convicted for threatening or intimidating a person. Ms. Starr further informed the Committee that Mr. Dias had no complaints when health care staff checked him after the incident. In light of her investigation, she recommended that the claim be denied.

In response to Ms. Starr's report, Mr. Dias stated that the Use of Force report was inaccurate. He claimed that a witness would verify that he was walking to his cell as ordered and did not become aggressive. He informed the Committee that he had a pending appeal in district court concerning the DR conviction. Representative Huebert explained to Mr. Dias that the Committee would not make a recommendation on the claim until receiving notice from him that the pending court case had been resolved.

Following discussion, the Joint Committee recommended that Claim No. 5954 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation".)

D'Andrea Jerome Griffin, Sr., LCF, discussed his Claim No. 5975 against Hutchinson Correctional Facility in the amount of \$21.47 for a refund of the cost of a pair of boots. While incarcerated at Hutchinson, he placed an order for a pair of work boots on January 9, 2007. He cancelled the order because he was transferred to EDCF on February 20, 2007, and at that time, payment for the work boots had not been withdrawn from his inmate account. He ordered another pair of boots at EDCF on March 7, 2007, and he received them two days later. While at Osawatomie Correctional Facility, he noticed on March 27 that HCF withdrew \$21.47 from his inmate account on March 8, 2007, for the work boots. He immediately requested a refund, but his request was denied. On April 18, 2007, he was called to the property room so that an officer could issue the work boots to him. He refused to accept the boots and once again asked for a refund. After he was transferred to LCF, he made numerous attempts to get a refund.

Shelly Starr, KDOC, recommended that Mr. Griffin be reimbursed \$21.47 for the boots he ordered while at Hutchinson Correctional Facility. She commented that it was unreasonable to expect Mr. Griffin to wait over three months and several transfers for the boots.

Following discussion, the Joint Committee recommended that Claim No. 5975 be allowed in the amount of \$21.47. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearings on claims filed by inmates at Ellsworth Correctional Facility (ECF), Claims Nos. 5951, 5973, and 5974.

James Driskell, ECF, summarized his Claim No. 5951 against ECF in the amount of \$44.28

for the loss of his Nike tennis shoes. Officers packed out his property when he was transferred to disciplinary segregation. When his property was returned to him upon his release from segregation, the tennis shoes were missing. He claimed that Nike tennis shoes were not listed when he signed the property inventory sheet brought to him in segregation; however, a pair of Nike tennis shoes was shown on the inventory sheet which he was asked to sign when his property was returned to him. Even though the shoes were missing, officers told him that, in order to get his property, he must sign the inventory sheet.

Shelly Starr, KDOC, pointed out that Mr. Driskell did not write a note on the inventory sheet indicating that the tennis shoes were missing. By signing the inventory sheet without this notation, he certified that all the property listed was returned to him. Therefore, the facility had no way to confirm that he did not receive all of his property. Additionally, Ms. Starr noted that he provided no evidence showing that facility staff was negligent in the handling of his property. With this, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5951 be denied. (See section captioned "Committee Action and Recommendation".)

Ronald J. Williamson, EDF, explained his Claim No. 5973 against LCF in the amount of \$102.93 for the loss of his television. His television was missing when he returned to his four-man cell after being away at school. His cell mates had no idea what happened to the television. In his opinion, an officer opened his cell for an unauthorized person while he was away; therefore, the facility was responsible for the theft of his television.

Shelly Starr, KDOC, noted that Mr. Williamson stated in his claim that he padlocked his television in his cell locker before leaving to go to school. When facility staff investigated his claim, the locker was found to be intact with no signs of forced entry. She reported that, although it appeared that Mr. Williamson may have been a victim of theft, there was no indication that his loss was due to negligence on the part of facility staff. Noting that inmates own property at their own risk, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5973 be denied. (See section captioned "Committee Action and Recommendation".)

Tremain Thompson, ECF, discussed his Claim No. 5974 against Norton Correctional Facility in the amount of \$40.25 for the loss of his tennis shoes. On May 29, 2007, he was taken directly from his facility job to segregation. The property in his one-man room was inventoried and packed out by an officer. Mr. Thompson signed the property inventory sheet, indicating that it was correct, without having time to read it. When he received a copy of the inventory sheet on June 10, 2007, he noticed that his tennis shoes had not been packed. He filed a facility property loss claim. Staff could not locate the shoes, and the claim was denied on the grounds that there was no evidence of negligence on the part of staff. He complained that his facility property loss claim was not thoroughly investigated. Mr. Thompson explained that he purchased a pair of Reebok shoes for \$30.88 on May 16, 2006, but he received a refund on June 21, 2006, because they had been

discontinued. He then purchased another pair of Reebok shoes for \$40.25 on June 21, 2006. In his opinion, the officer neglected to pack the shoes. He believed that he was not a victim of theft because none of the other property in his room was missing.

Shelly Starr, KDOC, noted that, unfortunately, there was no way to verify that the shoes were in Mr. Thompson's possession when his property was packed. Having found no evidence to show that the facility was negligent in handling his shoes, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5974 be allowed in the amount of \$30.88. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearings on claims filed by Johnathan Bafford, an inmate at Larned Correctional Mental Health Facility (LCMHF), Claims Nos. 5966 and 5967. Mr. Bafford first discussed his Claim No. 5967 against KDOC in the amount of \$75,000.00 for denial of medical care, pain and suffering, and stress. He explained that he was restricted from receiving medical care for six weeks while incarcerated at EDCF because staff felt that he had requested too many sick calls. He complained that the restriction denied him his right to receive medical treatment for shoulder pain, back pain, and problems with his right wrist.

Mr. Bafford went on to discuss his Claim No. 5966 against KDOC in the amount of \$20,000.00 for excessive use of force, violation of his 8th Amendment rights, and anguish. He explained that officers forced him to the floor in his cell and then told him that, if he got up and moved, force would be used against him once again. As the officers were leaving his cell, he started to get up. The officers then restrained him, using excessive force as they punched his back and pulled his hair. He commented that the fact that one officer broke his wrist in the process of restraining him showed that the force used was excessive. Mr. Bafford contended that the manner in which the officers restrained him was cruel and unusual punishment.

With regard to Claim No. 5967, Shelly Starr, KDOC, explained that Mr. Bafford has legitimate health care concerns; however, he repeatedly used sick call for issues for which no additional treatment was recommended. Therefore, the nursing staff told him that he could not request a sick call for those specific issues for at least six weeks. A review of his health care records revealed that he was seen for new issues during that time period, and he was promptly and appropriately treated. Having found that Mr. Bafford received appropriate medical care, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5967 be denied. (See section captioned "Committee Action and Recommendation".)

With regard to Claim No. 5966, Ms. Starr, KDOC, informed the Committee that the facility Use of Force report, which was very well documented, indicated that Mr. Bafford was placed on the floor in cuffs when officers returned him to his cell. He was told to remain on the floor after the cuffs were removed until all officers had exited the cell. Instead of following the order he was given, Mr. Bafford got up and elbowed one of the officers in the head. As the other officers tried

to bring him under control, he continued to resist. He was then sprayed with pepper spray. He was checked by medical staff after the incident, and no injuries due to the use of force were noted in his medical records. Ms. Starr observed that some of the officers who helped bring Mr. Bafford under control were not as lucky. One officer suffered a broken wrist, and another was clawed and elbowed. Having found that the force used on Mr. Bafford was appropriate and not excessive, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5966 be denied. (See section captioned "Committee Action and Recommendation".)

The Committee's attention was turned to claims on the agenda under the heading, "No Hearing Requested," Claims Nos. 5945 and 5956.

Claim No. 5945 was filed by Clifford D. Price, an inmate at LCF, against KDOC in the amount of \$59.90 for the loss of a pair of Georgia Giant boots. Ms. Starr explained that Mr. Price was wearing the boots when he was transferred to the segregation unit. A segregation officer took the boots from Mr. Price, but he did not list them on a property inventory sheet. The boots were never returned to him. Ms. Starr noted that Mr. Price provided documentation showing that he purchased the boots in 1999. Because the Department did not follow the proper procedures, she recommended that Mr. Price be reimbursed \$30.00, the depreciated value of the boots.

Following discussion, the Joint Committee recommended that Claim No. 5945 be allowed in the amount of \$59.90. (See section captioned "Committee Action and Recommendation".)

Claim No. 5946 was filed by Awnterio Lowery, an inmate at EDCF, against LCF in the amount of \$109.52 for property loss. Shelly Starr, KDOC, explained that Mr. Lowery complained that his tennis shoes, radio, shower shoes, and a stretch cap were missing when his property was brought to him after he was transferred from his cell to the segregation unit. She noted that the missing property was not listed on the inventory form when his property was packed out, and he did not note on the form that the items were missing when his property was returned to him. Because there was no way to verify that the property was in Mr. Lowery's possession at the time his property was packed out, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5956 be denied. (See section captioned "Committee Action and Recommendation".)

The meeting was recessed for lunch at 11:55 a.m.

Afternoon Session

The meeting was called to order at 1:35 pm. by the Vice Chairperson, Senator Journey, who opened the telephone hearings on the following claims against Norton Correctional Facility filed by

Thomas Blankenship, Jr., an inmate at Wichita Work Release Facility: Claim No. 5909 in the amount of \$20,000.00 for contaminated food and Claim No. 5910 in the amount of \$20,000.00 for denial of medical attention.

Mr. Blankenship explained that Claim No. 5909 and Claim No. 5910 related to an incident which occurred while he was eating lunch at Norton Correctional Facility on January 26, 2007. With regard to Claim No. 5909, he explained that Dale Herzberg, the inmate sitting next to him, found a used band aid in the food he was in the process of eating. Mr. Herzberg showed the band aid to an officer, and the inmates were told to dump their food and go through the lunch line again. Mr. Blankenship noted that, although the pan was changed, the food had been cooked in the same big pot. He complained that he lost his appetite and could not eat for three or four days after the incident, and he continued to feel that he must pick through his food before eating. With regard to Claim No. 5910, Mr. Blankenship explained that he and other inmates requested that the clinic perform a blood test to determine if they had contracted a dangerous disease which could be attributed to the band aid being in the food, but their requests were denied.

Shelly Starr, KDOC, informed the Committee that there was no facility report documenting the incident Mr. Blankenship described, and his medical records for the relevant time period made no mention of a sick call related to a band aid being found in his food. However, his records showed that, as part of his routine care, labs were done on his blood approximately two and one-half weeks after the incident. The lab results showed nothing unusual. Ms. Starr quoted the following statement which facility staff made in response to Mr. Blankenship's request for a blood test: "This was discussed with a doctor. This is not a skin to skin or body fluid exchange contact. There is no need for blood tests." Contending that Mr. Blankenship did not suffer any damages related to the incident, Ms. Starr recommended that both claims be denied.

Following discussion, the Joint Committee recommended that Claim No. 5909 and Claim No. 5910 be denied. (See section captioned "Committee Action and Recommendation".)

Senator Journey opened the telephone hearings on claims filed by inmates at Norton Correctional Facility (NCF), Claims Nos. 5912, 5913, 5925, 5926, 5968, and 5969.

Dale Wayne Herzberg, NCF, discussed his Claim No. 5925 against NCF (Aramark Food Service) in the amount of \$10,000.00 for contaminated food and Claim No. 5926 against NCF (Correct Care Solutions) in the amount of \$10,000.00 for denial of his request for a blood test. Mr. Herzberg explained that he got his lunch tray and sat down at a table with other inmates in the chow hall. After he took a few bites of his food, he saw what he thought was an onion. On closer inspection, he discovered that the object was a used band aid. He called an officer over to the table, and the officer instructed everyone to dump their food trays and go through the line again. After the incident, he began buying food at the canteen because he felt sick whenever he smelled the food in the chow hall. He noted that he and two other inmates (Thomas Blankenship and Johnny Lee Jackson) filed claims concerning the incident, and all of them had requested a blood test. Their requests were denied on the grounds that the temperature used to cook the food was high enough to kill all germs.

Shelly Starr, KDOC, commented that, although finding a used band aid in one's food is disconcerting, there was no indication that Mr. Herzberg was exposed to any dangerous conditions or diseases. She went on to say that Mr. Herzberg did not submit any sick calls related to the incident he described, and there was no evidence that he suffered any ill effects. Noting that Mr. Herzberg had no damages other than his own choice to purchase food from the canteen rather than eating the food provided by the facility's food service, Ms. Starr recommended that both claims be denied.

Following discussion, the Joint Committee recommended that Claim No. 5925 and Claim No. 5926 be denied. (See section captioned "Committee Action and Recommendation".)

Justin C. Gray, NCF, discussed his Claim No. 5968 against EDCF in the amount of \$75,000.00 for inappropriate post surgery care. He slipped as he stepped out the shower on June 5, 2006. As he attempted to catch his fall, he caught a finger on his right hand on the ledge, snapping his knuckle in half. He immediately went to the clinic, and a nurse put a splint on the finger. X-rays taken a few days later showed that surgery was needed. The surgery was performed at Wesley Medical Center on July 11, 2006. When the soft cast was removed a week later, he noticed that the finger was extremely crooked and curved beneath his middle finger. Furthermore, he could not make a fist. The doctor who performed the surgery told him that his fingertips were in line and that he would be able to make a full fist in about six months; however, his finger remained crooked, and he could not make a fist. After filing several grievances, he was seen by another doctor, who told him that his finger might straighten out if his fingers were taped together. To date, his finger was still crooked, he was unable to make a fist, and he was still in pain. He complained that he was never given any pain medication stronger than Ibuprofen. He also complained that the facility did not provide shower mats or shower strips.

Shelly Starr, KDOC, informed the Committee that Mr. Gray's medical record and x-rays were reviewed by the Department's contract oversight physician. The physician found that the surgery to repair the knuckle break was appropriately followed up by the orthopedist, and he noted that, even though this type of surgery repair is done correctly, there is always a possibility that the finger may not heal straight. Having found that Mr. Gray received appropriate medical care, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5968 be denied without prejudice. (See section captioned "Committee Action and Recommendation".)

Johnny Lee Jackson, NCF, discussed his Claim No. 5912 against NCF in the amount of \$10,000.00 for contaminated food and Claim No. 5913 against NCF in the amount of \$10,000.00 for denial of medical attention. On January 26, 2007, the inmate sitting next to him at chow time found a bloody band aid in his food. The following day, Mr. Jackson submitted a Form 9 requesting a blood test to determine whether he contracted a disease due to the band aid being cooked in the food. The officer who responded to the request indicated that a doctor said there was no need for a blood test because there was no blood to blood contact, skin to blood contact, or body fluid to body fluid contact. Mr. Jackson noted that he became ill a few days after the incident, and he was

uncertain if the illness was due to the band aid in the food prepared by the facility food service. He contended that his request for a blood test was denied in deliberate indifference to his medical needs.

Shelly Starr, KDOC, commented that the facility health care provider explained that food is cooked at a temperature that is designed to kill all bacteria. She noted that the incident occurred approximately nine months ago, and during that time period, Mr. Jackson did not submit any sick calls for medical issues that could be attributed to the incident. Having found that there was no danger of Mr. Jackson having any medical problems related to the band aid being in the food, she recommended that both claims be denied.

Following discussion, the Joint Committee recommended that Claim No. 5912 and Claim No. 5913 be denied. (See section captioned "Committee Action and Recommendation".)

Benet Williams, NCF, summarized his Claim No. 5969 against KDOC in the amount of \$12.50 for the replacement of his hot pot which he believed was damaged during a shakedown of his cell on June 6, 2007. He claimed that the hot pot was plugged in and worked before the shakedown, but it would not work when he plugged it in immediately after the shakedown. Therefore, he felt that the shakedown officer was responsible for the damage. He maintained that the shakedown officer unplugged the hot pot and damaged it even though he wrote on the shakedown report that the hot pot worked and was in good condition. In conclusion, he stated, "For the record, Norton has had many incidents where property was damaged or destroyed by a shakedown officer."

Shelly Starr, KDOC, informed the Committee that the officer who conducted the shakedown was no longer employed by KDOC. She went on to say that the standard procedure for shakedown officers does not include plugging in electrical appliances or checking to see if appliances work. She explained that the purpose of a shakedown is to make sure the property in the inmate's cell is intact, has the inmate's identification number on it, and has not been altered to hide contraband or to make a weapon. Having found no evidence of negligence on the part of the shakedown officer, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5969 be denied. (See section captioned "Committee Action and Recommendation".)

Senator Journey opened the telephone hearings on claims filed by inmates at Hutchinson Correctional Facility (HCF), Claims Nos. 5952, 5957, 5958, 5962, and 5965.

Jeffery A. Spear, HCF, explained his Claim No. 5952 against HCF in the amount of \$63.18 for the loss of his tennis shoes, shower shoes, and cooler. He was taken from work and placed in administrative segregation on March 19, 2007. His Nike tennis shoes and Reebok shower shoes, which he had locked in foot locker in his dorm, were not packed out by officers. In addition, the officers overlooked a six-pack cooler. He did not know that the items were not packed until his property was delivered to him on March 30. He filed a facility property loss claim, but he did not receive a response. Approximately 30 days later, he filed another claim, which was denied on the

grounds that IMPP 12-120 states that the Department shall not assume responsibility for the loss or damage of allowable property possessed by inmates.

Shelly Starr, KDOC, recommended that the claim be denied. She commented that, unfortunately, there was no way to verify whether the property was in Mr. Spear's dorm area at the time officers packed out his property.

Following discussion, the Joint Committee recommended that Claim No. 5952 be denied. (See section captioned "Committee Action and Recommendation".)

Darren Hickson, HCF, discussed his Claim No. 5957 against HCF in the amount of \$158.00 for the loss of his television, which he had for one year. On September 27, 2006, his inmate level was reduced from Level 2 to Level 1 for the second time in five years. As a result, he was required to send out or donate his electronic property. He signed a property removal form requesting that his television be mailed to his mother. When his mother visited him the following week, she told him that she did not receive the television. He was returned to Level 2 a few days later; therefore, he requested that the television be returned to him. Property room staff informed him that the television had been donated. He filed a facility property loss claim, which was denied on the grounds that paperwork showed that the television was mailed to his mother's address on September 27. He filed a grievance, and the Warden instructed him to file against the U.S. Postal Service. Mr. Hickson argued that the television was never mailed out because his inmate account did not reflect that a withdrawal was made for postage to mail out the television.

Shelly Starr, KDOC, called attention to a copy of the form authorizing the removal of personal property which Mr. Hickson attached to his claim. She pointed out that the form indicated that the receiving person was his mother and that the property was removed from the facility as specified on September 27, 2006. Additionally, she explained that a notation at the top of the form showed that \$17.56 postage was withdrawn from Mr. Hickson's inmate account on September 27, but, for an unknown reason, the withdrawal did not electronically take place at the time the notation was made. However, his account was recently corrected and now showed a withdrawal of \$17.56 for postage. In light of her investigation, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5957 be allowed in the amount of \$142.00. (See section captioned "Committee Action and Recommendation".)

Joe A. Norby, HCF, discussed his Claim No. 5958 against HCF in the amount of \$20,000.00 for personal injury and pain and suffering. An inmate attacked him from behind as he was coming in from the yard during the evening of April 17, 2007. He did not see the assailant, but the guard at the hall gate witnessed the attack. However, the guard did not call in a Code 30, and his attempt to detain the inmate failed. The guard questioned Mr. Norby and the inmate who was walking beside him at the time of the attack, but no further action was taken at that time. Mr. Norby went to the clinic the next morning, and x-rays showed that his jaw was broken. He also suffered nerve damage in his face and lips. Mr. Norby explained that he was later told that he was not the intended victim and that the assault was due to mistaken identity. However, because of the negligence and

ineptness of facility staff, he felt that he might still be in jeopardy.

Shelly Starr, KDOC, confirmed that the assault was due to mistaken identity and informed the Committee that Mr. Norby refused protective custody when it was offered to him. She explained that the assault occurred during a mass movement; therefore, the guard was very busy and did not have time to restrain the assailant. The guard stopped the attacker and ordered him to wait, but the inmate did not follow the order. She noted that Mr. Norby's medical records showed that he received appropriate medical care for the injuries he sustained in the incident. She recommended that the claim be denied on the grounds that KDOC is not responsible for unforeseeable criminal acts.

Following discussion, the Joint Committee recommended that Claim No. 5958 be denied. (See section captioned "Committee Action and Recommendation".)

Britt E. Byrd, HCF, briefly discussed his Claim No. 5962 against KDOC in the amount of \$45,000.00 for improper medical care, lost wages, and denial of due process. Instead of discussing the details of his claim, he referred the Committee to his written statement attached to the claim and stated, "I'll go ahead and let the paperwork stand for itself." When questioned by the Committee, he confirmed that his claim indicated that he re-injured his knee after he was inappropriately assigned to the Wichita Work Release Facility where he had to constantly walk up and down three flights of stairs. He noted that HCF staff told him that he would never be sent to Wichita Work Release due to his medical restriction for no stair climbing. He further noted that, within a few hours after arriving at Wichita Work Release, the nurse who reviewed his medical records asked, "What are you doing here?". He also explained that the original injury to his knee occurred when he stepped out of pick-up truck approximately ten years ago.

Shelly Starr, KDOC, noted that Mr. Byrd also claimed that he should be compensated for wages he could have earned if he had not been transferred to Wichita Work Release Facility. Ms. Starr then reported that the contractor monitor who reviewed Mr. Byrd's medical records found no evidence of re-injury to his knee. Instead, Mr. Byrd has a degenerative joint disease, which is complicated by his weight of 225 pounds. Ms. Starr went on to say that all KDOC facilities have stairs. She argued that it was not likely that his knee was significantly injured at the Wichita Work Release Facility because he was there for less than a month. Contending that Mr. Byrd was not entitled to the damages for the placement issues set forth in his claim, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5962 be denied. (See section captioned "Committee Action and Recommendation".)

Darnell L. Benton, HCF, summarized his Claim No. 5965 against LCF in the amount of \$73.90 for the loss of a pair of Georgia Giant boots and a pair of grey gym shorts which he purchased at LCF. Officers packed out his property after he was taken to segregation. When the officers brought the property inventory sheet to him for his signature, he noticed that his boots and gym shorts were not listed. Officers told him that he must sign the inventory sheet in order to get

the property listed, and they suggested that he file a facility property loss claim for the boots and shorts. The claim was denied on the grounds that he made no mention of any missing items when signed his personal property inventory and certified that the inventory was correct.

Shelly Starr, KDOC, recommended that the claim be denied because it was impossible to verify that the property was in Mr. Benton's possession when his property in his one-man cell was packed. She explained that officers are trained to pack all the property that can be identified as belonging to the inmate. Therefore, if property is not listed on the inventory sheet, it is unlikely that the property was in the inmate's cell.

Following discussion, the Joint Committee recommended that Claim No. 5965 be denied. (See section captioned "Committee Action and Recommendation".)

The Committee's attention was turned to the final claim under the heading, "Claims Carried Over," Claim No. 5946 by Mark A. Jordan and family against the Kansas Department of Social and Rehabilitation Services (SRS) in the amount of \$28,000.00 for false and misleading information, removal of children from their home, and related expenses. At the September meeting, it was the consensus of the Committee that more information was needed before making a recommendation on the claim. Committee members felt that additional information should be provided by Secretary Don Jordan, Kansas Department of SRS, and by a representative from the Sedgwick County District Attorney's Office. As requested, the following persons were present to provide further information and to respond to questions:

- Ron Paschal, Deputy District Attorney for the Eighteenth Judicial District Court, Sedgwick County;
- Kim Parker, Chief Deputy District Attorney, Office of the Sedgwick County District Attorney;
- Tricia Knoll, Deputy District Attorney (Child-In-Need-of Care), Office of the Sedgwick County District Attorney;
- Don Jordan, Secretary, Kansas Department of SRS; and
- Roberta Sue McKenna, legal counsel for the Kansas Department of SRS

Senator Journey called upon Ron Paschal to present further information concerning the law enforcement records relating to Mr. Jordan's claim. Due to the nature of the claim, Mr. Paschal pointed out that K.S.A. 38-2213 grants legislative access to information that is otherwise confidential, but the statute also provides that the information is to be disclosed in a closed or executive meeting, and none of the material is to be reproduced or further disclosed outside the meeting.

Representative Swenson moved that the open meeting of the Joint Committee on Special Claims Against the State be recessed for a closed meeting pursuant to subsection (e) of K.S.A. 2007 Supp. 38-2213 for the purpose of consulting with members of the staff of the Sedgwick County District Attorney's office and the Secretary of Social and Rehabilitation Services and members of the staff of the Department of Social and Rehabilitation Services to review information from law

enforcement records of a child alleged or adjudicated to be in need of care, that the Joint Committee on Special Claims Against the State resume the open meeting in this room, Room 514-S of the Statehouse, at 4:30 p.m., and that this motion, if adopted, be recorded in the minutes of the Joint Committee on Special Claims Against the State and be maintained as part of the permanent record of the committee. Seconded by Representative Olson. Motion carried at 3:55 p.m.

Mr. Paschal's presentation was not completed at 4:30. Open meeting resumed at 4:30.

Representative Colloton moved that the open meeting of the Joint Committee on Special Claims Against the State be recessed for a closed meeting pursuant to subsection (e) of K.S.A. 2007 Supp. 38-2213 for the purpose of consulting with members of the staff of the Sedgwick County District Attorney's office and the Secretary of Social and Rehabilitation Services and members of the staff of the Department of Social and Rehabilitation Services to review information from law enforcement records of a child alleged or adjudicated to be in need of care, that the Joint Committee on Special Claims Against the State resume the open meeting in this room, Room 514-S of the Statehouse, at 5:00 p.m., and that this motion, if adopted, be recorded in the minutes of the Joint Committee on Special Claims Against the State and be maintained as part of the permanent record of the committee. Seconded by Representative Grant. Motion carried at 4:30 p.m.

Presentation of relevant information continued, but was not complete at 5:00 p.m. Open meeting resumed at 5:00 p.m.

Representative Colloton moved that the open meeting of the Joint Committee on Special Claims Against the State be recessed for a closed meeting pursuant to subsection (e) of K.S.A. 2007 Supp. 38-2213 for the purpose of consulting with members of the staff of the Sedgwick County District Attorney's office and the Secretary of Social and Rehabilitation Services and members of the staff of the Department of Social and Rehabilitation Services to review information from law enforcement records of a child alleged or adjudicated to be in need of care, that the Joint Committee on Special Claims Against the State resume the open meeting in this room, Room 514-S of the Statehouse, at 5:20 p.m., and that this motion, if adopted, be recorded in the minutes of the Joint Committee on Special Claims Against the State and be maintained as part of the permanent record of the committee. Seconded by Representative Grant. Motion carried at 5:00 p.m.

The closed session concluded at 5:20 p.m. As the open meeting resumed, Mr. Jordan discussed issues relating to his efforts to stop his daughter from having sex with adult males at age 14 and his continued efforts to obtain assistance from staff at the Kansas Department of SRS and staff at the Office of the Sedgwick County District Attorney. He complained that law enforcement officials never interviewed the adult males he reported were having sex with his daughter. He quoted a recorded statement by Deputy District Attorney Kim Parker which indicated that Brittany's case would be too difficult to prosecute because Brittany had consented to sex, and she had a credibility issue. He complained that SRS did not protect his daughter but rather changed the focus to parental abuse and wrongfully placed all of his children in foster care. He pointed out that Brittany became pregnant while in foster care, not when living in his home. He confirmed for a committee member that his daughter's first pregnancy occurred at age 14 and was terminated. Brittany's mother, Pam

Jordan, stated that the pregnancy was terminated at 13 to 14 weeks.

Mrs. Jordan went on to say that copies of rape laws were given to her and her husband in February 2004 when Brittany willingly admitted to Detective Johnson and Pam Pierce that she was having sex with two persons who were over the age of 20. However, nothing was done to prevent continued contact with the men. She explained that Brittany's relationship with a 21-year old man, Justin Jones, began when she was 12 years old. She noted Brittany informed a Youthville employee that she was afraid to testify in a trial because Justin had threatened that he would harm her if she told anyone about having sex with him, but Youthville personnel never followed up and questioned Justin Jones. In addition, law enforcement did nothing when she and her husband reported that Brittany was staying with an adult male who provided her with her alcohol and marijuana. Mrs. Jordan also noted that the chronology presented by Mr. Paschal contained erroneous information with regard to events which occurred when Brittany was in a gymnastic class at age 9. She went on to explain that, when her children were taken from school to be placed in foster care, her youngest daughter had never spent time away from home, yet she was placed with complete strangers. She noted that, at the time the children were put in foster care, Kim Parker and Ron Paschal told her that they thought her husband asked for a diversion because he had something to hide. She explained that a diversion was requested because she and her husband thought Brittany had finally experienced the consequence of her actions. Mrs. Jordan noted that she was never questioned or allowed to talk during the entire chain of events.

In response to questions from the Committee, Kim Parker stated, "A criminal prosecution, of course, is a different angle than the child-in-need-of-care. And the statute of limitations on sex offenses would allow prosecution still of any offense that we talked about today. If Brittany Jordan, and she truly is the key, if she is willing now to speak specifically – because in a criminal complaint, we have to allege dates, where it happened, and who; and we have to have proof that supports that. Brittany is the key individual that could bring that proof, and there is no reason that the investigation of the criminal aspect of this cannot continue and other interviews. Like I told Mr. Jordan, this case will always be with her because of some of the issues – always have credibility issues. For example, the chlamydia, – Justin Jones – we would have a search warrant perhaps to see if he has any of the sexually transmitted diseases or anyone else who may have given those. Any additional proof that can be provided would assist her. This is just the criminal aspect that still would remain open if Brittany wants to now say that she did, in fact, have sex with him."

Senator Pyle requested that SRS provide the Committee with copies of their reports on Brittany and also provide any reports which SRS filed with the Office of the Sedgwick County District Attorney. In addition, he requested that staff present statutory reporting requirements. He also requested that Mrs. Jordan provide a copy of the medical records showing the exact date on which Brittany's sonogram was performed as well as a copy of the sonogram. Mrs. Jordan agreed to provide the documents.

Following discussion, the Joint Committee recommended that Claim No. 5946 be carried over to the December meeting. (See section captioned "Committee Action and Recommendation".)

The meeting was adjourned at 5:55 p.m.

Prepared by Shirley Higgins
Edited by Cindy Lash and Amy Deckard

Approved by the Committee on:

January 7, 2008

(date)

