

MINUTES

JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

August 27-28, 2008
Room 535-N—Statehouse

Members Present

Representative Steve Huebert, Chairperson
Senator Phillip Journey, Vice-Chairperson
Senator Terry Bruce
Senator Mark Gilstrap
Senator Dennis Pyle
Representative Virginia Beamer
Representative Pat Colloton
Representative Bob Grant
Representative Broderick Henderson
Representative Robert Olson
Representative Dale Swenson

Staff Present

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

Others Present

Libby Snider, Legal Counsel, Kansas Department of Corrections
John House, Kansas Department of Social and Rehabilitation Services
John Badger, Kansas Department of Social and Rehabilitation Services
John J. Gillett, Attorney at Law
Patricia Short, Home Sweet Home Care
Joseph Kroll, Kansas Department of Health and Environment
Gregory E. Skinner, Kansas Department of Health and Environment

**Wednesday, August 27
Morning Session**

The meeting of the Joint Committee on Special Claims Against the State was called to order at 10:10 a.m. by Representative Steve Huebert, Chairperson. The Chairperson called the Committee's attention to the minutes of the July meeting. *Representative Grant moved to approve the minutes of the July 9, 2008, meeting of the Joint Committee on Special Claims Against the State, seconded by Senator Gilstrap. The motion carried.*

The Chairperson opened the telephone hearings on claims filed by inmates at Hutchinson Correctional Facility (HCF), Claim Nos. 6046, 6064, 6074, and 6080.

Ronald Allen Hailes, HCF, discussed his Claim No. 6046 against Lansing Correctional Facility in the amount of \$6,000 for failure to provide shower shoes and hygiene items. He explained that he took a pair of shower shoes from the trash because he could not afford to purchase a new pair from the canteen. Subsequently, an officer, who was upset because he had filed a complaint against another officer, told him he would confiscate the shower shoes and throw them away if he did not drop his complaint. He dropped the complaint; however, the officer still took the shower shoes. In his opinion, the Kansas Department of Corrections (KDOC) was required to provide inmates with shower shoes, shampoo, and deodorant. He also expressed his opinion that KDOC was not following a federal law which provides that a state's Department of Corrections cannot make deductions from an inmate's account for legal copies. He stated that he became indigent and remained indigent due to being assessed charges for photocopies of legal documents.

Libby Snider, legal counsel for KDOC, commented that essentially Mr. Hailes disagreed with the KDOC policy concerning the contents of a care packet for indigent inmates. She went on to say that Mr. Hailes could have purchased a pair of shower shoes from the canteen for \$1.85 at the time he filed his claim; however, he had no money because he owed \$182.80 for legal copies allowed on credit and \$150 for fines and disciplinary restitution. She explained that, under IMPP 12-127, the Department provides photocopies on credit to indigent inmates up to \$50. She pointed out that Mr. Hailes was allowed credit for over three times that amount. Additionally, she noted that Mr. Hailes' debts for fines and restitution were the result of his own choices. She clarified that the law concerning photocopies to which Mr. Hailes referred is limited to Florida state law. In conclusion, she informed the Committee that KDOC has since changed its policy and currently includes a pair of shower shoes in the indigent care packet. With this, Ms. Snider recommended that the claim be denied.

In response, Mr. Hailes contended that, if he had not filed his claim, KDOC would not have changed its policy regarding shower shoes. He noted that the new KDOC policy did not provide for the inclusion of deodorant and shampoo in the indigent care package. As to the amount of his claim, Mr. Hailes said, "DOC needs to learn a lesson. They've been doing this for years. They violate their own IMPPs. When we file a claim against this, then they want to fix it. Six thousand dollars is outrageous. I just put that down. I don't expect to get six thousand dollars."

Following discussion, the Joint Committee recommended that Claim No. 6046 be denied.
(See section captioned "Committee Action and Recommendation.")

Pedro S. Hernandez, HCF, summarized his Claim No. 6074 against KDOC in the amount of \$925 for property loss. The property in his cell was packed by officers after he was taken to segregation on November 2, 2007. He later found that a book, his boots, canteen food items, legal documents, and family photographs were missing. He said that he received a property inventory

sheet for his electronic property while in segregation, but he did not receive an inventory sheet for his personal property. He claimed that the personal items and his television were lost due to the negligence of facility staff.

Libby Snider, KDOC, recommended that the claim be denied. She reported that, contrary to Mr. Hernandez's assertion, there is an inventory sheet listing several personal items which he signed on November 2, 2007. She noted that Mr. Hernandez signed the inventory sheet and did not make a notation on the sheet that any property was missing. A copy of the inventory sheet was attached to her written response to the claim. Ms. Snider explained that no other inventory for November 2 was located; therefore, there was no way to verify that Mr. Hernandez had the alleged missing property in his possession at the time his property was packed out. She noted that legal documents and photographs are non-compensable per IMPP 12-120, and inmates own property at their own risk.

Following discussion, the Joint Committee recommended that Claim No. 6074 be allowed in the amount of \$100.00. (See section captioned "Committee Action and Recommendation.")

Derek Devlin, HCF, discussed his Claim No. 6080 against HCF in the amount of \$122.93 for the loss of his television, alarm clock radio, and lamp. His electronic property was packed out by officers after he was taken to segregation. When he was released from segregation, he was informed that his electronic property could not be located.

Libby Snider, KDOC, reported that she found no evidence that Mr. Devlin owned a lamp. However, she confirmed that the television and radio were packed out by staff and could not be located. She noted that there was documentation showing that he paid \$102.93 for the television in December 2006 and that he paid \$8 for the radio. She recommended that the claim be allowed in the amount of \$100 (total of \$110.93 less 10 percent per year depreciation).

Following discussion, the Joint Committee recommended that Claim No. 6080 be allowed in the amount of \$100. (See section captioned "Committee Action and Recommendation.")

Virgil Fox, HCF, explained his Claim No. 6064 against KDOC in the amount of \$19.73 for the loss of five items he purchased at the facility canteen (food and shoe polish). The items were stored in his locker in the craft room, and he had receipts for all of them. After a friend told him that officers were going to check the contents of all of the lockers, he removed the items from his locker and put them in his coat pocket with the intent of taking them to his living area. The items were confiscated as he was returning to his assigned living area, and he received a disciplinary report for theft. He was charged with theft because he was not carrying the items in a facility store bag in accordance with facility regulations. The case was dropped, and a diversion agreement was entered into with his Unit Team counselor. Part of the diversion agreement was the canteen items would be returned to him. However, the items were destroyed by property room staff. Mr. Fox maintained that he should have been given an opportunity to mail out his property because he had proof that he had not stolen any of the items. He also clarified that he had no intent of using the items for dealing and trading, which is prohibited by facility rules and regulations.

Libby Snider, KDOC, explained that, because there are no pockets inside inmate coats, the lining must be cut in order to carry items inside. Pursuant to facility regulations, items which are neither illegal nor contraband become contraband when misused. By concealing the store goods in his coat to transport them, Mr. Fox was misusing them as well as the coat. Thus, the items were confiscated by officers as contraband. Ms. Snider recommended that the claim be denied on the grounds that Mr. Fox lost legal interest in his property when it became contraband.

Following discussion, the Joint Committee recommended that Claim No. 6064 be denied. (See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearings on claims by inmates at Topeka Correctional Facility (TCF), Claim Nos. 6055 and 6081.

Angela Brown, TCF, discussed her Claim No. 6055 against TCF in the amount of \$1,000,000,000 for personal injury due to asbestos. She said that asbestos had been removed in two areas of the facility. She complained that exposure to asbestos caused her to have difficulty in breathing and a sinus infection. She noted that she received several shots at the facility clinic for the sinus infection. In her opinion, she may need additional medical attention related to being exposed to asbestos after she is released on February 24, 2009.

Libby Snider, KDOC, pointed out that Ms. Brown stated in her claim that she wished to be included in a class action lawsuit which was filed a few years ago. She informed the Committee that the Department's chief legal counsel was unaware of any such case filed against KDOC. She commented that it was unclear why Ms. Brown felt that inclusion in the lawsuit could be accomplished through the legislative claims process. She went on to say that Ms. Brown provided no documentation to support her claim that she suffers from various ailments, that the ailments were caused by exposure to asbestos, or that KDOC is responsible for such exposure. Furthermore, the extent of Ms. Brown's purported injuries cannot be determined until she seeks medical attention after her release. For reasons cited, Ms. Snider recommended that the claim be denied.

A Committee member suggested to Ms. Brown that perhaps filing a lawsuit upon her release from prison would be the best approach to her concerns about being exposed to asbestos. He explained that, if the Committee denied the claim without prejudice, she could refile her claim if a lawsuit proved to be unsuccessful. Ms. Brown agreed with his suggestion that the claim be denied without prejudice.

Following discussion, the Joint Committee recommended that Claim No. 6055 be denied without prejudice. (See section captioned "Committee Action and Recommendation.")

Jacqueline Hudson, TCF, filed Claim No. 6081 against TCF in the amount of \$500,000 for medical negligence, pain and suffering, and future expenses. Cindy Lash, Kansas Legislative Research Department, informed Ms. Hudson that Libby Snider, KDOC, requested that the hearing on the claim be postponed to allow time for a fuller investigation. Ms. Hudson acknowledged that she understood the need to reschedule the hearing on her claim.

Following discussion, the Joint Committee recommended that Claim No. 6081 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearing on a claim filed by an inmate at Norton Correctional Facility (NCF), Claim No. 6032 by Robert A. Reyna against HCF in the amount of \$500.00 for an injury to his arm and for pain and suffering. Mr. Reyna explained that he returned to his cell after taking a shower on October 21, 2007, and an officer opened the cell door for him. As he began to go into his cell, the door closed on his left arm. He yelled out in pain, and the officer opened the door in approximately one minute. He asked the officer for his name several times so that he could submit a grievance regarding the incident, but the officer refused to answer. About 30 minutes later, the officer came to his cell and apologized for closing the door on him. When the officer saw that his arm was bruised and very swollen, he told him that he could go to the clinic. Although he received treatment at the clinic, the swelling did not go down for approximately two weeks, and he was in constant pain.

Libby Snider, KDOC, said that cell doors do not slide quickly as they are opened and closed; therefore, she felt that Mr. Reyna could have moved out of the path of the door as it closed had he

been observant. She reported that Mr. Reyna's medical records show that he was treated with ice and Ibuprofen and that his injuries were not severe or permanent. Noting that Mr. Reyna did not indicate that his medical treatment was inadequate, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6032 be denied.
(See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearing on a claim filed by an inmate at Ellsworth Correctional Facility (ECF), Claim No. 6076 by Alan K. Copridge against KDOC in the amount of \$62.98 for ankle braces. Several attempts were made to reach the extension of ECF staff assigned to bring Mr. Copridge to the telephone for the hearing; however, no one answered.

Following discussion, the Joint Committee recommended that Claim No. 6076 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearing on a claim filed by a patient in the Sexual Predator Treatment Program (SPTP) at Larned State Hospital, Claim No. 6018 filed by Dustin J. Merryfield against Larned State Hospital in the total amount of \$2,457.62 for the costs for copies of legal material and postage. Cindy Lash, Kansas Legislative Research Department, explained that, after Mr. Merryfield submitted his original claim in the amount of \$325.03 on January 11, 2008, he submitted seven additional claims for ongoing costs for copies and postage.

Mr. Merryfield contended that SPTP is responsible for the costs he incurs for postage on his legal mail and for the costs he incurs in procuring copies of legal material. He explained that the courts found him to be indigent in two cases; however, SPTP does not recognize him as indigent and charges him 25 cents per page for copies of legal material for pending lawsuits in federal court and for copies of documents to defend and assist in his civil commitment case. He has borrowed money from his family to cover the ongoing costs. He maintained that requiring him to pay for these costs is in violation of the rights provided by state and federal law. In response to questions from a Committee member, he confirmed that three of his lawsuits were currently on appeal in the Kansas Supreme Court, and the Court probably would not issue an opinion for at least six months. He agreed that it would be advisable to continue the hearing on his claim until the 2009 Interim after the Court has issued an opinion on the appeals.

Following discussion, the Joint Committee recommended that Claim No. 6018 be carried over to the 2009 Interim. (See section captioned "Committee Action and Recommendation.")

The Chairperson turned the Committee's attention to claims on the agenda under the heading, "No Hearing Requested," Claim Nos. 6047, 6049, 6052, 6053, and 6075. Cindy Lash, Kansas Legislative Research Department, summarized the claims.

Claim No. 6047 was filed by an inmate at El Dorado Correctional Facility, Scott A. Gilbert, against KDOC in the amount of \$25.24 for damage to his fan. Ms. Lash explained that Mr. Gilbert stated that he was placed in administrative segregation in May 2007. A property inventory and an electronic check list were completed at that time, and all of his electronics were in good condition. His property was inventoried outside his presence when he went out to court on June 20, and no electronic check list was completed. When he returned in July, he was handcuffed when he received his property boxes. Therefore, he was not able to check his property. He later found that his fan was broken. The fan was purchased in 2006.

Libby Snider, KDOC, noted that Mr. Gilbert signed the inventory sheet upon receipt of his property, which included the fan, without noting any discrepancies. Additionally, the officer who returned his property stated that he did not recall the fan being broken. Having found that there was

no evidence to substantiate that the alleged damage was caused by staff negligence, Ms. Snider recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6047 be denied.
(See section captioned "Committee Action and Recommendation.")

Claim No. 6049 was filed by an inmate at El Dorado Correctional Facility, Scott Staggs, against El Dorado Correctional Facility in the amount of \$25,000 for the loss of his legal papers. Ms. Lash informed the Committee that Libby Snider, KDOC, requested that the hearing on the claim be postponed to allow her an opportunity to investigate the claim more fully.

Following discussion, the Joint Committee recommended that Claim No. 6049 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation.")

Claim No. 6052 was filed by an inmate at Lansing Correctional Facility, Durayl T. Vann, against Lansing Correctional Facility in the amount of \$1,000 for personal injury, negligence, and cruel and unusual punishment. Ms. Lash said that Mr. Vann stated that he was handed a letter from his family on March 13, 2008, which was postmarked in July 2007. He claimed that, due to the negligence of the facility, he was deprived of the opportunity to attend a funeral, he lost contact with two family members of importance, and he was deprived of legal assistance in obtaining trial transcripts and attorney assistance. He was seeking punitive damages for the deliberate indifference of facility staff, which caused irreparable damage.

Libby Snider, KDOC, recommend that the claim be denied. She noted that the copy of the envelope which Mr. Vann attached to the claim indicated that he received the letter on the same day it arrived at the facility. She explained that the notation on the label on the envelope, which was generated at the facility for distribution of the mail, shows "ID#:00767997, 13-Mar-2008, C1113." Although his housing location was C113, the letter was delivered to him. Ms. Snider further noted that, while the postmark appears to be July 26, 2007, it cannot be established that the delay in delivery was attributable to staff at the facility rather than U.S. Post Office staff. She argued that, even if the delay was shown to be attributable to facility staff, Mr. Vann's claimed losses cannot be substantiated, as he did not provide the letter that was enclosed in the envelope nor did he describe the contents sufficiently to establish that the purported losses were attributable to the delay.

Following discussion, the Joint Committee recommended that Claim No. 6052 be denied.
(See section captioned "Committee Action and Recommendation.")

Claim No. 6053 was filed by Joseph Dale Moore, a former inmate at Lansing Correctional Facility, against Lansing Correctional Facility in the amount of \$29.50 for the loss of food items he purchased at the facility canteen. Ms. Lash said that Mr. Moore stated that, while he was at dinner, an officer let another inmate into his cell, and the inmate stole his food. He purchased the items the day before; therefore, all of the items were listed on his property inventory sheet. He filed an internal property loss claim, and the officer was counseled concerning his duties. Facility staff recommended that the claim be allowed, but the Secretary of Corrections denied the claim.

Libby Snider, KDOC, recommended that the claim be denied on the grounds that Mr. Moore failed to secure his property. She commented that officers guard inmates, not inmate property. She noted that inmates are provided with cabinets for their personal property, and it is their responsibility to ensure that the cabinets are used and locked in accordance with IMPP 12-120. She reasoned that it is not good policy for the Department to become insurers of inmate property.

Following discussion, the Joint Committee recommended that Claim No. 6053 be denied.
(See section captioned "Committee Action and Recommendation.")

Claim No. 6075 was filed by an inmate at El Dorado Correctional Facility, David Woodward, against El Dorado Correctional Facility in the amount of \$11.41 for a postage fee. Ms. Lash said that Mr. Woodward asserted in his claim that the facility improperly forces inmates to use a particular mail service rather than the U.S. Postal Service. He put three stamps on a 10" x 15" manilla envelope, which contained a drawing on cardboard, and attempted to send it out by regular mail. He was notified by the mail room that the envelope must be shipped out as a package via a service called Goin' Postal, and he made arrangements for the envelope to be sent out as required. Ms. Lash called the Committee's attention to two letters from Mr. Woodward that were received on August 25, 2008. The first letter states that the Department's mailing policy is exploiting inmates by forcing them to pay shipping fees for things that could be mailed through the U.S. Postal Service. The second letter included a memorandum from the warden which stated that, effective September 1, 2008, inmates will be allowed to send out packages through the U.S. Postal Service, using U.S. Postal Service shipping boxes.

Libby Snider, KDOC, stated that items other than letters were required to be mailed out through the use of a mailing service other than regular mail, due to the amount of claims for lost items which were mailed out. She explained that Goin' Postal is a trackable carrier. She emphasized that the carrier sets the fees for delivery of items, not the Department. Noting that Mr. Woodward simply disagreed with Department policy, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6075 be denied.
(See section captioned "Committee Action and Recommendation.")

The meeting was recessed for lunch at 11:40 a.m.

Afternoon Session

The Chairperson called the meeting to order at 1:45 p.m., at which time he opened the telephone hearings on claims by inmates at Lansing Correctional Facility (LCF), Claim Nos. 6027, 6031, 6036, 6051, 6056, 6057, 6058, 6066, 6068, 6069, 6077, and 6082.

Ms. Lash informed the Committee that Libby Snider, KDOC, requested that the hearing be postponed on the following claims to allow her time to complete her investigation: Claim No. 6027 by James Lee Jamerson, LCF, against KDOC in the amount of \$5,000 for cruel and unusual punishment; Claim No. 6036 by James R. Chelf against KDOC in the amount of \$2,000,000 for personal injury, lost wages, and pain and suffering; and Claim No. 6051 by Lamar Staten, LCF, against Winfield Correctional Facility in the amount of \$40.25 for the loss of his tennis shoes.

Following discussion, the Joint Committee recommended that Claim No. 6027, Claim No. 6036, and Claim No. 6051 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation.")

Bryan DePriest, LCF, discussed his Claim No. 6069 against KDOC, in the amount of \$9,849 for lost wages, lost interest, and expenses. He explained that his claim involved what he considers to be abuse of authority. On February 21, 2007, officers discovered three homemade weapons (shanks) and a packet of yeast hidden in the common area of his living unit. Consequently, he and 15 other inmates in the living unit were transferred to the maximum custody housing facility. He had been employed by a private company as an embroidery machine operator since June 13, 2005, and received \$6.36 per hour. He immediately lost his job upon his transfer to maximum security.

Ultimately, the disciplinary charge was dismissed, and he was rehired on October 19, 2007. The amount of his claim included compensation for lost wages, interest he would have earned, copying costs in seeking redress, and the malicious and intentional disruption of a standard of living he had earned and to which he had grown accustomed.

Libby Snider, KDOC, said inmates do not have a liberty or property interest in specific jobs or whether they have a job at all by statute. Additionally, she emphasized that correctional officers, who deal with violent inmates on a daily basis, must have the ability to discipline inmates whenever they feel disciplinary action is needed. In her opinion, rewarding an inmate because he wins his disciplinary hearing would undermine the authority of corrections staff and the Department. For reasons cited, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6069 be denied.
(See section captioned "Committee Action and Recommendation.")

Leonard B. Kirby, LCF, explained his Claim No. 6082 against LCF in the amount of \$353.33 for damage to his leather craft property. He was transferred from the East Unit to the Maximum Unit on October 19, 2007. At that time, his leather and other craft goods were inventoried and packed out by an officer and taken to a storage area. Property room staff noted on the property storage log that black ink was leaking from the box when it was lifted from the transport cart. When his craft items were returned to him in the property room, a broken bottle of leather dye fell from the bottom of the box as the box was handed to him. He immediately showed the broken bottle to a property room officer and told him that the dye had probably damaged the craft items in the box. He also pointed out to the officer that the top of the box was stained with dye; therefore, he felt that the box had been turned upside down. He threw the broken bottle in the trash, signed the property receipt form, and returned to his cell house without opening the box. He discovered the damage after opening the box in his cell house, and he showed the damaged items to his unit team manager.

Libby Snider, KDOC, noted KAR 44-16-105 provides that inmates own property at their own risk, and loss or damage does not provide a basis for recovery unless the loss or damage directly resulted from the intentional or negligent act or omission of a correctional employee. She went on to say that Mr. Kirby did not note on the inventory sheet that any of the items in the property box were damaged. She observed that his facility property loss claim was in the amount of \$175, and his itemized list appeared to show the full value of the items without taking into account that many of the items were described on the inventory sheet as being in fair condition or partially used. Because she found no evidence to substantiate that the alleged damage was caused by staff negligence, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6082 be denied.
(See section captioned "Committee Action and Recommendation.")

Andre Lee Robinson, LCF, summarized his Claim No. 6068 against LCF in the amount of \$7.47 for the loss of his gym shorts. He had minor surgery and returned to his cell at LCF to rest. He later woke up and found blood on his shorts; therefore, he took them off to be laundered. He was subsequently transferred to segregation, and the property in his cell was packed out by officers. When his property was returned to him, the shorts were missing. He was told that his shorts were sent to the laundry, but laundry room personnel said that they never received them. He confirmed that the facility replaced the shorts, and he had withdrawn his claim.

Libby Snider, KDOC, provided the Committee with a copy of Mr. Robinson's signed withdrawal form and recommended that the claim be denied. She explained that facility staff discovered that a pair of gym shorts with blood on them was confiscated and sent to the laundry in a red biohazard bag. The shorts were then sent to the clinic to be disposed of as hazardous waste.

Following discussion, the Joint Committee recommended that Claim No. 6068 be denied.
(See section captioned "Committee Action and Recommendation.")

Robert E. Lowe, Jr., LCF, discussed his claim No. 6077 against KDOC in the amount of \$55.76 for theft from his inmate account. The ID card for his inmate trust account was in his coat pocket when he hung his coat on a coat rack at work. He explained that it was impossible to keep his ID card with him while he worked without damaging it, and there was no way to store it while he worked. The ID card was stolen while he was working. The thief used the ID card to purchase items at the facility canteen. The amount of the purchase was \$49.86. Mr. Lowe had to pay a \$5 fee to replace the card. He claimed that the facility was negligent because canteen personnel did not require positive identification when the purchase was charged to his account, and there was no supervisor inside the canteen to ensure that illegal purchases were not made.

Libby Snider, KDOC, recommended that the claim be denied on the grounds that Mr. Lowe was responsible for the safekeeping of his identification card, and he failed to secure it properly. She said that his assertion that it was impossible to do so could not be substantiated.

Following discussion, the Joint Committee recommended that Claim No. 6077 be denied.
(See section captioned "Committee Action and Recommendation.")

Luke Reed, LCF, summarized his Claim No. 6058 against KDOC in the amount of \$12.47 for a defective hot pot. The hot pot he purchased from the facility canteen on September 13, 2006, caught on fire. The facility replaced the hot pot on June 18, 2007. Less than eight weeks later, the replacement began to leak water. The water collected around electrical wires, and he was shocked more than once. In his opinion, the facility should have given him a new hot pot.

Libby Snider, KDOC, confirmed that a hot pot which Mr. Reed purchased in 2006 caught fire, and the Department replaced the hot pot in 2007 as a courtesy. She contended that the leak that developed in the replacement hot pot was the result of a manufacturer defect, not staff negligence. Therefore, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6058 be denied.
(See section captioned "Committee Action and Recommendation.")

James Robert Dalzell, LCF, discussed his Claim No. 6031 against LCF in the amount of \$72.76 for the loss of his tennis shoes and radio. He locked up his property before leaving his cell to go to work on October 18, 2007. Officers came to his workplace and escorted him to the segregation unit. The property in his cell was packed out by officers. He had purchased the shoes and radio at the facility a few days before his transfer to segregation, and they were listed on his property inventory sheet. When he was released from segregation, they were missing. He filed a facility property loss claim which was denied because "inmates own property at their own risk." He felt that the officers who investigated his claim lied; therefore, he contacted his attorney, who advised him to file a claim with the Joint Committee on Special Claims.

Libby Snider, KDOC, explained that officers packed Mr. Dalzell's property in two boxes, one for segregation property and one for storage property to be returned upon his release from segregation. He had an opportunity to sign the inventory sheet for the segregation property, but he did not have an opportunity to sign the inventory sheet for the storage property. The following day, he inquired about his storage property, concerned that he could be missing five specific items. Ms. Snider observed that, although the storage inventory listed 20 items, he correctly predicted that the five items about which he inquired were not in the storage property. She further explained that Mr. Dalzell was housed in a one-man cell with a lockable cabinet, and the officers who inventoried and packed the property in his cell stated that all personal property that could be identified as Mr.

Dalzell's was packed and that, if the missing items had been in the cell, they would have been packed. Having found no evidence that the missing items were in his cell when his property was packed or that the loss was the direct result of staff negligence or omission, Ms. Snider recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6031 be denied.
(See section captioned "Committee Action and Recommendation.")

Jason Manning, LCF, explained his Claim No. 6066 against LCF in the amount of \$15,825 for lost wages, mental anguish, and punitive damages. He alleged that, due to the negligence of the facility staff who investigated his disciplinary report, he spent an excessive amount of time in segregation, causing him to miss work. He contended that a reasonable amount of time in segregation would have been two weeks, but due to staff negligence, he remained in segregation for seven weeks, causing him pain and suffering. He said that the amount of his claim included a standard amount for each day he spent in segregation and the amount of money he could have earned in the 25 days he missed work (10 hours a day at \$6.50 per hour.)

Libby Snider, KDOC, clarified that Mr. Manning calculated the amount of his claim as follows: \$5,000 for punitive damages; \$9,000 for 45 days in segregation; \$200 per day for emotional distress and mental anguish; and \$1,625 for lost wages. She informed the Committee that Mr. Manning was placed in segregation after being written up for battery on an LCF medical staff member, and the charge was ultimately dismissed. She reminded the Committee that inmates do not have a liberty or property interest in specific jobs or whether they have a job at all. She noted that correctional staff, who deal with violent inmates daily, must have the ability to discipline inmates when they feel it is required. She reasoned that rewarding inmates who win a disciplinary hearing would undermine the authority of corrections staff and the Department. With this, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6066 be denied.
(See section captioned "Committee Action and Recommendation.")

Tyron James, LCF, discussed his Claim No. 6057 against LCF in the amount of \$31.83 for damage to his fan, which he purchased on February 4, 2004. He said that he had been allowed to have the fan in segregation several times. However, he was not allowed to have it when he was transferred to segregation on March 3, 2008. The fan was in his cell and working fine before he was transferred. When he asked for the fan in segregation, he was told that he could not have it because it was damaged. After his release from segregation, inmates in his cell area told him that they saw an officer intentionally damage the fan after he was taken to segregation. Mr. James noted that the officer named by the inmates had been intentionally harassing him and wrote him up for the disciplinary report that resulted in his being taken to segregation.

Libby Snider, KDOC, reported that Mr. James' property was packed by two officers, and it was noted on the inventory sheet that the fan was altered (exposed wires and loose plastic housing cover), making it contraband. The officers stated that the fan was damaged before they took possession of it. Ms. Snider found that, although Mr. James filed several grievances, he filed no grievances complaining of mistreatment by an officer. There being no reliable evidence to substantiate intentional misconduct by facility staff, Ms. Snider recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6057 be denied.
(See section captioned "Committee Action and Recommendation.")

Jerome M. Ross, LCF, summarized his Claim No. 6056 against LCF in the amount of \$11.50 for the loss of personal property items. He was taken to segregation on December 13, 2007. The property in his cell was packed out by officers while he was in segregation, and he was not given an opportunity to sign an inventory sheet. He assumed that the property not allowed in segregation was being held for him. He did not know that some of his property was missing until February 22, 2008, when his property was returned to him upon his release from segregation. In his opinion, the property was lost due to the negligence of facility staff.

Libby Snider, KDOC, reported that an inventory sheet dated February 5, 2008, reflected that Mr. Ross received all of his property except the property not permitted due to his being under restriction. She observed that it was unusual that he did not ask about the alleged missing items on February 5 and never did ask about them until February 22. She informed the Committee that an investigation of Mr. Ross' claim revealed that he had been housed in a one-man cell with lockable cabinets, and officers who packed and inventoried his property indicated that all items that could be identified as his property were packed. Furthermore, the officer who signed off on the inventory paperwork recalled that Mr. Ross had very little property at the time. Because there was no evidence to substantiate that he possessed the alleged missing items when his property was packed or that the alleged loss was due to staff negligence, Ms. Snider recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6056 be denied.
(See section captioned "Committee Action and Recommendation.")

Ms. Lash called the Committee's attention to Claim No. 6036 filed by James R. Chelf, LCF, against KDOC. She noted that, earlier in the meeting, the Committee recommended that the claim be carried over to a future meeting. She explained that, after the Committee voted to postpone the hearing on the claim, she contacted Mr. Chelf's attorney, William J. Pauzauskie, who indicated that he preferred that the Committee deny the claim without prejudice so that he could proceed with his plan to file a lawsuit.

Following discussion, the Joint Committee reconsidered its decision to carry over Claim No. 6036 and recommended that Claim No. 6036 be denied without prejudice. (See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearing on a claim by an inmate at Larned Correctional Mental Health Facility (LCMHF), Claim No. 6048 by Larece Terrell Hutton, LCMHF, against LCMHF, in the amount of \$7,550,000 for inadequate medical treatment. Mr. Hutton explained that he had taken several prescription medications for migraine headaches before he was incarcerated, but the facility clinic took him off the medications and only gave him Ibuprofen. As a result, his headaches worsened.

Libby Snider, KDOC, noted that Mr. Hutton did not claim that his migraine headaches were the result of any act or omission of correctional employees, and he made no discernible claim against any state entity. She recommended that the claim be denied because Mr. Hutton failed to provide sufficient information for an investigation or a response by KDOC.

Following discussion, the Joint Committee recommended that Claim No. 6048 be denied.
(See section captioned "Committee Action and Recommendation.")

Chairperson Huebert opened the telephone hearing on a claim filed by a former inmate, Claim No. 6028 by Matthew L. Church, against LCF in the amount of \$59.90 for the loss of a pair of Georgia Giant work boots. Ms. Lash recalled that the claim was carried over in July because Mr. Church was not present when the Committee attempted to contact him at the home of his mother, as he requested. She also informed the Committee that Mr. Church had not signed the certified mail

receipt for the Notice of Hearing on his claim. Once again, she called the home of his mother. Mrs. Church stated that he was no longer living with her and that he was in an unknown location in another state.

Following discussion, the Joint Committee recommended that Claim No. 6028 be denied without prejudice. (See section captioned "Committee Action and Recommendation.")

The Chairperson opened the hearing on Claim No. 6065 by Patricia L. Short, d/b/a Home Sweet Home Care, against the Kansas Department of Health and Environment (KDHE) in the amount of \$396,000 for failure to perform a survey in a timely fashion and monetary loss. Ms. Short's attorney, John J. Gillett, spoke on her behalf.

As background information, Mr. Gillett explained that Ms. Short developed an idea for a home health business in Fredonia, Kansas, and entered into an LLC partnership to form Home Town Health Care. The business was state licensed and Medicare certified in July 2006. While her partner was gone on vacation in October 2006, Ms. Short discovered that her partner had been embezzling money from their company. Litigation in 2007 led to a resolution wherein the partnership was dissolved, and Ms. Short's former partner made a payment to her. Both of them opened new agencies. Ms. Short's former partner opened a new agency at the same location as Home Town Health Care and named it Fredonia Home Town Health Care. Ms. Short opened Home Sweet Home Care at a separate location. After Ms. Short received her state license and began the process for Medicare certification, she discovered that her former partner had sent a change of ownership (CHOW) form to Cahaba Government Benefit Administrators. The change of ownership status allowed her to continue Medicare billing under their previous business name and, thus, avoid the process of applying for Medicare certification and waiting for a Medicare survey to be conducted by KDHE. Mr. Gillett emphasized that there was no change of ownership. There was a dissolution of a partnership; therefore, Ms. Short's former partner should have applied for Medicare certification as a new business, just as Ms. Short did.

Mr. Gillett explained that Ms. Short's new agency was licensed by the State of Kansas in March 2007, and she applied for a Medicare survey in August 2007. In September 2007, she was notified that, before a survey could be scheduled, she must attend a one-day KDHE pre-certification workshop. She attended the workshop on September 13, 2007. The initial KDHE survey was scheduled for October 29, 2007, but she received a letter from KDHE on October 15 which indicated that the survey had been cancelled because, due to cutbacks, the Centers for Medicare and Medicaid Services (CMS) would no longer authorize new agency surveys, only re-surveys and complaint investigations. The letter also suggested that she contact a CMS approved home health agency accreditation organization to obtain Medicare accreditation. She submitted an appeal letter on October 24, 2007. A letter from Charles Moore, KDHE, dated November 14, 2007, indicated that the CMS Kansas City Regional Office Division of Survey and Certification could not justify approving her request for the state agency to conduct the Medicare certification survey. In February 2008, she scheduled a survey with the Joint Committee (JACHO), and she had to pay a \$1,700 deposit. Because an on-site survey had not been conducted, she had to borrow \$82,000 in order to continue the operation of her business. However, KDHE re-surveyed her ex-partner's agency, and her ex-partner was allowed to continue to use the original Medicare accreditation issued to Home Town Health Care LLC. Mr. Gillett submitted documentation which showed that Home Town Health Care LLC received an income in the amount of \$140,294.92 before the partnership was dissolved. He commented that KDHE Medicare surveys are free, but Ms. Short had to pay for a survey by a CMS approved home health agency accreditation organization. He explained that the amount of the claim included the cost of the JACHO survey, the estimated loss of patient income (\$150,000), and compensation for pain and suffering. He went on to say that Ms. Short poured all of her resources into her business, and she has dedicated her life to patient care despite the fact that she is a breast cancer survivor and suffers from the side effects brought on by ongoing treatment.

Ms. Short told the Committee that, during the relevant time period, she worked full time as a nurse in a hospital, in addition to running her business. She and Mr. Gillett then responded to questions from the Committee regarding the circumstances relating to the responses to her requests for a KDHE survey and the response KDHE received from the CMS Regional Office. Ms. Short confirmed that the only applicants for a new survey that CMS would consider approving were those who could prove that there were special circumstances. She noted that she attempted to prove to CMS that the cancellation of her survey after it had already been scheduled was a special circumstance, but her attempt was unsuccessful.

Gregory E. Skinner, KDHE staff attorney, clarified that KDHE is the agent of CMS for the purpose of performing initial Medicare certification surveys. As such, KDHE conducts initial surveys in accordance with workload priorities, as determined by CMS. He explained that longstanding CMS policy makes survey work for existing home health providers a higher priority than for new providers. He noted that this policy is documented in annual budget letters, as well as various other documents CMS has issued in the last several years. In 2007, CMS further restricted a state's decision to conduct initial surveys by advising funds would be withheld if a state conducted an initial survey prior to completing all work for existing Medicare providers. He noted that, in a letter dated November 9, 2007, the Kansas City Regional Office of CMS specifically denied permission to conduct an initial survey for Home Sweet Home Care in Fredonia. He pointed out that there was no letter written on KDHE letterhead to document that KDHE intended to conduct an on-site survey for Home Sweet Home Care. For the Committee's information, he called attention to a time line attached to his written response to the claim which outlined the interaction of KDHE with Home Sweet Home Care between March 19, 2007, and February 22, 2008. In addition, he distributed copies of a KDHE statement entitled, "Initial Survey and Certification Challenges for 2008." He pointed out that CMS effectively prohibits KDHE from conducting initial surveys for at least the federal fiscal year ending September 30, 2008, and that this directive originates from longstanding federal budget limitations nationwide. Mr. Skinner commented, "If Ms. Short has a claim, it's against CMS." Based on the information he presented, he recommended that the claim be denied.

In response to a question from a Committee member, Ms. Short said that, although she had a JACHO survey in June, she had not yet been issued a Medicare number for her agency. Another Committee member explained to Ms. Short that, if the Committee should recommend the approval of her claim, she would not receive payment until next year because the recommendation would have to be approved by the 2009 Legislature. He commented that the amount of reimbursement her agency will receive from Medicare could not be determined until a Medicare number is issued. Noting that the amount she receives from Medicare could affect the Committee's decision on her claim, he suggested that the claim be carried over to the next Committee meeting with the hope that she will have more specific information for the Committee to consider at that time.

Following discussion, the Joint Committee recommended that Claim No. 6065 be carried over to the next meeting. (See section captioned "Committee Action and Recommendation.")

The meeting was adjourned at 4:35 p.m.

Thursday, August 28

Chairperson Huebert called the meeting to order at 9:10 a.m. and opened the telephone hearings on claims by inmates at El Dorado Correctional Facility (EDCF), Claim Nos. 6004, 6005, 6006, 6037, 6050, 6054, 6063, 6067, 6071, 7072, and 6073.

Amy Deckard, Kansas Legislative Research Department, referred the Committee to a letter signed by Scott Staggs, EDCF, withdrawing Claim No. 6004, 6005, and 6006. The claims were resolved to his satisfaction.

Following discussion, the Joint Committee recommended that Claim Nos. 6004, 6005, and 6006 be denied. (See section captioned "Committee Action and Recommendation.")

Claim No. 6037 was filed by John F. Francis, EDCF, against LCF in the amount of \$82.58 for the loss of canteen items and wash cloths. Libby Snider, KDOC, requested that the hearing on the claim be postponed to allow her the opportunity to investigate the claim more fully.

Following discussion, the Joint Committee recommended that Claim No. 6037 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation.")

Dale Michael Lloyd Denney, EDCF, discussed his Claim No. 6050 against the Kansas Department of Corrections. He claims to have served two and one-half years beyond the legal length of his sentence for a 1987 case. Mr. Denney requests penal credits of two and one-half years or \$150,000 to equitably compensate for the loss of two and one-half years of liberty.

Libby Snider, KDOC, stated that while Mr. Denney was out on parole, he committed another offense. The sentences for the two offenses were aggregated, and Mr. Denney was given credit for time served on the original offense. Mr. Denney's original sentence was subsequently converted to a determinate sentence, and officials found that this determinate sentence was satisfied (completed) before he picked up the new charges. As a result, they removed the "time served" credit that had been applied to the aggregated sentence. Noting that inmates are not allowed to bank penal credits toward future offenses, Ms. Snider recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6050 be denied. (See section captioned "Committee Action and Recommendation.")

Claim No. 6071 was filed by Jessie Chavez, EDCF, against Ellsworth Correctional Facility in the amount of \$40 regarding the loss of tennis shoes. Mr. Chavez stated that his shoes were taken and held for evidence pending a disciplinary review, and they were still being held in evidence when he was moved. They were never returned to him.

Libby Snider, KDOC, reported that the inventory sheet mentioning that the shoes were being held for evidence mentioned it solely because this is what Mr. Chavez told the officer conducting the inventory. Mr. Chavez's claim that his tennis shoes were confiscated in relation to the disciplinary case could not be substantiated, and as inmates own personal property at their own risk, Ms. Snider requested that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6071 be denied. (See section captioned "Committee Action and Recommendation.")

Claim No. 6063 was filed by Eric D. Sims, EDCF, against the KDOC for \$350 regarding damage to his wordprocessor. Mr. Sims stated that the screen on his wordprocessor was cracked due to being forced upward by an officer while searching for contraband during a shakedown of his cell. The wordprocessor no longer works.

Libby Snider, KDOC, reported that the officer who conducted the shakedown of Mr. Sims' cell, stated that he searched the wordprocessor for contraband, but no damage occurred. Ms. Snider recommended that this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6063 be allowed in the amount of \$100. (See section captioned "Committee Action and Recommendation.")

Jeffery Hebert, EDCF, filed Claim No. 6054 against Larned Correctional Mental Health Facility for \$225 regarding loss of photographs. Mr. Hebert said he had a number of photographs in his cell, 51, that was over the number limit allowed. His photographs were confiscated and destroyed after a shakedown of his cell. He said they some of them were irreplaceable family photographs. He acknowledged he had more pictures than allowed, but said he was not given the option to mail out the photographs. Instead, they were destroyed without his permission.

Libby Snider, KDOC, responded that once the quantity is over the limit, it all becomes contraband. Therefore, all of his pictures were confiscated. She stated that it was unfortunate that the pictures were destroyed, but noted that photographs are not items that can be given a value. She recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6054 be denied. (See section captioned "Committee Action and Recommendation.")

Gary A. Ditges, EDCF, filed claim No. 6067 against EDCF in the amount of \$22.63 for property loss and property damage. Mr. Ditges stated that items were removed during a shakedown, including two pairs of socks, a pen, and an adapter, as well as his calculator being damaged. No mention of the missing items was listed on the shakedown report, other than "miscellaneous trash." He is in segregation. No other inmates are able to go into his cell in segregation, just officers and himself.

Libby Snider, KDOC, responded that the shakedown report was somewhat detailed and did not list the items that Mr. Ditges says are missing. She has no documentation that the items were there prior to the shakedown. She recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6067 be denied. (See section captioned "Committee Action and Recommendation.")

Willie Hodges, EDCF, filed claim No. 6073 against EDCF in the amount of \$196.78 regarding the loss of his property. Mr. Hodges stated that his property was packed into four boxes when he was moved into segregation. None of his property could be located after his release from segregation.

Libby Snider, KDOC, stated that there is a one-box limit on property that is going into storage when an inmate is placed in segregation. She recommended payment on the claim in the amount of one-fourth of the amount claimed.

Following discussion, the Joint Committee recommended that Claim No. 6073 be allowed in the amount of \$100. (See section captioned "Committee Action and Recommendation.")

Claim No. 6072 was filed by Vincent Keith Reed, EDCF, against EDCF in the amount of \$500 regarding the loss of his property. His property was packed out during the time he was appealing the drop of privilege level due to his work performance. He states he was told his property would be held until the appeal was concluded, due to the fact that if his appeal was successful his property would be returned to him. His property, however, was destroyed.

Libby Snider, KDOC, responded that, when an inmate's property is confiscated due to a drop in privilege level, the inmate has 45 days to sign a property form indicating how the property is to be disposed. Mr. Reed's "arrangements" with property officers to continue to hold his property are not

documented. There is documentation that he was given notice and reminded of the 45 days that he had to dispose of his property. Ms. Snider recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6072 be denied.
(See section captioned "Committee Action and Recommendation.")

The Committee considered a letter from Shelia Hudson, TCF, requesting that the Committee reconsider her Claim No. 5809 against TCF for \$1,061,000 for unlawful custody, mental anguish, pain, and suffering. The claim was denied on December 11, 2007. The request was reviewed and discussed. Under Committee Rule 3(a), a claim which previously has been denied shall not be reconsidered unless seven members vote in the affirmative that sufficient new evidence has been presented to warrant reconsideration.

Following discussion, the Joint Committee took no action to reconsider Claim No. 5809. (See section captioned "Committee Action and Recommendation.")

The Chairperson turned the Committee's attention to claims on the Agenda under the heading, "Hearings on Claims by Former Inmates", Claim Nos. 6011, 6034, and 6041.

Gary LeRoy Ross filed Claim No. 6034 against KDOC for personal injury and lost wages in the amount of \$10,000. Mr. Ross absconded from Mirror, Inc., in Topeka, and a warrant was issued. He is in custody in Ohio, and KDOC awaits his transport back to Kansas. The Committee reviewed his case and written recommendation by KDOC.

KDOC recommendation stated that "Mr. Ross claims that he fell down the stairs at HCF because the stairs were painted with paint that was not "non-slip." He is requesting \$10,000 for the \$83 in wages he lost and his pain and suffering . . . (he) was taken to the infirmary in a wheelchair. He was x-rayed and it was confirmed that he had a broken jaw. Approximately four days later, his jaw was surgically repaired and wired. Approximately six weeks after the accident, the wires were removed from his jaw and he was released from the infirmary. There is no indication that there is a problem with the paint on the stairs.

" . . . There does not appear to be any negligence on the part of the Department that would have caused his fall. He has been treated appropriately and at no cost to him. It is recommended that this claim be denied." She recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6034 be denied.
(See section captioned "Committee Action and Recommendation.")

Isaac Jacobs filed Claim No. 6011 against KDOC in the amount of \$103.13 for the loss of his television. Mr. Jacobs has been paroled to California. The Notice of Hearing letter sent by certified mail was accepted, but he did not appear for the hearing, nor did he make arrangements for hearing by telephone.

The Committee reviewed the claim and recommendation from KDOC. The KDOC recommendation stated that Mr. Jacobs' "incentive level dropped to level one twice within a five-year period. Pursuant to IMPP 11-101, he was required to send out his electronics rather than storing them . . . Because Mr. Jacobs failed to designate where to send his property, it was donated per policy. There is no evidence of negligence on the part of the Department. It is recommended that this claim be denied."

Following discussion, the Joint Committee recommended that Claim No. 6011 be denied.
(See section captioned "Committee Action and Recommendation.")

Corey A. Simmons filed Claim No. 6041 against Winfield Correctional Facility in the amount of \$200 for property loss and property damage. Mr. Simmons was paroled and lives in Wichita. He did not sign the certified letter receipt for the Notice of Hearing and was not present. The Committee reviewed the claim and recommendation from KDOC.

The recommendation from KDOC stated that "Mr. Simmon's television was apparently damaged during transfer from WCF to EDCF. Though no damage was noted when the television was checked at WCF, EDCF staff documented damage to the television when it was inventoried there. The television was purchased in 2006 and valued at \$69 . . . With regard to the remaining items which Mr. Simmons claims were missing when he retrieved his property, it could not be substantiated that the property was in Mr. Simmons' possession at the time that it was secured by WCF staff . . . the Department recommends this claim be paid in the amount of \$63.00. The Department asks that the balance of the claim be denied. . . ."

Following discussion, the Joint Committee recommended that Claim No. 6041 be denied. (See section captioned "Committee Action and Recommendation.")

The meeting was adjourned at 10:55 a.m.

Prepared by Shirley Higgins and Kathy Letch
Edited by Cindy Lash

Approved by the Committee on:

November 12, 2008

(Date)