

MINUTES

JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

December 15, 2022
Room 582-N—Statehouse

Members Present

Senator Brenda Dietrich, Chairperson
Representative Bradley Ralph, Vice-chairperson
Senator David Haley
Senator Carolyn McGinn
Representative Susan Humphries
Representative Mark Samsel
Representative Dan Osman, appointed substitute member to the Committee

Members Absent

Representative Vic Miller

Staff Present

Murl Riedel, Kansas Legislative Research Department
Meredith Fry, Kansas Legislative Research Department
Molly Pratt, Kansas Legislative Research Department
Mike Heim, Office of Revisor of Statutes
Nick Myers, Office of Revisor of Statutes
Melissa Lowrey, Committee Assistant
Susan McClacherty, Committee Assistant

Conferees

Pat Doran, Chief Counsel, Department of Administration
Tanner Asbury, Records Attorney, Department of Administration
J. Phillip Gragson, Attorney for Claimant
Dan Riley, Chief Legal Counsel, Kansas Department of Wildlife and Parks
Steve Abrams, Chief Financial Officer, Kansas Department of Wildlife and Parks
Brett Blackburn, Chief Engineer, Kansas Department of Wildlife and Parks
Dennis Depew, Deputy Attorney General for Civil Litigation, Office of Attorney General
Libby Snider, Staff Attorney, Kansas Department of Corrections
Teri Agnew, Public Service Administrator, Kansas Department of Revenue

**THURSDAY, DECEMBER 15
ALL-DAY SESSION**

Welcome

Chairperson Dietrich called the meeting to order at 9:39 a.m. Committee staff took roll call, and the Chairperson noted a quorum was present.

Murl Riedel, Senior Budget Analyst, Kansas Legislative Research Department, provided a report on the payment of claims previously approved by the 2022 Legislature.

**Claim No. 7296, Claimant: Michael Seastrom
vs. Department of Administration (DOA)
due to property damage in the amount of \$1,989.45**

Claimant stated his 2019 truck was damaged by a malfunctioning security gate at the Curtis State Office Building (CSOB) Parking Garage. The gate failed to raise completely and left visible marks on the truck's roof and broke a satellite antenna on the morning of October 7, 2022. A claim was filed with the DOA on October 21, 2022, for repairs estimated at \$1,724.50. Because the amount exceeded \$1,000, the claimant was told to submit a legislative claim. The claimant submitted a legislative claim in the amount of \$1,989.45 which includes \$1,724.50 in truck repairs and \$264.95 for four days of a rental car through Enterprise Rent-A-Car.

**Respondent, DOA
represented by Pat Doran, Chief Counsel, DOA**

Respondent confirmed that damage to the claimant's vehicle was caused by a COSB Parking Garage security gate at the west entrance, which malfunctioned and failed to raise entirely on the morning of October 7, 2022. The agency recommends the claim be paid in full in the amount of \$1,989.45.

Following discussion, the Committee recommends Claim No. 7296 be allowed in the amount of \$1,989.45, to be paid with existing agency resources.

**Claim No. 7300, Claimant: Kenneth McGovern
vs. DOA
due to property damage in the amount of \$6,646.45**

Claimant stated his 2016 truck was damaged by a malfunctioning security gate at the CSOB Parking Garage. The gate failed to raise completely and scraped the truck's roof on the morning of October 7, 2022. A police report was filed and pictures were taken of the damage. A claim was filed with the DOA on October 18, 2022, for repairs estimated at \$2,803.45. The estimate indicated repairs would require two weeks. Because the amount exceeded \$1,000, the claimant was told to submit a legislative claim. The claimant submitted a legislative claim in the amount of \$6,646.45 which includes \$2,803.45 for repairs and \$3,843.00 for three weeks of vehicle rental through Hertz. Claimant clarified that he is a state employee and has not made

the repairs yet. He obtained the rental quote online, but does not object to a reduced amount for rental fees. The claimant stated if the claim was approved, he will contact the agency to exercise the State of Kansas employee discount for vehicle rental.

**Respondent, DOA
represented by Pat Doran, Chief Counsel, DOA**

Respondent confirmed that damage to the Claimant's vehicle was caused by the COSB Parking Garage security gate, which malfunctioned and failed to raise entirely on the morning of October 7, 2022. There has been continuing work on this gate and as of yesterday, it has been fixed.

The agency recommends the claim be paid in the amount of \$4,072.04. The cost reflects full payment for repairs estimated at 2,803.45 and \$1,268.59 for three weeks of vehicle rental. The agency recommends an amount less than requested for vehicle rental due to the availability of a State of Kansas employee discount when renting from a certain company.

Following discussion, the Committee recommends Claim No. 7300 be allowed in the amount of \$4,072.04, to be paid with existing agency resources.

**Claim No. 7280, Claimant: Cory Jones – CARRYOVER
vs. Larned Correctional Mental Health Facility (LCMHF)
due to property loss in the amount of \$236.92**

Claimant states that when he left his cell for the day room on May 26, 2022, staff left the cell unsecured and his television went missing. He alleges the television was stolen by another inmate named Mr. Baker, but admits he did not see Mr. Baker in the act. The Claimant states the television was located by staff and held as evidence for a disciplinary hearing.

**Respondent, LCMHF
represented by Libby Snider, Staff Attorney, Kansas Department of Corrections
(KDOC)**

Respondent stated that no television belonging to the Claimant was held in the disciplinary office as evidence. Records indicate the Claimant was in possession of a television in September 2021, but no television was listed on inventories of the Claimant's property from February and May 2022. Facility staff advised that there was no disciplinary reports written at the time of the alleged theft. At the last hearing, the Committee requested additional information on the individual the Claimant identified as Mr. Baker. There was a inmate in the same living unit named Braylon Baker, but there is no record of disciplinary actions against this individual during that time. The Claimant recently told facility staff that he received a letter from the Joint Committee on Special Claims Against the State stating that if the agency offered him a television, he would drop his claim. When asked to provide the letter, the Claimant stated that he had made this up.

The Department can find no evidence the Claimant was in possession of a television on the date of the alleged theft or that any theft occurred. The Claimant has admitted to falsely reporting a letter regarding his present legislative claim. The KDOC recommends the claim be

denied. If it is not denied, KDOC requests that any recovery should be limited to the depreciated value of \$119.03.

When asked what could have happened to the television after September 2021, the respondent stated it is possible the Claimant traded the item with another inmate. The respondent clarified that Mr. Baker was another inmate in the same living area; however, Mr. Baker was never the subject of disciplinary action for any event at the time in question.

Following discussion, the Committee recommends Claim No. 7280 be denied.

**Claim No. 7299, Claimant: John Robert Prine
vs. Lansing Correctional Facility (LCF)
due to property loss in the amount of \$160.73**

Claimant stated the claim involved two separate incidences. He states he was robbed and some items were recovered, but other items were never replaced. The Claimant stated that several months later in 2021, an officer opened his cell for his cellmate to take a phone call and three inmates with weapons robbed him. Only the television was replaced. The Claimant was told there was no video footage the second incident. He reported the incident immediately, but no investigation was conducted.

When the Claimant was subsequently transferred from the LCF to the LCMHF, he states he was not able to go through his property.

**Respondent, LCF
represented by Libby Snider, Staff Attorney, KDOC**

Respondent stated the claim relates to multiple incidents occurring over the last year-and-a-half involving the Claimant.

In the first incident, the Claimant alleged property loss on August 26, 2021, in the amount of \$103.95. The Claimant was attacked while going to the canteen, sent to the infirmary, and asserts his cell was robbed. The extension cord and lock were replaced, and he received a refund of \$6.67 for hygiene items. There was no proof of purchase to support compensation for cards, photo album, or photos.

In a second incident on January 1, 2022, the Claimant alleged property loss in the amount of \$336.97. He alleged that three inmates entered his cell, threatened him with weapons, and stole his television with remote and a hot pot. Staff reviewed security video and did not see anyone enter the Claimant's cell. Months later, staff discovered the Claimant's television and submitted it for evidence. However, staff was subsequently unable to locate the television and a replacement television was provided to the Claimant.

In a third incident on January 8, 2022, the Claimant alleged property loss. The Claimant states that on that day, an officer opened his cell and his cellmate left to use the phone. The officer failed to secure the door and three other inmates entered and stole his property. The Claimant was moved to protective custody and staff packed his property.

Respondent stated that none of the items claimed were listed on the property inventories from January 8, 2022, which the Claimant signed without noting anything missing. He seeks compensation for a television remote, surge protector, coaxial cable, earbuds, headphones, photos, photo album, extension cord, and shorts. The extension cord was replaced and no proof of purchase to support compensation for the photo album was found. Agency policy provides that inmates may possess photographs, but such photographs have no value in the event of loss or damage. The Claimant's statements were not substantiated by review of security video. His television was later replaced, but only because it came into staff possession when it was discovered months later and then was subsequently lost. The Claimant makes a vague suggestion that his cellmate may have been released with some of his property, but he signed for receipt of the headphones on July 28, 2022, and a power strip, a surge protector, and two earbuds on August 9, 2022. The Claimant received compensation or replacement for all claimed items shown to have been purchased by him and lost due to staff negligence. He has not presented any additional proof of purchase or staff negligence. He signed inventories on July 28 and August 9, 2022, without noting any discrepancies. The agency recommends the claim be denied.

Following discussion, the Committee recommends Claim No. 7299 be denied.

Claim No. 7302, Claimant: Christopher Kern
vs. KDOC
to property damages in the amount of \$59.43

Claimant states his property was packed by staff at Hutchinson Correctional Facility (HCF) and placed in storage on January 31, 2022, while he was in the hospital. Staff later brought a box of his property to him at his cell and dropped it on the floor, damaging some items. Further, packaged food, hygiene items, and clothing were missing from his property. The Claimant was informed by staff that food items are not stored due a short self-life. However, the Claimant noted the missing food included soup cans, candy, and coffee, which are not perishable. The Claimant states that staff did not allow him to inspect property before signing for receipt.

Respondent, KDOC
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated that none of the claimed items were on an inventory sheet from January 30, 2022, and there was no evidence that staff ever had possession of them. The claimant signed the inventory sheets on February 5, 2022, acknowledging receipt of his property without noting any discrepancies. There is nothing to show if or when any damage or loss may have occurred. He did not purchase any of the perishable items within 90 days prior to the alleged loss and agency policy provides that perishable items will be considered to have no claim value after such time. The Claimant's property was packed and inventoried. He signed the inventory sheets without noting any discrepancies. There is no showing that the items claimed to be missing were present when his property was packed or that staff ever had possession of them or that any damage occurred. For these reasons, the agency recommends the claim be denied.

Following discussion, the Committee recommends Claim No. 7302 be allowed in the amount of \$59.43, to be paid from existing agency resources. Members expressed concern regarding the process by which inmates sign for receipt of inventoried property.

Claim No. 7275, Claimant: Jason Grasle – CARRYOVER
vs. HCF
due to property loss in the amount of \$258.50

Claimant states that on April 13, 2022, he was attacked on the yard at HCF East Unit and immediately moved to a different unit. Staff failed to notify anyone at East Unit that he was being moved. Consequently, his property was not immediately secured and items were stolen. He seeks compensation for the lost property.

Respondent, HCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent states staff reviewed the Claimant's canteen purchase history and his account transaction history and found no record that he purchased many of the claimed items. The incident occurred about 6:28 p.m. and the Claimant's property was placed in East Unit storage at 9:10 p.m. The Claimant acknowledged receiving and signing for some of his property on April 15, 2022. The inventory that he signed was a complete inventory of items received. No discrepancies were noted regarding items now claimed. His property was packed and inventoried within two-and-a-half hours of the altercation. The inventory was presented to him the following day and included items that were returned and items that were placed in storage. He signed without noting anything missing. His alleged loss is unsubstantiated, and there is no showing that any alleged loss was the direct result of staff negligence. For this reason, the agency recommends denial of the claim.

Following discussion, the Committee recommends Claim No. 7275 be denied.

Claim No. 7305, Claimant: Hector Gallegos
vs. KDOC
due to property loss in the amount of \$351.38

Claimant stated that on May 4, 2022, he was attacked by other inmates at the HCF and taken to the hospital. He claims that staff packed his property when he was transferred to another facility. After he was transferred, he discovered some of his property was lost and seeks compensation for 2 sets of pens, 10 lidded containers, 3 scented oils, 4 packs of socks, and a television.

Respondent, KDOC
represented by Libby Snider, Staff Attorney, KDOC

Respondent noted there was confusion with this facility claim. Attached to the Claimant's legislative claim is a signed withdrawal of the facility claim stating the matter was resolved. The Claimant states that he spoke with staff in the Enforcement, Apprehensions and Investigations (EAI) unit and offered to settle the claim in exchange for a television. Claimant stated that he

then told a Unit Team Counselor that he wanted to withdraw the claim. When he returned to EAI staff with the withdrawal paperwork, the Claimant was informed that he misunderstood and there was no offer for settlement involving a television. Because the Claimant withdrew his facility claim, it was not investigated.

The Respondent stated that both staff members identified by the Claimant were contacted. The EAI staff person indicated that he did not investigate the facility claim or negotiate a settlement. He advised the Claimant that he did not investigate claims, but he did have a television available for the Unit Team Counselor if it was needed to settle the claim. The Unit Team Counselor reported the Claimant came to him and said he needed to withdraw his claim so that EAI could give him a television. The Unit Team Counselor provided the withdraw form for the claimant to sign. The Claimant was informed a television was available, but staff believes the Claimant misinterpreted this to mean he would be given a television.

Based on a misunderstanding and because the claim was withdrawn, the facility has not investigated the matter. The KDOC is recommending that the claim be dismissed without prejudice to permit proper processing. In the alternative, the KDOC requests that it be carried over for the same reason.

Following discussion, the Committee recommends Claim No. 7305 be carried over to a later meeting.

Claim No. 7288, Claimant: Gary Ditges
vs. KDOC
for property damage in the amount of \$695.55

Claimant states that on June 25, 2022, his cell at the Norton Correctional Facility was searched by an officer and his MP3 player was damaged during the search. The screen was cracked, and the touch screen functions no longer work. He is unable to listen to his purchased music. He purchased the device for \$131.25 on May 13, 2021, and the balance of his claim is for 270 purchased songs. The Claimant estimates repair of the player at \$50.

During the hearing, the Claimant clarified he only seeks compensation for the MP3 because the purchased songs are still accessible.

Respondent, KDOC
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated the Claimant admitted to staff that he did not see an officer break the MP3 player. Staff noted that there was spider web cracking on the lower left corner of the device's touch screen, but this damage appeared to be old. The cell inspection form from June 25, 2022, as well as two previous inspections by different officers, did not indicate whether there was any damage observed, but all noted that the condition was good.

Respondent stated the officer involved in the incident no longer works for the Department. Staff noted the Claimant still owns music he has purchased, and it will be available for download if he chooses to purchase another player.

KAR 44-16-105 and IMPP 01-118 state that inmates own property at their own risk, and claims shall not be paid unless loss or damage directly resulted from staff negligence. The claim was investigated, and the device was inspected. The damage appeared to be old. No evidence was found to establish that the damage to the Claimant's MP3 player occurred during the cell search or that it was caused by staff. The KDOC recommends that the claim be denied.

Following discussion, the Committee recommends Claim No. 7288 be allowed in the amount of \$50.00, to be paid with existing agency resources.

Claim No. 7286, Claimant: Matthew Astorga
vs. HCF
due to property loss in the amount of \$1,152.41

Claimant states that his property was sent to the El Dorado Correctional Facility (EDCF) from HCF, but the property was released to the wrong individual. He requests compensation for a television, radio, watch, sweatshirt, sweatpants, thermal top and bottoms, family photographs, art supplies, and trial transcripts.

During the hearing, the Claimant clarified he was given a replacement television. His primary concern is the missing photos and court transcripts from a 1996 trial in New Mexico.

Respondent, HCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated the Claimant cited a date of loss of March 14, 2022. The Claimant was released from KDOC on January 19, 2021, from HCF. On February 1, 2022, he was admitted back to KDOC as a new court commitment and went to the Reception and Diagnostic Unit (RDU). Once discharged from RDU around March 14, 2022, the Claimant was moved to EDCF. HCF EAI staff reported that nothing was logged for the claimant from 2020 through 2022, and they had no property belonging to him.

The Claimant presented a letter from a court reporter indicating that transcripts had been sent to his attorney and were paid for by the Board of Indigence Defense Services. He provides a menu of canteen prices rather than proofs of purchase, and he provides various correspondence with KDOC personnel. The Claimant was released from KDOC to the Leavenworth County Jail for resentencing in his criminal case. He was advised that his property was stored at HCF and would be returned to him upon his return to KDOC or disposed of in accordance with his instructions if he did not return to KDOC.

Respondent states the Claimant is not entitled to compensation for transcripts that he did not pay for, and it is possible that the claimed transcripts are still available through his attorney. Agency policy provides that residents are permitted to possess photographs, but they have no claim value in the event of loss or damage. Nothing presented with the Claimant's claim establishes that his property was lost, that the claimed items were property that he had purchased, or that his property was released to the wrong individual. His claimed losses are unsubstantiated and there is no showing that any such loss was the direct result of staff negligence. In addition, by failing to file a timely facility claim, the Claimant has failed to exhaust his administrative remedies, making the present claim subject to dismissal pursuant to Committee Rule 2.

The KDOC recommends the claim be denied. If it is not denied, KDOC recommends that it be dismissed pursuant to Rule 2. If the claim is neither denied or dismissed, the KDOC would request that it be carried over to permit further investigation and valuation of the claim.

Following discussion, the Committee recommends Claim No. 7286 be denied.

Claim No. 7287, Claimant: Dion Jamal Green
vs. EDCF
due to property loss in the amount of \$265.03

Claimant states that his extension cord, shoes, thermal top, headphones, rechargeable batteries with charger, radio, and a book went missing after he returned from segregation housing.

Respondent, EDCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent requests the claim be denied. The Claimant recently submitted a signed withdrawal form due to recent settlement of the facility claim for a depreciated value of \$100.91.

Following discussion, the Committee recommends Claim No. 7287 be dismissed with prejudice.

Claim No. 7307, Claimant: Clinton McKinney
vs. LCF
due to personal injury in the amount of \$500,000.00

Claimant states staff wrongfully opened his mail, conspired to impede his legal actions, and allowed a physical altercation, in retaliation to the claimant's request for Native American religious accommodations. The claimant clarified some aspects related to a pending lawsuit.

Respondent, LCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent states the Claimant offers no evidence in support of his allegations, and a review of the grievances indicates that numerous filings have been appropriately processed and answered. Claimant does not dispute the findings in those responses or offer any arguments that the decisions are erroneous. Nothing presented established the Claimant has suffered any compensable loss as the direct result of staff negligence, or that any such loss should be valued at the claimed amount. The KDOC recommends the claim be denied.

Following discussion, the Committee recommends Claim No. 7307 be denied.

Claim No. 7297, Claimant: Rebecca Lambert
vs. Kansas State Fair
due to personal injury in the amount of \$240,000.00

Claimant is represented by her father, Alberto Martinez, who is not an attorney. Claimant states she sustained injury to her right patella when she slipped on water inside a building on the State Fairgrounds. She seeks compensation for emergency room and ambulance services, completed surgery, anticipated future surgery, pain and suffering, and loss of wages.

When asked if the Claimant had pursued a lawsuit, Mr. Martinez stated no lawsuit was pursued because no attorney was willing to represent the Claimant on this matter.

Respondent, Kansas State Fair
represented by Janene Starks, Controller

The agency did not appear before the Committee due to previous commitments. Committee staff read written responses from the agency indicating that matter was being investigated. Mr. Martinez notified the agency by phone on September 26, 2022, that his daughter had fallen while at the State Fair. The Claimant phoned the agency on September 29, 2022, verifying the incident. The agency instructed the Claimant to fill out an incident form and emailed the Claimant with a link for the Committee and Kansas Tort Claims. Records validate the Reno County Emergency Medical Services was dispatched and escorted by the Kansas Highway Patrol to the Sunflower South Building, where the incident occurred. The agency requests to carry over this claim to a later date to allow the agency time to assess the incident more closely, particularly in light of the Claimant's contention that additional surgery may be needed.

Committee staff indicated this claim may be premature because the statute of limitations for a tort claim has not expired, and there are still outstanding medical bills that may be incurred. Committee staff also clarified that state agencies are generally prohibited from paying claims in excess of \$1,000, unless recommended by the Committee.

Following discussion, the Committee recommends Claim No. 7297 be dismissed without prejudice, pursuant to Rule 2.

Claim No. 7289, Claimant Midwest Electrical Contractors, Inc.
vs. Kansas Department of Wildlife and Parks (KDWP)
due to bill refused in the amount of \$53,754.06

Claimant is represented by attorney, J. Phillip Gragson. Claimant contracted with the agency to provide electrical work and materials for the upgrade of the camping areas at the Hillsdale State Park, which included the extraction of old copper wiring. There were significant project delays due to weather and supply chain disruption concerning certain pedestals required by the agency. Claimant is seeking compensation in the amount of \$53,754.06 for increased costs and overhead incurred for material and job site storage and project management as a result of the delays. The Claimant incurred costs for the disposal of copper wiring, which the agency expressed no interest in retaining.

In response to a request from the Committee, the Claimant provided case law, “*Wheat v Finney*”, which he asserts requires a claim to be considered by the Committee prior to seeking action in civil court on matters of implied contracts.

**Respondent, KDWP
represented by Dan Riley, Chief Legal Council, KDWP**

Respondent stated the terms of the contract clearly laid out that copper wiring is to be left in place unless removal is necessary to complete the project. Any copper removed under those circumstances was to be stored for agency. The duration of the project was clearly negotiated and contracted at 180 days. There were many delays on the project. The agency granted 134 days of extensions. Some of those delays were not due to supply chain issues, but rather were delays because the contractor had not completed the work. April 1, 2022, was the deadline for opening of the park, and the agency’s customers and clientele had expectations that park services be provided. The agency states the disputes raised by the Claimant are unfounded and recommends the claim be denied.

Following discussion, the Committee recommends Claim No. 7289 be dismissed without prejudice pursuant to Rule 2. The Committee notes that should this matter later be addressed in a court of law, it considers this action as fulfilling any requirement that a claim first be considered by the Joint Committee on Special Claims Against the State.

Lunch

The Chairperson recessed the meeting for lunch at 12:22 p.m. and reconvened the meeting at 1:33 p.m.

Approval of Minutes from October 6, 2022

Representative Ralph moved to approve the minutes of the October 6, 2022, meeting and Representative Osman seconded. The motion carried.

**Claim No. 7290, Claimant: Ronald Johnson
vs. Office of the Attorney General
due to personal injury in the amount of \$37,500,000.00**

Claimant states his sentence is illegal due to a 2013 Kansas Supreme Court ruling that certain statutes known as the “Hard 50” sentence were unconstitutional. He seeks compensation for legal fees and eight years of monetary loss.

**Respondent, Office of the Attorney General
represented by Dennis Depew, Deputy Attorney General for Civil Litigation**

Respondent stated the Claimant raises a number of issues relating to the “Hard 50” sentence that he received in a criminal case in Wyandotte County for first degree murder. The

issues raised by the Claimant were addressed by the Kansas Supreme Court in his most recent appeal, which was decided on April 30, 2021. The Court found the Claimant was not entitled to relief nor a sentence modification. Due to this, the agency feels the Claimant is not entitled to compensation and recommends the claim be denied.

Following discussion, the Committee recommends Claim 7290 be denied.

Claim No. 7301, Claimant: Jamy Hurren
vs. Kansas Bureau of Investigation (KBI)
due to property damage in the amount of \$1,607.15

Claimant states his rental property in Salina, Kansas, sustained damage on September 27, 2022, by law enforcement officers executing a search warrant for a suspect hiding at the residence. The resident was not at home at the time of incident. The claimed amount includes the repair of two windows and an entrance. The Claimant was instructed by the KBI officer to file a claim with the Committee for compensation of damages.

The Claimant contacted his insurance agent about the incident, but was told the State is typically responsible in these situations. No insurance claim was submitted. The Claimant has a \$1,000 deductible, but noted his insurance policy excludes damages resulting from the acts of civil authority. The Claimant stated there were efforts to try to prevent the damages by providing key access once the police called, but this option was not pursued due the suspected presence of a firearm.

Respondent, KBI
Bryan Ross, Assistant General Counsel, KBI

Respondent stated that on September 27, 2022, the KBI was conducting an investigation into distribution of drugs and associated crimes. The suspect in that investigation fled, evaded police, and barricaded himself inside the residence in Salina, Kansas. Ultimately, the high-risk warrant team utilized a hydraulic ram to enter the front door. They also ported bedroom and basement windows to deploy non-lethal munitions. The suspect eventually surrendered. The claim includes an invoice for damage to the front entrance, ground level window, and basement window totaling \$1,607.15. Respondent stated the damage was consistent with the known damage to the residence in the apprehension of the suspect.

Respondent stated the KBI does not oppose the Committee recommending this claim for payment, but KBI's budget does not have funds appropriated to cover property damage in this type of situation. If the Committee allows this claim, the KBI requests additional funds be appropriated to the agency.

In response to a question, Committee staff noted two claims against KBI were recently considered and both were either denied or dismissed without prejudice

Following discussion, the Committee recommends Claim 7301 be allowed in the amount of \$1,607.15, to be paid with existing agency resources. The Committee recommends that payment be conditioned upon the Claimant providing documentation demonstrating the matter was first either denied by an insurance company or the Claimant is subject to a deductible.

Claim No. 7273, Claimant: Michael Fitzsimmons – CARRYOVER
vs. EDCF
due to property loss in the amount of \$120.58

Claimant states that a correctional officer searched his cell on August 3, 2021, and took possession of his shoes, battery chargers, and batteries without leaving a shakedown report. Claimant indicates the items were never returned and requests reimbursement for them.

Respondent, EDCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated the facility claim was not filed within the 15 days required by policy; subsequently, the claim was not approved. In his legislative claim, the Claimant argues the notary stamp on August 9, 2021, establishes the facility claim was filed within the appropriate time limit. The notary stamp establishes only the Claimant's signature was witnessed on that date. Below that notary stamp is a section of the claim form stating when it was received from claimant, which is dated September 22, 2021, at 14:10. This is signed by the unit team staff and initialed by the Claimant. By failing to file a timely facility claim, the Claimant did not exhaust administrative remedies, and the claim is subject to dismissal pursuant to Rule 2.

The Claimant's cell was searched on August 3, 2021, by two correctional officers. The only items confiscated in that search were extra bedding that was returned to the laundry as documented in a shakedown report signed by both officers. No personal items were taken. The alleged loss is unsubstantiated, and there is no showing staff ever had control of the claimed items. The Department recommends the claim be denied. If it is not denied, the agency recommends dismissal pursuant to Rule 2.

Following discussion, the Committee recommends Claim No. 7273 be denied.

Claim No. 7291, Claimant: Patrick Lynn
vs. KDOC
due to property loss in the amount of \$121.44

Claimant states that on August 30, 2021, he was transferred from HCF to EDCF. Staff at HCF packed the Claimant's property prior to departure. On September 24, 2021, the Claimant received a box of belongings in the following condition: a television with a broken base, a radio with damage to the power supply, a lamp with a broken bulb, and broken television remote. Claimant stated he is also missing food items, primarily jars of sauces, as well as toiletries, headphones, batteries, and Tupperware containers.

During the hearing, the Claimant indicated he has pending lawsuits in the 10th Circuit Court of Appeals on this matter. Further, he threatened to resolve the matter with a box of bullets, a Smith & Wesson firearm, and a small army of people he has on standby.

**Respondent, KDOC
represented by Libby Snider, Staff Attorney**

Respondent states the claim involves voluminous property issues. The Claimant references a number of pending lawsuits on page four of his claim. Respondent states the agency initially planned to request a carryover to allow staff time to investigate the claim. However, given the Claimant's pending litigation, the agency recommends dismissal pursuant to Rule 2 so the claimant may pursue his judicial remedies and then refile later, if necessary.

Following discussion, the Committee recommends Claim 7291 be denied. The Committee asks the agency representative to notify KDOC that the Claimant made not only implicit, but also explicit, threats during the course of the hearing.

**Claim No. 7292, Claimant: Patrick Lynn
vs. KDOC
due to personal injury in the amount of \$75,000.00**

Claimant states his physical and psychological health was dramatically affected and personal property was destroyed in 2015 due to retaliation from staff involving an alleged criminal conspiracy. The Claimant stated in the earlier hearing that he has pending lawsuits in the 10th Circuit Court of Appeals on various matters.

**Respondent, KDOC
represented by Libby Snider, Staff Attorney**

Respondent states that given the Claimant's pending litigation, the agency recommends the claim be dismissed without prejudice.

Following discussion, the Committee recommends Claim 7292 be denied.

**Claim No. 7293, Claimant: Patrick Lynn
vs. KDOC
due to personal injury in the amount of \$75,000.00**

Claimant states his due process rights were violated during disciplinary proceedings related to an incident that occurred in November 2021. The Claimant stated in the earlier hearing that he has pending lawsuits in the 10th Circuit Court of Appeals on various matters.

**Respondent, KDOC
represented by Libby Snider, Staff Attorney**

Respondent states that given the Claimant's pending litigation, the agency recommends the claim be dismissed without prejudice.

Following discussion, the Committee recommends Claim 7293 be denied.

Claim No. 7295, Claimant: Jesse McLaughlin
vs. KDOC
due to property losses in the amount of \$386.05

The Claimant states that correctional staff failed to properly transfer his property, which resulted in the loss of electronic devices. The Claimant's facility claim was for \$614.75, but an itemized list in the legislative claim reduced the amount to \$386.05.

Claimant asked if the Committee received the additional documents he recently submitted. Committee staff responded that no additional documents were received. Claimant requested additional time to submit additional documents as evidence.

Respondent, KDOC
represented by Libby Snider, Staff Attorney, KDOC

Respondent agreed to the claim being carried over to next meeting.

Following discussion, the Committee recommends Claim No. 7295 be carried over to a later meeting.

Claim No. 7303, Claimant: Ryan Gaughan
vs. EDCF
due to personal injury in the amount of \$75,000.00

The Claimant is medically quarantined and not available to attend this hearing. Committee staff read a summary of the claim. The Claimant states medical staff caused pain and suffering due to not providing him back surgery for his serious medical conditions for a period of five months.

Respondent, EDCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent states the claim involves the agency's contracted medical provider and does not contain allegations against any state employees. The Claimant expresses intent to pursue a lawsuit on this matter. The KDOC recommends the claim be dismissed without prejudice, pursuant to Rule 2.

Following discussion, the Committee recommends Claim No. 7303 be dismissed without prejudice, pursuant to Rule 2.

Claim No. 7304, Claimant: Ryan Gaughan
vs. KDOC
due to property loss in the amount of \$25.75

Committee staff advised the Claimant is medically quarantined and not available to attend this hearing. Committee staff read a summary of the claim. Claimant states a pair of shorts and sweatpants were stolen when he submitted these items to laundry services.

Respondent, KDOC
represented by Libby Snider, Staff Attorney, KDOC

Respondent states the Claimant placed personal clothing in a laundry service bag with state-issued clothing. The Claimant offers no information showing staff negligence was the cause of the alleged theft, so the agency recommends the claim be denied. The agency provides state-issued clothing to inmates to cover basic needs, but inmates are permitted to purchase personal clothing items at their own risk. Such personal clothing has no claim value in the event they are lost or stolen. The Claimant stated the state-issued clothing was replaced, but the personal purchased clothing was not.

Following discussion, the Committee recommends Claim No. 7304 be carried over to a later meeting, to allow the Claimant to participate in the hearing.

Claim No. 7294, Claimant: Wesley Lovett
vs. KDOC
due to property loss in the amount of \$364.00

Claimant states he was taken to segregation housing on April 25, 2022, for possession of a weapon, and his property was left unsecured in the cell shared with three other inmates. Claimant states his property was not removed until around 3:00 a.m. the next day. He was released from segregation housing on May 10, 2022, and noticed items were missing. He requests compensation for hygiene items, art supplies, stamps, and earbuds.

The Claimant states inventories conducted by correctional staff often lack detail. Staff apply undue pressure on inmates to sign inventory sheets without giving an opportunity to properly account for items.

Respondent, KDOC
represented by Libby Snider, Staff Attorney, KDOC

Respondent states the Claimant only received a portion of his property on April 26, 2022, and he did not discover that items were missing until he was released from segregation housing on May 10. Although he did not receive all of his property on April 26, the Claimant did receive an inventory of all of his property. The inventory included numerous items with check marks to indicate items that were taken to storage. The Claimant signed all four pages of the inventory without noting any discrepancies regarding the items he now claims. It appears the Claimant did make note regarding a hot pot, a surge protector, and two bowls, but these items are not included in his claim, so presumably they were located and returned to him. The Claimant's

alleged loss is unsubstantiated and there is no showing that any alleged loss was the direct result of staff negligence. The Department recommends the claim be denied.

Following discussion, the Committee recommends Claim No. 7294 be denied.

Claim No. 7298, Claimant: Thomas Everson
vs. Hutchinson Correctional Facility (HCF)
due to property loss in the amount of \$150.00

Claimant states his eye glass frames, safety glasses, eyeglass case containing lenses, and AA batteries were taken during a shakedown on or about June 23, 2022, and thrown away by correctional staff. The missing items were not listed on the shakedown report. As soon as Claimant returned to his cell, he discovered items he previously purchased were missing, and he immediately notified staff.

Respondent, HCF
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated the Claimant had safety glasses and a case that he asserts were provided by an employer in 2017; however, there would be no proof of purchase to substantiate this. The agency could find no evidence he had ever purchased the safety glasses or the case. The eyeglass frames were confiscated because they were altered and would constitute contraband. Inmates are not entitled to compensation for contraband property. With regard to the AA batteries, they are listed on the shakedown report as burnt. The shakedown report includes two eyeglass frames with no lenses and it also states he has more than two pair of glasses which would be excessive property and contrary to policy. Claimant is not entitled to compensation of contraband, and there is no proof of purchase for the safety glasses and case. It is possible those were given to him by the employer for his use while working and simply never returned. The Department recommends the claim be denied.

Following discussion, the Committee recommends Claim No. 7298 be denied.

Claim No. 7308, Claimant: Derrick Richard
vs. KDOC
due to personal injury in the amount of \$150,000.00

Claimant states he was hospitalized for salmonella poisoning due to food improperly prepared by contracted food service staff and asserts he is being punished for reporting the incident. He asserts the contracted food service provider knew the food was bad and served it anyway. Claimant stated the freezers were broken, and the facility did not have adequate storage for the food. The Claimant went to the medical clinic for his ongoing health concerns and was told his ailments are age-related.

Claimant clarified he does not have a pending lawsuit.

Respondent, KDOC
represented by Libby Snider, Staff Attorney, KDOC

Respondent states the Claimant filed a claim regarding the salmonella food poisoning issue. The Claimant previously filed Claim No. 7233 for similar circumstances, which the Committee dismissed without prejudice on October 6, 2022. The agency received the present claim which appears to involve exactly the same issues with some additional allegations that contracted staff continued to feed him the same chicken or processed patties that originally made him sick. The KDOC requests this claim be carried over or dismissed without prejudice, because there is currently pending litigation regarding the salmonella issue.

Respondent stated food inspection protocols were provided to the Committee, as requested.

Following discussion, the Committee recommends Claim No. 7308 be dismissed without prejudice pursuant to Rule 2.

Claim No. 7306, Claimant: Juan Ayala
vs. KDOC
due to personal injury in the amount of \$500,000.00

Due to the Claimant not being available to attend the hearing due to hospitalization, the Committee staff read a summary of the claim. Claimant states staff disregarded medical restrictions prohibiting his use of stairs which resulted in a fall while descending stairs on March 29, 2022. The Claimant alleges residual hip and back pain.

Respondent, KDOC
represented by Libby Snider, Staff Attorney, KDOC

Respondent stated the KDOC recommends the claim either be denied without prejudice to allow the claimant to exhaust judicial remedies or carried over to a later meeting to allow for further investigation of the claim.

Following discussion, the Committee recommends Claim No. 7306 be dismissed without prejudice pursuant to Rule 2.

Review of Motor Fuel Tax Refunds - CARRYOVER
Respondent, Kansas Department of Revenue
represented by Teri Agnew, Public Service Administrator

Respondent stated that the last time she was present the Committee had a question about a refund for Johnson Feed in the amount of \$2,854.33. Johnson Feed, of South Dakota, is a trucking company that operates refrigerated units. Fuel used in refrigeration units that run separate from the vehicle motor is eligible for a refund. The company has over 200 vehicles which accounts for the amount of fuel and the refund.

It is not uncommon for businesses to not be based here in Kansas, but they must buy the fuel in Kansas. Businesses do have to provide proof that the fuel was purchased in Kansas. Approximately 7.0 percent of all refunds are for trucking companies.

Following discussion, the Committee recommends the Motor Fuel Tax Refunds in the amount of \$7,086.73.

Adjourn

Chairperson Dietrich adjourned the meeting at 4:09 p.m.

Prepared by Susan McClacherty

Edited by Murl Riedel

Approved by the Committee on:

August 31, 2023

(Date)