

MINUTES

JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

December 3-4, 2009
Room 143-N—Statehouse

Members Present

Senator Tim Owens, Chairperson
Representative Rocky Fund, Vice-chairperson
Senator Terry Bruce
Senator Kelly Kultala
Senator Ty Masterson
Senator Dennis Pyle
Representative Bill Feuerborn
Representative Bob Grant
Representative Broderick Henderson
Representative Steve Huebert
Representative Jeff King
Representative Rob Olson
Representative Joe Patton

Staff Present

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

Thursday, December 3

Chairperson Owens called the meeting to order at 1:40 p.m.

Cindy Lash, Kansas Legislative Research Department (KLRD), announced a change in staff assignments for the Claims Committee. Dylan Dear, KLRD, will be taking Amy Deckard's place as staff for the Claims Committee.

Representative Fund moved to approve the minutes of the November 2-3, 2009, meetings with addition of the Committee decisions on claimants Stacker and Shanklin; Representative Feuerborn seconded the motion; the motion carried.

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

Brian K. Kinney summarized Claim No. 6154 against Kansas Department of Corrections (KDOC) disputing restitution charged against him in the amount of \$595.90. Mr. Kinney explained that he was charged \$595.90 restitution without prior notice being given to him that this would occur. He also contended that the time frame stipulated in internal management policy and procedure (IMPP) was not followed. Mr. Kinney claimed that he had been told that if he pled guilty, the situation would be taken care of right away, so he complied. Restitution had not been mentioned until the sentencing, but it was too late to change his plea. He chose to appeal the decision, but was not given an appeal form. Officer Stevens brought final disposition to him; appeal form was never brought to him. They never have given him a reason for the restitution charged against him.

Libby Snider, Kansas Department of Corrections (KDOC), responded saying Mr. Kinney's complaint was that he was denied due process. He had never previously mentioned that he was unable to receive appeal forms. Captain Onuth said he had informed Mr. Kinney of the costs of restitution and Mr. Kinney had responded stating that he did not think that was too bad. Officer time to investigate Mr. Kinney's location and process him is itemized in the documentation. An appeal could have taken care of the issue. She requested that this claim be denied.

Mr. Kinney stated he did not appeal because he was not given appeal forms upon requesting them. The issue of charging restitution was only brought up with him at the sentencing. Time passed prior to submitting the claim because Mr. Kinney was in the county jail.

Following discussion, the Joint Committee recommended that Claim No. 6154 be denied.
(See section captioned "Committee Action and Recommendation.")

Carl A. Butler summarized Claim No. 6197 against KDOC due to loss of property in the amount of \$122.75. Mr. Butler says this matter could have been taken care of in last year's claim to replace his television. Since then, he purchased a new television; they found his missing television; they then told him he would have to mail out one of the televisions. He was refused a pass to mail out property, so they ended up destroying the found television. The purchase price of the television was \$97.75. The balance being requested in the claim is for mailing the television.

Libby Snider, KDOC, responded saying after transfer to another facility, Mr. Butler did not note any discrepancies on inventory lists. Upon finding his television had been replaced, he then owned two, which is not allowed. One was retained in storage while Mr. Butler was informed that he was going to have to make disposition of one of them, and the facility had even offered to pay the shipping costs to send it out. Mr. Butler had argued that he should have been able to keep the television or to sell it to another inmate. He never informed the property officer that he was willing to send out the television or that he had an address for shipping. She recommended this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6197 be denied.
(See section captioned "Committee Action and Recommendation.")

Matthew Ebel summarized Claim No. 6198 against KDOC due to loss of property for \$15.16. Mr. Ebel received a disciplinary report for dealing and trading. The authorities said his food items would be forwarded to his inventory. It was changed to not be stored, but was destroyed.

Libby Snider, KDOC, responded saying that Mr. Ebel was found dragging a laundry bag of food items to his cell. He was charged with dealing and trading and the food items were confiscated as contraband. She recommended the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6198 be denied.
(See section captioned "Committee Action and Recommendation.")

Jeffery Alan Turner summarized Claim No. 6201 against KDOC due to loss of property in the amount of \$45.04. When Mr. Turner was sent to segregation for fighting, the officers sent his property to him, he checked the inventory, then the officers determined that it had been improperly packed out. They then re-packed his property. Mr. Turner claimed he was missing property from the second packout.

Libby Snider, KDOC, responded saying that Mr. Turner did file a facility property claim, which was investigated. It was determined that the only items not returned to him or held in storage were given to him in money and that he signed a form waiving any further claim on the missing property. She recommended that this claim be denied.

Mr. Turner stated that he was not informed that the signing the paper was final action on the matter.

Following discussion, the Joint Committee recommended that Claim No. 6201 be denied.
(See section captioned "Committee Action and Recommendation.")

Tracy A. Markee summarized Claim No. 6205 against KDOC due to loss of property in the amount of \$149.48. He cited page two of the KDOC written recommendation for this claim, saying that his incentive level was incorrect. He had ordered a television due to the fact that he was supposed to have been reduced to a Level I. He did inform the counselor that he should have had an incentive level reduction prior to ordering of the television. They did not correct his incentive level. He should have been able to keep the television that he ordered.

Libby Snider, KDOC responded saying that Mr. Markee may have said to staff that his level should have been reduced. However, he would have had to send out the television regardless of his custody level. He did not send out the television, so the facility removed it. She recommended that this claim be denied.

Mr. Markee interjected that the property disposition slips were sent to him prior to the response from the facility on the status of his case.

Following discussion, the Joint Committee recommended that Claim No. 6205 be denied.
(See section captioned "Committee Action and Recommendation.")

Anthony Conley summarized Claim No. 6193 against KDOC due to personal injury and other damages in the amount of \$50,000. Medically prescribed tinted lenses were taken from him. The \$50,000 is for the suffering caused by the disregard of his personal needs by the officer.

Libby Snider, KDOC, responded saying that the officer contradicted Mr. Conley's statements. The officer contacted medical staff who said that the glasses were not totally signed-off by the medical staff. He was not allowed to have the glasses on during the picture taking session with his family.

Mr. Conley requested the video tapes of the visit session with his family to show that he was wearing the glasses upon entering the visitation room.

Following discussion, the Joint Committee recommended that Claim No. 6193 be denied. (See section captioned "Committee Action and Recommendation.")

The Chairperson opened the hearings filed by Kansas counties against the **State Treasurer.**

James Crowl, Assistant Shawnee County Counselor, representing 12 Kansas county claimants, summarized Claims No. 6206, 6213, 6214, 6215, 6216, 6217, 6218, 6219, 6220, 6221, 6222, and 6223 against the State Treasurer due to underpayment of motor fuel tax refunds made for FY 2000-FY 2005. The claimants and amounts of the claims are as follows:

<u>Claim No.</u>	<u>Claimant</u>	<u>Amount</u>
6206	Board of County Commissioners of Ness County	\$ 26,001.02
6213	Board of County Commissioners of Barton County	349,089.96
6214	Board of County Commissioners of Cowley County	302,986.72
6215	Board of County Commissioners of Geary County	82,203.66
6216	Board of County Commissioners of Grant County	23,654.46
6217	Board of County Commissioners of Lane County	13,972.42
6218	Board of County Commissioners of Leavenworth County	1,311,748.28
6219	Board of County Commissioners of Rice County	19,561.82
6220	Board of County Commissioners of Russell County	37,221.10
6221	Board of County Commissioners of Shawnee County	6,599,319.38
6222	Board of County Commissioners of Trego County	8,514.74
6223	Unified Government of Wyandotte County/Kansas City	233,074.94

Mr. Crowl stated that there is a predetermined formula to calculate the amount of motor fuel tax to be refunded. He said there were actually two issues to address, the miscalculation in the formula and that satellite offices were not included in the refunds. Shawnee County was told this problem went back at least to 2000 and affected 19 counties in Kansas. The statute states that it is mandatory that the counties be paid. Therefore, they are requesting payment of the difference between what was paid and the correct amounts. Mr. Crowl stated that, when meeting with the Kansas Department of Revenue (KDOR) last year, KDOR said the data was lost or they did not have it. They have now been able to recreate the figures. Scott Gates, State Treasurer's Office, has the updated numbers for FY 2000-2005, but they just received them from KDOR and have not had an opportunity to review them.

Committee members questions followed, to which Mr. Crowl replied.

- **Why were only 12 counties filing claims at this time?**

They were the ones that responded to Shawnee County's letters.

- **Are the overpaid counties expected to repay the overpayment amounts?**

Mr. Crowl replied that this was a decision that was up to the State to decide.

- **What caused the miscalculation?**

The software package that they had purchased and implemented was programmed incorrectly.

- **Are audits done and yet they missed this?**

Yes, an independent auditor performs an audit each year.

- **Are different auditors hired each year?**

Yes.

- **If this claim is not allowed, is a lawsuit probable?**

Yes, as a last resort

Chairperson Owens stated this Committee is considered the court of last resort and the counties' administrative remedies have not been exhausted. Procedure over the years has been that all other avenues be exhausted prior to coming to the Committee.

The claim was filed prior to a lawsuit because the statute states that the claim should be filed prior to lawsuit being filed.

The Chairperson recommended that the Committee defer any action and that this issue be taken before the Appropriations Committee.

Following discussion, the Joint Committee recommended that Claims No. 6206, 6213, 6214, 6215, 6216, 6217, 6218, 6219, 6220, 6221, 6222, and 6223 be referred to the House Appropriations Committee and action on the claims be carried over to a future meeting of the Claims Committee. (See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearings filed by inmates at **Larned State Hospital (LSH)**.

Max R. Saiz summarized Claim No. 6203 against the Department of Social and Rehabilitation Services (SRS) for property damage in the amount of \$450.00. Mr. Saiz' unit was locked down, he was moved to an isolation room, and his cell was thoroughly searched. Mr. Saiz states that during this process, his LCD television was bent and scratched when put at the bottom of the cart. Mr. Saiz' sister sent him \$377 for a new television from WalMart. His old television was not destroyed, but was bent and scratched up on the stand, the back, and the front. He was told he could replace it or send it in for repairs. He had Mr. Burke, witness to the event, present with him in the counselor's office during this hearing.

Brenda Hagerman, LSH, was on the phone from LSH and Elizabeth Phelps, SRS, was present. The summary is that there was no clear indication of negligence on the part of LSH staff and she recommended that this claim be denied.

Mr. Saiz asked if staff was not responsible, but the television was in their care when it was damaged, who was responsible.

A Committee member asked what the reason was for shakedown. It was a search for contraband, but Mr. Saiz stated that none was found in his room. Ms. Hagerman could not confirm this statement.

Following discussion, the Joint Committee recommended that Claim No. 6203 be denied.
(See section captioned "Committee Action and Recommendation.")

Dustin J. Merryfield summarized Claim No. 6018 against LSH in the amount of \$3,096.24 for costs for copies of legal materials and postage. Mr. Merryfield is civilly committed. The facility refused to recognize him as indigent for about a year. Prior to the change in classification, he requested other people to pay for his ongoing legal cases.

Liz Phelps, SRS, responded that litigation activities that Mr. Merryfield chose to participate in are at his discretion. She recommended that this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6018 be denied.
(See section captioned "Committee Action and Recommendation.")

The Chairperson opened the hearings filed by the Whites against SRS.

Kim J. White summarized carried over Claim No. 5841 against SRS for mental and emotional anguish for \$51,000. SRS took his children without investigating and placed them with a child abuser. His wife lost them back into the state's custody. Mr. White's youngest son has been adopted out-of-state and his oldest son has been back in Mr. White's custody for seven months. Mr. White asked SRS to reinvestigate why the boys were taken from him. Mr. White states that he has complied with SRS 100 percent. The claim is based on the allegation that SRS abused him and his children by taking his children from him and exposing them to abuse.

Nolan Chance White summarized Claim No. 6208 against SRS due to the mental and physical abuse and SRS misconduct for \$250,000. SRS removed him from his parents when he was eight years old, moving him from foster home to home. He became emotionally unstable; his self esteem suffered. When he was ten years old, SRS gave him back to his mother who let him do illegal drugs and did not care for him. He was again taken out of the mother's home, moved to foster homes, and was "adoptable" for six years. He is now 16 years old. He has not seen his brother, with whom his was close, for two and one half years.

Mr. White stated that he arrived at the \$250,000 figure by determining how much the foster homes were receiving from SRS for taking him, but were spending the money on themselves.

Sue McKenna, SRS, responded by saying that SRS did investigate; the court found that SRS was working to reintegrate Nolan with his mother or father. They have been working since Kim White's initial claim in 2006 to reunite Nolan and his brother or adopt them out. The caseworker has also worked to reunite the boys with father. Ms. McKenna recommended the claims be denied.

Ms. McKenna confirmed that SRS worked with Mr. and Ms. White to maintain the boys in the home for several years. Nolan's behavior became more disruptive, and the corporal punishment administered was excessive. SRS began working with the mother. Nolan told of being sexual abused by a maternal uncle. Ms. White was not able to keep him from that relationship. Nolan was

a challenge for all adults to deal with. When in a group home, Nolan was sexually assaulted by another resident, an older boy. Interviews of staff in the group home by law enforcement and SRS, told them that the maximum time Nolan was alone was five minutes at a time. Ms. McKenna said the perpetrator was taken into custody, charged with aggravated sodomy, but was found unfit to stand trial. Providing more information on the perpetrator is not justified in defending SRS in this claim. The group home is a licensed home in good standing.

Senator Terry Bruce moved, due to the sensitive nature of this claim, that the open meeting of the Joint Committee on Special Claims Against the State be recessed for a closed meeting pursuant to KSA 38-2212(d)(1) and KSA 75-4319 for the purpose of gleaning pertinent information from the claimant, that the Joint Committee on Special Claims Against the State resume the open meeting in this room, 143-N of the Statehouse, at 4:25 p.m., and this motion, if adopted, be recorded in the minutes of the Joint Committee on Special Claims Against the State and be maintained as part of the permanent record of the Committee, that those in attendance be members of the Committee, designated staff, the claimants, and SRS' designated agent. Representative Bill Feuerborn seconded the motion. Senator Kelly Kultala excused herself from the executive session because her employer is Youthville. The motion carried.

The Joint Committee on Special Claims Against the State resumed the open meeting portion of the Committee meeting.

A Committee member asked Ms. McKenna if a judge signs off on SRS taking a child from the home and returning a child to the parents. She said the court decides the time table for integrating a child back into the home. There is a hearing and report each year to determine whether SRS is doing its job satisfactorily. The court did not find that the state was not doing what it could for the White children.

A Committee member asked Kim White how he determined, in 2006, to claim the amount of \$51,000. Mr. White explained that former Senator Phil Journey had told him he could not sue the State and he wanted to be able to take this to court to show that the people in Wichita were not taking care of his children. Nolan is living with him now, but Mr. White does not have custody; there will be a hearing within the next month or two. His youngest son has been adopted.

Following discussion, the Joint Committee recommended that Claim No. 5841 be denied. (See section captioned "Committee Action and Recommendation.") (Senator Kultala abstained from the vote.)

Following discussion, the Joint Committee recommended that Claim No. 6208 be denied. (See section captioned "Committee Action and Recommendation.") (Senator Kultala abstained from the vote.)

Jerry and Denise Dahlstrom's Claim No. 5690 against SRS in the amount of \$1.2 million for termination of medical provider status for their 10th Street Medical, Inc. business has pending court proceedings. As a result, the Joint Committee recommended that Claim No. 5690 be denied without prejudice. (See section captioned "Committee Action and Recommendation.")

Mike Heim, Office of the Revisor of Statutes, summarized the revision of the bill draft he prepared for the Committee. He explained that he deleted the provision that the Judiciary Committee Chairperson be on the Claims Committee. The bill draft reduces the Committee membership from 13 to 7 members. The draft addresses the ranking minority member on page 2; the draft allows for a "one-time appeal" by submitting a specific reason a claim merits hearing; Section 4 addresses the

implementation, cut-off date, and effective date change, as well as where the changes would have to be published.

Chairperson Owens stated he was inclined to have the Committee think on the information and take up the topic first thing the next morning. Discussion followed that addressed the following issues; the assignment to committee (the Speaker and President may assign the bill to whatever committee they desire); the concept that 13 minds are better than seven and lean toward less bias; this Committee is more judicial in nature than legislative, making more not necessarily better; and smaller bodies can sometimes coordinate attendance more easily.

Cindy Lash mentioned that SB 93, which reduces the size of the Committee, is currently in House Judiciary Committee.

The topic was deferred to Friday, December 4, 2009, for further discussion.

The meeting was adjourned at 5:05 p.m.

Friday, December 4 Morning Session

The meeting was called to order at 9:08 a.m.

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

Richard Hamm summarized Claim No. 6196 against KDOC in the amount of \$97.75 due to loss of property. He explained that he was sent to segregation directly from a hearing. His property was packed out of the 4-man cell. Prior to leaving for the hearing, he had locked up all his property, except for his television which did not fit in a locker. When the property inventory forms were brought to him, two different forms, one was for allowable property in segregation and one for electronics and anything else that he was not allowed in segregation. He signed the one for allowed property, but not for the unallowed property. His electronics did not come back to him.

Libby Snider, KDOC, responded by saying that they could not substantiate that he owned the electronics that he claims were missing. It is possible that his property was stolen prior to the packout, but it is possible that he gave his property away. She recommended that this claim be denied.

Ownership of property was discussed. Mr. Hamm said his receipt for the television was in his property. Ms. Snider said that property is etched with a serial number and the inmates' number.

Following discussion, the Joint Committee recommended that Claim No. 6196 be denied.
(See section captioned "Committee Action and Recommendation.")

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

Ronald Hailes summarized Claim No. 6199 against HCF for denial of medical treatment in the amount of \$900. He stated that Ms. Holmes was told to send him to the clinic for treatment

several times and refused to send him. Because there was a Form 9, she was called several times by the nurse to send him over.

Mr. Hailes was asked why his claim was for \$900. He explained that KDOC charges inmates each time they miss a sick call. It is a fair amount.

Ms. Snider responded by saying that it was verified that he was to have a foot soak after removal of an ingrown toenail. The denial was due to a misunderstanding. He claims that it delayed the healing of his foot, though there is no evidence of such. She recommended that this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6199 be denied. (See section captioned "Committee Action and Recommendation.")

Gary Lynn Gillom, Jr. summarized Claim No. 6204 against Hutchinson Correctional Facility for property damage and loss in the amount of \$9.98. Mr. Gillom explained that he let another inmate look at his magazines before they went to sleep. The next morning the magazines were confiscated by a guard and destroyed. The guard had said that Mr. Gillom's name was not on them, so he threw them out.

Libby Snider, KDOC, responded that the guard had stated that there was not a name or id on the magazines, so they were destroyed. Dealing and trading is prohibited, which includes borrowing or loaning items. Loaning them to another inmate made them contraband and, therefore, eligible for confiscation. She recommended the claim be denied.

Mr. Gillom replied that a dealing and trading charge would have been understandable, but he was not charged with that infraction.

Following discussion, the Joint Committee recommended that Claim No. 6204 be denied. (See section captioned "Committee Action and Recommendation.")

Harry Chance's Claim No. 6195 was summarized by Cindy Lash, against Hutchinson Correctional Facility for loss of property in the amount of \$35.65. When he was transferred to another unit items were missing. Since then some items have been found, but the shoes were not. The unit manager approved payment of the claim; the Secretary denied it.

Libby Snider, KDOC, recommended payment of this claim.

Following discussion, the Joint Committee recommended that Claim No. 6195 be allowed for \$35.65. (See section captioned "Committee Action and Recommendation.")

Cindy Lash summarized Darnell Benton's Claim No. 6200 against Hutchinson Correctional Facility for loss of property in the amount of \$17.97. During a shakedown his muscle magazines were confiscated due to no identification on them.

Libby Snider, KDOC, responded that three magazines were confiscated during a shakedown because they had no names or numbers. They were not in plastic sleeves with identification. No evidence to the contrary was provided. She recommended that this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6200 be denied.
(See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearing filed by Roberto Honeycutt at **El Dorado Correctional Facility**.

Roberto Honeycutt summarized Claim No. 6226 against El Dorado Correctional Facility for loss of property in the amount of \$31.29. When in segregation, an inmate contacted Mr. Honeycutt's girlfriend with Mr. Honeycutt's phone account.

Libby Snider, KDOC, responded by saying that it was determined that another inmate had used Mr. Honeycutt's pin number for his phone account. Investigation did not find that the other inmate was charged with a disciplinary report, so that he would be charged restitution to Mr. Honeycutt. The inmate and Mr. Honeycutt were previously found to be involved in illegal activities together and, at that time, either Mr. Honeycutt or his girlfriend had given the other inmate the phone number. She recommended this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6226 be denied.
(See section captioned "Committee Action and Recommendation.")

The Committee revisited the subject of **draft legislation**.

The topic of deciding a claim without a hearing was discussed. The question arose that if the Committee could deny claims without hearings and the claimants could appeal, if the Committee decided to pay a claim without a hearing, could the state agency appeal. Mr. Heim stated that a provision could be added to the draft to allow these appeals.

The number of attorneys from each chamber in the membership of the Committee was discussed. Currently it is two attorneys from each chamber; the bill draft would change that to one from each house.

Some Committee members stated that they do not support this bill draft, but have no problem with Chairperson Owens taking the bill draft to leadership. The committee process will provide good input and options for this bill.

Chairperson Owens stated that he will present it to Senate Judiciary Committee to begin the dialogue in the legislature.

The Chairperson opened the telephone hearings filed by inmates at the **Topeka Correctional Facility (TCF)**.

Kathrine Burns summarized Claim No. 6178 against TCF for sexual misconduct and mental anguish in the amount of \$50,000. She explained that she was sexually harassed by a male officer who stuck his hand inside her shirt, caressing her breast, under the pretense of finding her badge, and was then told to meet him in the day room within the hour. She did not go to the day room to meet him. Security cameras are around to see pat-downs.

Libby Snider, KDOC, responded that an investigation was done. Ms. Burns was interviewed as well as the officer. Video tapes were looked at and it was determined that he took her badge from

her pocket without lingering. She was given a disciplinary report due to her badge clip having an erroneous security level on it.

A Committee member asked if there are not female officers present. Common sense would recommend that female officers be present for a search, and reaching into a pocket is a bad choice.

Ms. Snider responded that she thought it would not be appropriate for a female officer to reach inside an inmate's pocket as well. She also thought it is a requirement that badges be worn outside the clothing, not in a pocket.

Ms. Burns stated that she had pled no contest to summary judgement, because she had a blue clip on her badge. But the officer still had violated her, because of going inside the pocket and feeling her breast.

Following discussion, the Joint Committee recommended that Claim No. 6178 be carried over and be referred to the Governor's special investigation of sexual misconduct within Corrections. (See section captioned "Committee Action and Recommendation.")

Shelia Hudson summarized Claim 6211 against TCF for personal injury in the amount of \$100,000. She stated that she was attacked and struck. The inmate that attacked her has still not been charged after two months. Ms. Hudson was removed to segregation, not the attacker. The other inmate is that one that should have been moved. Video tapes of the incident were never viewed. After the second incident, it was ordered that the cameras' tapes be viewed; this was not done.

A Committee member asked why her claim was for \$100,000 for the personal injury when all she had presented was discussion on procedure.

Ms. Hudson replied that her nose was bloody and now needs surgery. She has no idea of the cost of the surgery she needs, but medical costs are high with no insurance.

Ms. Snider said this claim is about housing and injury to Ms. Hudson's nose. After the incident, Ms. Hudson was moved, as well as the other inmates. One was charged with battery; the other case is still pending. Her written claim does not say that KDOC did not respond appropriately. She recommended that this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6211 be denied. (See section captioned "Committee Action and Recommendation.")

Debbie Elaine Crain summarized Claim No. 6212 against TCF for personal injury in the amount of \$4,200. Ms. Crain stated that she was put in TCF due to parole violation; revocation was not computed. Ms. Crain wants her "served time" restored.

Ms. Snider responded saying that when Ms. Crain violated her 36-months post-release supervision, she was ordered to serve time to her discharge date. There were new offenses due to this violation. She must to serve the time consecutively; however, good time has been applied due to this investigation. She recommended this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6212 be denied. (See section captioned "Committee Action and Recommendation.")

Tarlene Williams summarized Claim 6225 against TCF for personal injury in the amount of \$500,000. She stated that HIV inmates are not segregated from other inmates. Due to an HIV positive inmate putting her blood in Ms. Williams' drinking cup, Ms. Williams is now undergoing HIV testing and has been found to have hepatitis C which she did not before she came to TCF. Her future medical expenses are unknown. She has not been started on medication yet. Testing will be every four months.

Libby Snider, KDOC, responded that the HIV positive inmate was reportedly asked by another inmate to cut her finger and put blood into Ms. Williams' drinking cup. Ms. Williams was sent to medical for testing. The investigation remains open. Federal requirements do not routinely recommend that HIV positive inmates be segregated. She recommended this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6225 be denied. (See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearing filed by an inmate at the **Ellsworth Correctional Facility** (ECF).

Larry Wheeler summarized Claim No. 6151 against KDOC for personal injury in the amount of \$75,000. His pinky finger has been cut off.

Ms. Snider responded that Mr. Wheeler was operating a table saw and cut his fingers. KDOC was not negligent. Medical treatment was provided after the incident. Within nine minutes from the time he was cut he received medical care. He was taken to the emergency room, and had surgery the next day. She recommended this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6151 be denied. (See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearing filed by an inmate at the **Norton Correctional Facility** (NCF).

Gerardo Lopez-Brito, through an interpreter, summarized Claim No. 6229 against KDOC for property damage in the amount of \$242.00. Mr. Lopez-Brito said that he was in the yard, at Ellsworth Correctional Facility, when an officer opened his pod and six people went into the pod. When he returned to his cell, everything was broken. The captain and warden told him that everything that was broken or missing would be paid for within six months and not to worry about submitting a property claim; it would be taken care of. To date, nothing has been done to repay Mr. Lopez-Brito, so he filed the property claim and the claim against the state.

Libby Snider, KDOC, responded that this is contrary to what she found. The investigator interviewed officers and found no negligence on the part of facility staff, nor any documentation to support Mr. Lopez-Brito's claim or to dispute the investigator's findings. She recommended this claim be denied.

Mr. Lopez-Brito said the unit team, the captain, and warden said they would send all the paperwork and evidence on his claim from the Ellsworth Correctional Facility to him at Norton Correctional Facility. He sent all the documentation of evidence that he was given with his claim form.

Following discussion, the Joint Committee recommended that Claim No. 6229 be denied.
(See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearing filed by an inmate at the **Larned Correctional Mental Health Facility** (LCMHF).

Michael Lee Brooks summarized Claim No. 6202 due to personal injury in the amount of \$1,500. He explained that, when he was transferred from El Dorado Correctional Facility to LCMHF, he refused to take the medication Geodon. He stated that Lansing Correctional Facility previously had him on Geodon and it made him sick by raising his blood sugar levels. LCMHF put him on Haldol, even though it previously had made him "slow and sleepy." His claim was that they were causing him injury by not allowing him to be on the medication Abilify, which, in his opinion, worked the best. Eventually, Larned State Hospital (LSH) staff put him on Abilify.

Libby Snider responded that Abilify was not on the correctional facilities' list of medications where he previously was being held. She does not know why facilities use different formularies. She will check on this. The Haldol, however, stabilized him, though it made him sleepy. His requests for Abilify were forwarded to the proper medical personnel. When he was transferred to LSH, his medication was changed from Haldol to Abilify. The facilities have treated him appropriately. There has been no negligence. She recommended this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6202 be denied.
(See section captioned "Committee Action and Recommendation.")

The Chairperson opened the hearings for personal appearances.

Jacqueline Hudson appeared for hearing on Claim No. 6081 against TCF for medical negligence in the amount of \$500,000. She stated that she had a hip replacement in 2005. After that she was put in TCF, she complained of chronic pain in her hip. TCF staff took her cane from her and did not follow up. After her release from TCF, she pursued medical treatment for her pain. It was found that the artificial hip was too large for her and there was a broken screw in it.

Libby Snider responded that Ms. Hudson had received the hip replacement prior to intake. A cane and pain medications were provided. X-rays showed that there was nothing that could be done. It was documented that she was seen numerous times without her cane. Her case was reviewed and it was determined that she needed no cane or medications. She showed improvement when doing the exercises prescribed. No negligence has been proved. She recommended this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6081 be denied.
(See section captioned "Committee Action and Recommendation.")

Cindy Lash summarized Claim No. 5894 submitted by Ronald Murray against KDOC for confiscation of legal documents in the amount of \$22,471.42.

Libby Snider recommended this claim be denied. She stated that the inmate elected which documents were to be removed from his property, not the staff. His litigation was not impacted due to removal of materials.

Following discussion, the Joint Committee recommended that Claim No. 5894 be denied. (See section captioned "Committee Action and Recommendation.")

Finney County, Kansas, filed Claim No. 6210 against the State of Kansas for reimbursement of costs from the sexually violent predator expense fund in the amount of \$26,283.06.

Steve Phillips, Attorney General's (AG's) Office, stated that the AG's Office recommended payment of this claim. Christine Ladner is the attorney who oversees sexually violent predator issues.

A Committee member asked if there will be more claims like this and if there is any money at all appropriated for these matters.

Christine Ladner stated that she believes there will be more claims. This Act was enacted in 1994. There are 199 persons in the Sexual Predator Treatment Program at Larned State Hospital, currently. As of August 21, 2009, they are entitled to have annual reviews. A district court judge ruled that the offenders are entitled to independent professional reviews. It is her opinion that there will be more litigation in this regard. Every year each case has the medical staff sending reviews to district courts.

A Committee member asked why they receive an annual review as opposed to every two or three years. The answer given was "because it is in the statute."

A Committee member asked if it would still be held constitutional if the reviews were every two or five years. The answer was not known. This claim is not from one of the 199 in the Program, and there are 40 new cases each year.

Following discussion, the Joint Committee recommended that Claim No. 6210 be allowed for \$26,283.06 to be paid from the State General Fund. (See section captioned "Committee Action and Recommendation.")

Cindy Lash summarized Claim No. 5823 from Chris Johnson against KDOC due to personal injury in the amount of \$250,000. This is an old claim and his lawsuit is resolved. He was jogging while incarcerated, stepped into a hole dug by a dog, and broke his ankle, which causes continued pain.

Following discussion, the Joint Committee recommended that Claim No. 5823 be denied without prejudice. (See section captioned "Committee Action and Recommendation.")

Cindy Lash summarized Claim No. 6207 from Grady Ragsdale against KDOC due to loss of property in the amount of \$59.52. His tennis shoes were lost when transferred to a new facility. He was required to change shoes at the last minute.

Libby Snider, KDOC, concurred with Mr. Ragsdale's explanation of his claim and recommended payment of the claim.

Following discussion, the Joint Committee recommended that Claim No. 6207 be allowed in the amount of \$59.52. (See section captioned "Committee Action and Recommendation.")

Cindy Lash summarized Claim No. 6209 from Marceline Collins against KDOC due to loss of property in the amount \$16.54. Ms. Collins ordered a book from *Barnes and Noble* to be sent to her son in a correctional facility. He did not receive the book. It was given to another inmate and that inmate was sent to another facility.

Libby Snider, KDOC, responded that the book was received and logged in for censorship. It was then lost. She recommended the claim be paid.

Following discussion, the Joint Committee recommended that Claim No. 6209 be allowed in the amount of \$16.54. (See section captioned "Committee Action and Recommendation.")

The Committee recessed at 12:00 noon.

Afternoon Session

The Committee reconvened at 1:35 p.m.

Motor Fuel Tax Refunds submitted to be paid in 2010 total \$81,473.31. Cindy Lash explained the breakdown of the tax refunds.

Following discussion, the Joint Committee recommended that the Motor Fuel Tax Refunds of \$81,473.31 be allowed. (See section captioned "Committee Action and Recommendation.")

Dr. Erick Nolan Youvan summarized Claim No. 6224 against Pittsburg State University (PSU) due to personal injury in the amount of \$5.0 million. Dr. Youvan stated that this claim was driven by a conversation with PSU former General Counsel, Darron C. Farha, who was sent on vacation the day after he spoke with Dr. Youvan. He was exposed to a pesticide fog, Rejex-it, on the PSU campus. Grape KoolAid artificial flavoring is what the Rejex-it information page shows is in the bird fog that was used on the PSU campus. He had an asthmatic response to this exposure. The pain and suffering this bird fog has caused, in addition to Dr. Youvan's claim that he was labeled a threat to the University, is the basis of this claim. Dr. Youvan states that the \$5 million figure was suggested by Mr. Farha.

Dr. Youvan stated that his injuries are emotional, physical, and legal: Physical injury - he is now required to carry inhalers; Emotional injury - patients have not seen him since these allegations; and Legal injury - how can he defend himself against a university.

In answer to a Committee member's question asking if, since PSU contracted with a pesticide company, should the suit not be against them, Dr. Youvan replied that the bird fog was not applied as per specifications on labeling.

A Committee member asked how it was sprayed, to which Dr. Youvan answered that it was sprayed from the third floor of Brandenburg Stadium. It was a visible fog.

The doctor with whom he consulted, Dr. Hurder, directed Dr. Youvan to get a chest x-ray. He stated that he did not get one, because when a person goes to an emergency room, he must have knowledge of the product ingested, or inhaled, or a sample of it.

Dr. Youvan stated he had a cover letter from the Department of Agriculture, case #9JM9226, that he claimed was significant, although it says there is inconclusive evidence to go to the Environmental Protection Agency regarding negligence and due diligence.

A Committee member summarized to make sure Dr. Youvan's story was clear:

- At 4:30 p.m., Dr. Youvan was walking out of the PSU library;
- A contractor was applying Rejex-it fogforce bird repellent approved by the EPA, deemed reduced risk pesticide, from the third floor of the stadium;
- Dr. Youvan experienced an asthmatic attack, tingling in his hands, blurred vision, bi-lateral tinnitus, shaking, and difficulty breathing;
- Dr. Youvan tried to go to the campus clinic;
- He was transported to an emergency room;
- After seeing a doctor, who prescribed a chest x-ray, Dr. Youvan left the emergency room without having the x-ray performed;
- Dr. Youvan saw Dr. Brown at Girard Medical Hospital, who prescribed a breathing treatment and inhaler;
- Dr. Knox at University of Kansas Medical Center tested Dr. Youvan's pulmonary functions; and
- Dr. Youvan has been unable to go back to the doctor, due to emotional issues.

A Committee member asked Dr. Youvan what his economic loss is at this time that caused him to place a claim for \$5.0 million. Dr. Youvan replied that he had no good answer to give at this time.

Dr. Youvan stated that he was on campus to apply for a job with PSU's Physics Department, but was not hired. He was asked to leave the campus after going to the administration offices directly from the hospital asking what chemicals were used in the bird fog and to see the MSDS. John Patterson had him escorted off the campus by armed security guards.

A Committee member asked him why he saw a doctor in Kansas City and a different doctor in Girard. Dr. Youvan explained that he lives on a farm in Arma, Kansas.

Jamie Brooksher, General Counsel, Pittsburg State University, responded by saying:

- There was no medical evidence that he was injured;
- PSU was not the entity spraying the fog, it was Schendel Pest Control, Springfield, MO;
- The Department of Agriculture's report shows they investigated Schendel and found it inconclusive; and
- The birdfog is made from food grade materials (grapes).

The question was asked if many other people walked through the fog, were there other complaints. Ms. Brooksher replied there were not other complaints and that PSU would hold the pest control company responsible for proper application.

Dr. Youvan responded that since the report from the Department of Agriculture stating there was "inconclusive evidence," the Department of Agriculture has since changed their statement to say the evidence is sufficient.

Following discussion, the Joint Committee recommended that Claim No. 6224 be denied.
(See section captioned "Committee Action and Recommendation.")

Nicola Jo Attebery, Claim No. 6227, against University of Kansas Medical Center (KUMed) due to property damage in the amount of \$1,000, was not present, nor were representatives of the medical center.

Following discussion, the Joint Committee recommended that Claim No. 6227 be denied.
(See section captioned "Committee Action and Recommendation.")

Clifford N. Cormier summarized Claim No. 6228 against the Kansas Bureau of Investigation (KBI) in the amount of \$95,000. Mr. Cormier purchased a 1969 Boss Mustang for \$19,400 from Timothy Brumbaugh, stepson of Dr. Carl Grant, after seeing it four times and investigating the value. Mr. Cormier had a friend at the Sheriff's Department run the Vehicle Identification Number (VIN) through NCIC and found the car to be "clean." He planned to replace the heater core at a later time, so he put the car in a storage unit.

Within the next day or two, Mr. Cormier was contacted at his place of employment by Jeff Brandau, Agent, KBI, saying the car was a stolen vehicle and had been stolen since October. Agent Brandau allegedly informed Mr. Cormier that he was at Mr. Cormier's house, he had Mr. Cormier's son, and Mr. Cormier needed to come there. Mr. Cormier had the title in his truck, so he called the Sheriff's Department and checked the VIN against the NCIC database again. The car did not show as stolen.

Mr. Cormier called his attorney, Mike Francis. He explained what was happening and that Mr. Cormier had the title, the canceled check, the bill of sale, and the car; the car could not be stolen. Agent Brandau spoke with Mr. Francis on the phone and told him that he had in his possession the stolen car report. Mr. Francis told Mr. Cormier to give the agent the car.

Agent Brandau then told Mr. Cormier that he did not actually have the report and the Merriam City Police Department could not fax the stolen car report over, because they were not open. Topeka police officer Jepson, who was accompanying Agent Brandau, took the title from Mr. Cormier; called in the VIN to check it against the Topeka Police Department database; and it did not show the car as stolen. Under threat of arrest, Mr. Cormier took them to the storage unit. They wrote down the VIN. Officer Jepson called it in again and the database still did not show it as stolen. Agent Brandau then took the VIN to his car, came back to them 15 to 18 minutes later, and said "it's stolen now."

According to Mr. Cormier, the former owner, Dr. Carl Grant, had been a confidential informant for the KBI. The KBI agent was doing him a "favor" by pursuing his "stolen" car.

Approximately 15 days later, Dr. Grant contacted friends of Mr. Cormier to ask if Mr. Cormier wanted to purchase the car again for another \$20,000. It was apparently located on a car lot, via

the internet, for sale in Warrensburg, Missouri, at a collector car dealership for \$95,000. Mr. Cormier sued Agent Brandau for the \$95,000, but the KBI agent was found immune in court.

Mike Francis, Mr. Cormier's attorney, had filed an action against Agent Jeff Brandau, which was dismissed on the basis of the Kansas Tort Claims Act, that it was in due process of an investigation. Therefore, this is not one of those things that Mr. Cormier could recover by going through the court system. The Claims Committee is his last resort. Mr. Francis does not know if any investigation was done by Agent Brandau or the KBI. Topeka Police Officer Jepson had run the VIN number twice; the Topeka Police Department computer did not show it as stolen.

The name on the title was John Knowles, Burbank, California. It was filled out by him and assigned to someone else. Mr. Cormier said he had called and spoken with Mr. Knowles, prior to the purchase of the car. The car was not stolen. Mr. Cormier was in the process of contacting the Highway Patrol in Burbank, California, to confirm his information.

Mr. Cormier had left with the seller, Mr. Brumbaugh, after giving the vehicle to the KBI, to get his money back. Mr. Brumbaugh did not meet him at the designated location after he was supposedly going to the bank to retrieve the funds. Mr. Cormier's check had already cleared his account.

Laura Graham, attorney for the KBI, responded that Mr. Cormier wants to recoup lost potential profits in asking for \$95,000. He had the same allegation against the KBI two and one half years ago in the court case. The car has not sold for that amount to their knowledge. She went on to say the Merriam Police Department say the car had been stolen. They do not know if its VIN was entered into NCIC. She confirmed that Dr. Carl Grant had been a confidential informant for the KBI. The KBI assisted the Merriam Police Department in securing the vehicle. Mr. Brumbaugh led Agent Brandau to Mr. Cormier, and left with Mr. Cormier to repay him. Ms. Graham asked why had Mr. Cormier not pursued Mr. Brumbaugh in recouping his loss.

A Committee member ask if the KBI has any verification of a stolen vehicle report or that Dr. Grant had owned the vehicle. Ms. Graham said she has no documentation from the Merriam police department. Once the KBI seized the vehicle, they were out of the loop. They assumed that Merriam police returned the car to Dr. Grant.

Ms. Graham said Agent Brandau is now retired from the KBI and is in Afghanistan. She thoroughly read the KBI file on this case, as well as the lawsuit. There had been a 12b6 motion to dismiss the lawsuit. It was according to KSA 75-6104 that Agent Brandau was found to be immune and the case was dismissed. Paperwork from the National Law Enforcement Telecommunications System (NLETS) did identify that the vehicle was stolen; this was confirmed by Agent Ikoff and again was confirmed by the Merriam police. Ms. Graham believed NLETS to be a companion database to NCIC, but will find out and let the Committee know.

Committee members posed more questions to Ms. Graham and Mr. Cormier for clarification:

- **Did the KBI take possession of car or did the Topeka police?**
Ms. Graham did not know;
- **How did Mr. Cormier know the picture of the vehicle at the Warrensburg, Missouri car lot was the same car?**
Mr. Cormier was not sure;

- **Had Mr. Cormier received title for the car from the stepson, Mr. Brumbaugh?**
He replied that he had;
- **How could Mr. Brumbaugh have the title if he had stolen the car from his stepfather?**
Mr. Cormier said he did not think he could have;
- **How did Dr. Grant or Mr. Brumbaugh report a stolen car if they did not have title to the car?**
Ms. Graham replied that she did not think they could;

Following discussion, the Joint Committee recommended that Claim No. 6228 be carried over to a future meeting at the call of the Chair during the 2010 Legislative Session and a letter be sent to the Attorney General requesting an investigation be done on this matter. Mr. Cormier and Mr. Francis will be invited to hear the decision of the investigation. (See section captioned "Committee Action and Recommendation.")

The meeting was adjourned at 3:35 p.m.

Prepared by Kathy Letch
Edited by Dylan Dear and Cindy Lash

Approved by Committee on:

August 30, 2010
(Date)