

MINUTES

JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

August 30-31, 2010
Room 546-S—Statehouse

Members Present

Senator Thomas C. (Tim) Owens, Chairperson
Representative Mitch Holmes, Vice-chairperson
Senator Terry Bruce
Senator Kelly Kultala
Senator Ty Masterson
Senator Dennis Pyle
Representative Bill Feuerborn
Representative Rocky Fund
Representative Broderick Henderson
Representative Steve Huebert
Representative Jeff King
Representative Joe Patton

Member Absent

Representative Bob Grant

Staff Present

Cindy Lash, 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

Others Present

Libby Snider, Legal Counsel, Kansas Department of Corrections
Rachel Whitter, KansasReporter.org
Laura Graham, Attorney, Kansas Bureau of Investigation
Robert Blecha, Director, Kansas Bureau of Investigation
Lee J. Davidson, Office of the Kansas Attorney General
Andy Schlapp, Wichita State University
Jim Crowl, Representing Shawnee, Barton, Leavenworth, and Cowley Counties

Jonathan Brzon, Representing Shawnee, Barton, Leavenworth, and Cowley Counties
Rich Eckert, Representing Shawnee, Barton, Leavenworth, and Cowley Counties
Scott Gates, Office of the Kansas State Treasurer
Marlin Carsen, 66 Food Mart, Inc.
James Bartle, Kansas Department of Revenue
Richard Boeckman, Barton County, Kansas
Jim Conant, Kansas Department of Revenue
Steve Stotts, Kansas Department of Revenue
Gary Blackburn, Kansas Department of Health and Environment
Randy Carlson, Kansas Department of Health and Environment

**Monday, August 30
Morning Session**

Chairperson Owens called the Committee to order at 9:05 a.m.

Committee Deliberation:

Representative Huebert moved to approve the minutes of the December 3-4, 2009, meeting of the Joint Committee; Representative Fund seconded the motion; and the motion carried.

Senator Bruce moved to adopt the Committee Rules; Representative Feuerborn seconded the motion; and the motion carried.

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

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

**Claim No. 6247, Claimant, Jerome Ross #76138
v. Respondent, Lansing Correctional Facility
due to loss of property in the amount of \$15.94**

Claimant summarized his claim. He stated, while in segregation at LCF, he turned in books for his family to pick up. He said he gave the books to the officer who put them in the library box. The library then, according to the Claimant, destroyed the books.

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

Respondent stated the rules of the unit were given to the Claimant. She said he should have been aware that he had to submit a property removal form for his property to be held for his family. KDOC personnel located no such record. Respondent recommended the claim be denied.

Claimant said that he has had books sent home previously. He was, therefore, aware of the proper procedure. Claimant noted that the officer had said he does not remember if the Claimant

turned in the form; however, Claimant remembers that he did.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6247 be denied.
(See section captioned "Committee Action and Recommendation.")

**Claim No. 6260, Claimant, Jose Francisco Duran #65060
v. Respondent, El Dorado Correctional Facility
due to damage to property in the amount of \$3.20**

Claimant, Jose Francisco Duran #65060, was not present. Cindy Lash, KLRD, summarized Claim No. 6260. According to his claim form, the Claimant claims that his ear bud, which he had hung on the wall, was damaged when he returned to his cell after a mass shakedown.

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

Respondent stated that the shakedown included removing items stuck to the walls. The KDOC officers said they did not cut or damage anything. Respondent recommended the claim be denied.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6260 be denied.
(See section captioned "Committee Action and Recommendation.")

**CLAIMANTS REQUESTING RECONSIDERATION
OF PREVIOUSLY DENIED CLAIMS**

The Chairperson opened discussion on requests for reconsideration.

**Claim Nos. 4595 and 5218, Claimant, Luke Reed #38178
v. Respondent, Lansing Correctional Facility (LCF)
due to property damage in the amount of \$232.89; and
loss of property in the amount of \$66.47, respectively**

The Chairperson opened Committee discussion regarding the requests by Claimant Luke Reed #38178 for reconsideration of the previously denied claims.

Committee Deliberation:

Following discussion, the Joint Committee recommended that the request for reconsideration of Claim No. 4595 be denied. (See section captioned "Committee Action and Recommendation.")

Following discussion, the Joint Committee recommended that request for reconsideration of Claim No. 5218 be denied. (See section captioned "Committee Action and Recommendation.")

**Claim Nos. 5354 and 5406, Claimant, Shelia D. Hudson #34450
v. Respondent, Topeka Correctional Facility (TCF)
due to exposure to asbestos and mental anguish in the amount of \$3 million; and**

due to denial of the right to smoke and pain and suffering in the amount of \$100,000

The Chairperson opened Committee discussion regarding the requests by Claimant Shelia D. Hudson #34450 for reconsideration of the previously denied claims.

Committee Deliberation:

Following discussion, the Joint Committee recommended that request for reconsideration of Claim No. 5354 be denied. (See section captioned "Committee Action and Recommendation.")

Following discussion, the Joint Committee recommended that request for reconsideration of Claim No. 5406 be denied. (See section captioned "Committee Action and Recommendation.")

**CLAIMS FROM INMATES AT
HUTCHINSON CORRECTIONAL FACILITY**

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

**Claim No. 6235, Claimant, Ronald Hailes #39699
v. Respondent, Kansas Department of Corrections
due to insufficient necessities provided to indigent inmates in the amount of \$120.00**

Claimant summarized his claim. He stated the packet of necessities for indigent prisoners is supplied to them once a month and is insufficient in quantity and items. He states that the soap provided in the packet lasts one week; no shampoo or deodorant are provided; and other items are given out every other month.

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

Respondent stated the Court of Appeals has concluded that shampoo and deodorant are not constitutionally necessary for sufficient hygiene. Respondent recommended the claim be denied.

A Committee member asked how the Claimant arrived at \$120. Claimant stated \$120 is what the hygiene items would cost if purchased from the facility's canteen.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6235 be denied. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6239, Claimant, Sean C. Bradley #81456
v. Respondent, Lansing Correctional Facility
due to loss of property in the amount of \$214.59**

Claimant summarized his claim. He stated that he came home from school; watched a football game; went outside to walk around the track; and talk with another inmate. When he came back in, his shelf was empty; his television, shoes, radio, everything was gone. Claimant stated he then went to report that everything was missing. He also mentioned that his television was only two weeks old when it disappeared.

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

Respondent stated that Claimant does not make an argument about why the state is responsible. Internal KDOC sources reported that the Claimant was in the habit of lending out his property during the day and having it returned in the evening. Respondent found no evidence of KDOC neglect or responsibility. KDOC rules state that inmates assume the risk of owning property that cannot be secured. Respondent recommended the claim be denied.

A Committee member asked Claimant how he arrived at the figure of \$214.59. Claimant stated it was the value of the missing items, as listed on the claim form.

A Committee member asked Respondent if inmates cannot secure their property. Respondent stated that some items may not fit in the lockers that can be secured.

The Committee member asked if there are inmate identification (i.d.) numbers on all inmate property. He asked if the facility could be searched for the item by the i.d. number. Respondent stated that i.d. numbers may be scraped off, but that is the procedure for identifying property.

The Committee member asked Claimant if he had lent out his items. Claimant stated that he had not lent out his property. He added that he had allowed his roommate to watch the television in his absence. He stated that his roommate either would have been in the unit or gone to play drums. He noted that the television did not fit into his locker or cabinet.

Claimant stated a guard has to unlock the cell door for a person to have access to his property, though the guard is unable to see for whom he is opening the door. The guard would be able to see someone carrying a television. He said the guard had to know something, unless someone else had decoyed him.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6239 be denied.
(See section captioned "Committee Action and Recommendation.")

**Claim No. 6262, Claimant, Nasif Gadelkarim #48247
v. Respondent, KDOC/EI Dorado Correctional Facility
due to loss of property in the amount of \$474.00**

Claimant summarized his claim. He stated that when he was in segregation, he received some of his property. He said he asked where his tapes were, to which he was told the tapes, the officer believed, were in property storage. Two months later, when he got out of segregation, he went to pick up the rest of his property and found the tapes and his stereo were missing. Claimant

stated the officers had said they knew who stole the stereo and would give him money or a used stereo. The tapes were still missing, however. The officers told Claimant they inventoried the property room and did not find tapes, but said they would return the missing items when they were located. He stated that the missing tapes had his prison number on them. He said he submitted Form 9s, but the authorities did not respond. Then, Claimant was moved to Hutchinson Correctional Facility, so he could no longer talk to the El Dorado officers about his claims. The Hutchinson officers told him to submit a Claim Against the State.

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

Respondent stated that Claimant, prior to his property going into storage, had possession of audio tapes of voices of now deceased relatives. She noted that he has had a previous claim regarding missing/lost photographs of his now deceased relatives. After Claimant requested the tapes upon his release from segregation, no tapes were located. Respondent stated the investigation found: the internal claim was out of time (15 days) by the time Claimant submitted the internal claim in an appropriate amount for the agency to process the request; Claimant told the investigators that the delays in filing his claim were due to being asked by staff to postpone filing a claim to give them time to search for the missing tapes, yet there was no documentation that anyone delayed his claim submission; he waited eight months prior to submitting an internal claim. The IMPP places value only on commercially purchased audio tapes (\$10-\$15 each); therefore, the missing tapes have no state-allowed value. Respondent recommended the claim be denied.

Claimant responded that the facility has the property sheet that proves possession of the tapes by the facility. Claimant stated he desires the tapes returned to him, not the money.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6262 be allowed for \$130.00 to be paid from the institution's fund. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6243, Claimant, Aaron Stottlemire #94389
v. Respondent, Hutchinson Correctional Facility
due to loss of property in the amount of \$12.71**

Claimant was not present at the hearing.

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

Respondent gave a brief summary of the claim directly from the Claimant's claim form. She stated that there was no documentation found during her investigation that showed the claimant owned a fan and the food items the claimant claims were missing after he was moved to segregation. There was no documentation showing that he made note of any items missing on any inventory sheets. Respondent recommended the claim be denied.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6243 be denied. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6264, Claimant, Thomas Everson #35685
v. Respondent, Hutchinson Correctional Facility
due to loss of property in the amount of \$24.00**

Claimant summarized his claim. He stated that he was transferred to Hutchinson Correctional Facility from El Dorado Correctional Facility directly into segregation. He stated his property was processed; they removed some of the property before giving him his property that was allowed in segregation. He stated that he noted quite a bit of missing property on two of the lists; some of the property was located after that. He did say that the original property claim was not copied for him.

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

Respondent stated the property inventory noted "a lot" of his property was missing. Claimant had stated some of the property was returned, but the lock and two tapes noted remained missing. The notations made on the photocopies included with his claim form were not on the documentation that was in his KDOC file. Respondent recommended the claim be denied.

Claimant noted the property form from EDCF did list the lock and tapes. The property forms for HCF, he said, were the forms for signing for what he was given, not for what he did not receive.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6264 be denied.
(See section captioned "Committee Action and Recommendation.")

**Claim No. 6267, Claimant, Owen Lingenfelter #46771
v. Respondent, Hutchinson Correctional Facility
due to loss of property in the amount of \$47.79**

Claimant summarized the claim. He stated that, after being packed out, his black RCA Super Radio was missing. He also stated that, in addition to forms the Committee was sent, he has located an additional Inmate Personal Property sheet pertaining to this claim that shows the missing radio.

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

Respondent stated after Claimant was moved to segregation, Claimant reported his radio missing. In the course of the investigation, Sergeant Palmer mentioned that he recalled Claimant reporting his radio stolen several days prior to being moved to segregation. Respondent recommended the claim be denied.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6267 be denied.
(See section captioned "Committee Action and Recommendation.")

CARRIED OVER CLAIM

**Claim No. 6228, Claimant, Clifford N. Cormier
v. Respondent, Kansas Bureau of Investigation
due to loss of property in the amount of \$95,000**

The Chairperson opened the hearing on the carried over claim.

Claimant, Clifford N. Cormier, and his attorney, Michael E. Francis, were not present at the hearing. Chairperson Owens reminded the Committee of the topic of Claim No. 6228 and that they had all been sent the results of the Attorney General's investigation into the case from which this claim originated.

**Respondent, Kansas Bureau of Investigation (KBI)
represented by Laura Graham, Legal Counsel, KBI**

Respondent stated that the agency had no further comments.

A Committee member stated that he continued to have nagging questions regarding the allegation regarding Special Agent Jeff Brandau, his connection with a confidential informant, Mr. Karl Grant, and how that pertains to the car. He said that this was not addressed in the materials he read in the Attorney General's report. He believed it to be critical to the case. The Special Agent has not been available, according to the KBI. According to the Attorney General's report, the car has now sold for a considerably lower price than that of the claim.

Respondent said Mr. Grant, the presumed owner of the vehicle, was not and never had been a confidential informant for the KBI.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6228 be denied.
(See section captioned "Committee Action and Recommendation.")

Afternoon Session

The meeting reconvened at 1:35 p.m.

**CLAIMS FROM INMATES AT
LANSING CORRECTIONAL FACILITY**

**Claim No. 6244, Claimant, Craig L. Berry-EI #42209
v. Respondent, Kansas Department of Corrections
due to personal injury in the amount of \$5 million**

Claimant summarized the claim. He stated he had an MRI on his knee; the result of the MRI showed a dislocated kneecap. He stated he cannot walk much distance before his knee buckles.
**Respondent, Kansas Department of Corrections (KDOC)
represented by Libby Snider, Legal Counsel, KDOC**

Respondent stated that the Claimant's claim is unclear. The Claimant's claim form states he was in line for a meal when he took a step and his knee popped causing him extreme pain. He stated KDOC and his contracting health care provider are aware of the condition of his knee. He does not say why KDOC is liable, whether KDOC caused the injury, was negligent in some way, or liable for treatment for the injury. Claimant states he has had an MRI, as well as other treatments, so it appears that he is receiving medical care. Respondent recommended the claim be denied.

A Committee member asked the Claimant how he arrived at the \$5 million figure. Claimant stated KDOC was ignoring medical recommendations, making him go through chow line, and walking farther than he should. He noted he had been written up for explaining to an officer that he was not physically able to go through the chow line and that medical personnel recommendations were against it, as well. Claimant states that the guards told him to get a handicap status and a wheelchair (which he was trying to do), or to go stand in the line like everyone else. He stated the guards told him if he had trouble, they would deal with it. He stated emotional trauma was the cause of claiming \$5 million. He stated that currently he uses a wheelchair in his daily activities to go from place to place, though he is not confined to it. At the time of submitting the claim, he noted, he was wheelchair bound. Prior to the incident which caused the dislocation of his kneecap, he stated, he used a cane.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6244 be denied.
(See section captioned "Committee Action and Recommendation.")

Claim No. 6245, Claimant, Shawn Owens #39742
v. Respondent, Lansing Correctional Facility/Kansas Department of Corrections
due to personal injury in the amount of \$500.00

Claimant summarized the claim. He stated he was sent to segregation for an investigation to be conducted, which evolved into a disciplinary hearing. He added that he appealed the decision and the Secretary amended the charges to remand for a new hearing, but he was not given a new hearing. Claimant had submitted a writ for habeous corpus to find out why he had not been given a new hearing. The case was dismissed and the agreement was to reinstate his status, give him back his job, and pay Claimant loss of wages in back pay.

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

Respondent stated the Claimant had pled "no contest" to the disciplinary action. She noted the Claimant's case was eventually dismissed due to time constraints, and the habeous case was dismissed, as well, because the disciplinary case had been dismissed. In the KDOC investigation, no documentation was found of any agreement of status, job, or wage reinstatement to the Claimant. Respondent recommended the claim be denied.

Claimant stated the judge and his attorney had said that he would get everything back he lost. But he did not get his job or pay, only the fine he had paid was reimbursed and his incentive level was reset.

The Chairperson reminded the Claimant that the Respondent had suggested that Claimant speak with his attorney in an attempt to retrieve what he lost.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6245 be denied. (See section captioned "Committee Action and Recommendation.")

**Claim Nos. 6263 and 6273, Claimant, Clyde L. Sullivan, Jr. #44512
v. Respondent, Lansing Correctional Facility
due to loss of money in the amounts of \$83.89 and \$13.20**

Claimant summarized the claims, which are for a total of \$97.09 for the same reasons. He stated that KDOC takes 5 percent of wages earned from all inmate pay to pay toward restitution owed; if none is owed, it goes to the Crime Victims' Fund. He stated, when he brought it to the attention of KDOC personnel that the money was owed to restitution, he was fired from his job at Hinkley's Enterprises.

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

Respondent stated KDOC was unaware that restitution was to be paid; however, 5 percent is taken from inmate wages anyway, so it would not make any monetary difference to the Claimant. The KDOC, at some point, must have had notice that restitution was due, because in 2002 restitution payments were being paid from the Claimant's pay. Respondent agreed that funds were misdirected, however, and asked for the opportunity to correct the error or limit Claimant's damages to \$31.87. Respondent stated Claimant is not personally due the money even after restitution and crime victims, as it has been six years since this has occurred.

Claimant was asked if he has paid all restitution owed by him. He stated records show he still owes \$70.70. Claimant stated that when the misdirection of funds was brought to the attention of personnel at LCF, they transferred him to EDCF.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6263 and 6273 be carried over to a future meeting to give KDOC time to try to rectify the matter, redirecting \$70.70 from the Crime Victims' Compensation Fund to pay the balance of restitution owed by Claimant. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6248, Claimant, Victor Anzua-Torres #87099
v. Respondent, Lansing Correctional Facility
due to loss of property in the amount of \$700.00**

Claimant summarized the claim. He stated A and D (Admission and Discharge), KDOC, told him that it had destroyed his legal paperwork, which it did not have that right to do: transcripts, police reports, everything.

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

Respondent stated criminal trial transcript was confiscated from another inmate and subsequently lost at LCF. Respondent stated the Claimant told investigators that he gave his paperwork to inmate Horne, who was helping him with his criminal case, and the papers were lost when Horne was moved to segregation. She said the Claimant does not tell how the value of the transcript was derived, nor when he gave the papers to inmate Horne. LCF general orders about how an inmate may receive legal assistance from another inmate: a Form 9 must be submitted to the unit team, notification and consent from respective unit teams, transfer of documents must be made in presence of the unit team counselor; and both unit teams must approve the time and location of the inmate meeting. Respondent stated her investigation showed the Claimant did not provide documentation that any of these procedures were followed or that any staff was involved in any way with the transfer of the transcript. Respondent recommended the claim be denied.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6248 be denied.
(See section captioned "Committee Action and Recommendation.")

**Claim No. 6237, Claimant, Michael O'Neill #81296
v. Respondent, Kansas Department of Corrections
due to loss of property in the amount of \$18.23**

Claimant summarized the claim. He stated his clock radio, headphones, and adapter were packed out when he was transferred to a different facility. He was told, he stated, by KDOC that it would check into his property loss. He stated he was told his property was not located. Hutchinson Correctional Facility told the Claimant that it lost or misplaced the property, yet his internal claim was denied.

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

Respondent stated KDOC recommends that this claim be approved for \$18.23.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6237 be allowed for \$18.23. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6238, Claimant, Brian Manis #67511
v. Respondent, Lansing Correctional Facility
due to loss of property in the amount of \$106.33**

Claimant summarized the claim. He stated his television was missing after he returned from visitation. He said his internal claim was denied due to provision of locked cabinets, even though the television does not fit in the cabinets. He stated the cabinets are the only storage place that can be secured.

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

Respondent stated the claimant said his cell must have been opened when he was absent. The IMPP states that if property cannot be secured in a locked cabinet, inmates own it at their own risk. She stated that Claimant does not show any negligence on the part of KDOC or an employee. Respondent recommended the claim be denied.

Claimant stated he was aware that he owned property at his own risk, but his property was in his locked cell; it is up to the officers to secure the cells. He stated that no other inmate should have access to his property, if the officers locked the cell.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6238 be denied.
(See section captioned "Committee Action and Recommendation.")

**Claim No. 6240, Claimant, William Gilkey #53480
v. Respondents, Lansing and Norton Correctional Facilities
due to loss of property in the amount of \$70.00**

Claimant summarized the claim. He stated he has been locked up for 13 years, and, over that time, he has purchased tapes from vendors. He stated that after three transfers, ten of his tapes were missing when his property was returned to him.

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

Respondent stated that Claimant's property, including 15 tapes, was placed in storage when he went to Sedgwick County jail. Respondent said the Claimant signed the inventory sheet showing he had received all of his property. It is the inmate's responsibility to not sign the form if the property is not present. Respondent recommended the claim be denied.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6240 be denied.
(See section captioned "Committee Action and Recommendation.")

**Claim No. 6249, Claimant, Jeffrey J. Sperry #47031
v. Respondent, Kansas Department of Corrections
due to personal injury in the amount of \$250,000**

Claimant summarized the claim. He stated he has been incarcerated at Lansing Correctional Facility since 1997 and, for over half that time, has worked in the library. He stated there is exposed asbestos material all over the library and over the desk where he works. He stated officers have torn the asbestos material open in search of contraband. Claimant stated he has started having dental problems. There is also, according to Claimant, a lot of lead-based paint that has cracked and peeled. Claimant stated the facility administration sent a letter denying presence of any asbestos or lead paint. He stated he had samples tested showing results that read positive, over ten times the allowable amount of lead paint. He also said the EPA came in to remove asbestos. He stated he is exhausting his claim to bring his lawsuit to federal court.

Respondent, Kansas Department of Corrections (KDOC)

represented by Libby Snider, Legal Counsel, KDOC

Respondent stated that during her investigation, she contacted Michael Gaito, Director of Capital Improvements, KDOC, who said that there may or may not be lead-based paint in the cell houses. Mr. Gaito also told her that staff and inmates should treat the paint as though it is lead-based, unless it is tested and shown to be negative. He told the Respondent that the best way to test for exposure is to have blood work done. Respondent said the Claimant has not provided documentation to show he had any tests done. Respondent recommended the claim regarding lead-based paint be denied.

Respondent stated she contacted Mr. Gaito regarding the claim about exposed friable asbestos in the library. She said Mr. Gaito's investigation showed the insulation in the library contains asbestos, however it was encased in insulation materials and was not friable, and was not a health hazard; the only friable asbestos found in the service building was in the inmate bathroom, where it appeared an inmate had broken the barrier in the insulation to hide contraband; and as soon as it was discovered, it was removed. She stated the U.S. Environmental Protection Agency did an inspection and its May 3, 2010, report found no violations. Respondent recommended the asbestos claim be denied.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6249 be denied.
(See section captioned "Committee Action and Recommendation.")

**Claim No. 6250, Claimant, Hasein Dupree #69751
v. Respondent, Lansing Correctional Facility
due to loss of property in the amount of \$83.60**

Claimant summarized his claim. He stated he was put in segregation and brought some of his property. He stated that he had not been in segregation before, and filed the missing property report too late for the facility to consider the internal claim.

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

Respondent stated the Claimant had signed the property inventory sheet that mentioned the missing fan, but did not mention missing boots. She stated the Claimant had asked about the boots and that was confirmed by staff, but his locker was not secured, and no boots were located upon second visit to his cell. Respondent recommended the claim be denied.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6250 be denied.
(See section captioned "Committee Action and Recommendation.")

**Claim No. 6253, Claimant, Gerald Schwartz #66094
v. Respondent, Kansas Department of Corrections
due to loss of property in the amount of \$38.00**

Claimant summarized the claim. He stated KDOC requires inmates to sign the property inventory sheet when put in segregation, or they claim you are disobeying a direct order; therefore, his sheets are signed. He added that the signing of the sheet does not indicate he was given possession of his property.

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

Respondent stated the Claimant signed the inventory sheets indicating they were correct. She stated the Claimant did not note missing items until he was released from segregation; there is no evidence that those "missing" items were ever in his possession. Respondent recommended the claim be denied.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6253 be denied.
(See section captioned "Committee Action and Recommendation.")

**Claim No. 6258, Claimant, Dale McCormick #80482
v. Respondent, Kansas Department of Corrections
due to personal injury in the amount of \$148,000**

Claimant summarized the claim. He stated he has been exposed to illegal levels of lead paint and asbestos within the facility for years.

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

Respondent stated the KDOC response is essentially the same as the KDOC response to Claim No. 6249 of Jeffrey Sperry #47031, except that this Claimant has had blood tests done for lead levels, which should dispel any fears of high levels of lead in his system. Respondent recommended the claim be denied.

A Committee member asked the Respondent if KDOC anticipated numerous claims of this nature to be forthcoming. Respondent stated that it is possible, especially if they perceive going through this venue being required to get to the courts.

Claimant stated the KDOC explicitly denied the presence of lead-based paint in the facility, which is erroneous. He stated KDOC refused him an independent blood test; and the facility test results showed lower than average levels. He claimed KDOC did not use the proper vial for the blood test, so test results would be unreliable; and KDOC has refused to allow him to see the report.

Claimant also stated there are low levels of asbestos in the library; the materials were torn and damaged according to the EPA, not "intact" as the tests stated.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6258 be denied.
(See section captioned "Committee Action and Recommendation.")

**Claim No. 6265, Claimant, Lorenda H. Crutchfield #82745
v. Respondent, Lansing Correctional Facility
due to damage to property in the amount of \$126.60**

Claimant summarized the claim. He stated the officers require inmates sign inventory sheets prior to receiving property while in segregation, and after getting the inventory sheets, he told the officer that he was missing items. When he was finally given his television, he added, it had two new cracks in the front of it, the speaker did not work, when changing the channel it turned off the set, and the screen was green.

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

Respondent stated there was no visible damage to the television set. Respondent recommended the claim be denied.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6265 be denied.
(See section captioned "Committee Action and Recommendation.")

**Claim No. 6268, Claimant, Adrian Livingston #60787
v. Respondent, Lansing Correctional Facility
due to loss of property in the amount of \$46.45**

Claimant summarized the claim. He stated his items were taken due to breaking restriction, possession of dangerous contraband, and theft. He stated the items he put on the claim form are not part of the contraband or theft, but for breaking restriction, so they should have been returned to him.

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

Respondent stated the property he claims is missing was indeed confiscated from him and the property was to be donated or destroyed. Regulations state that contraband is any item that constitutes a rule violation and the inmate will then forfeit all rights to those items. She stated the Claimant was in violation, because of his restriction status, for having those items, which made those items contraband. Respondent recommended the claim be denied.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6268 be denied.
(See section captioned "Committee Action and Recommendation.")

Claim No. 6271, Claimant, James Roy Andrew #89904

**v. Respondent, Kansas Department of Corrections
due to sexual misconduct in the amount of \$5,000**

Claimant summarized the claim. He stated that he had been having health issues – rapid heart rate, difficulty breathing – so he was being taken to the clinic. He stated the guard pushing him in the wheelchair told him that he needed to not fall out of the chair. If he did fall out of the chair, the guard would have to give him CPR, and he would never go back to women. The claimant stated he was moved, at his request, within the facility, but he was put on the wish list to transfer to a different facility. He said he then wrote a letter to the deputy secretary regarding a number of issues including this matter; the deputy secretary responded to each item in his letter, except to the sexually explicit comment. He stated he then pursued further remedy by filing a grievance; he was moved to Lansing Correctional Facility; then the answer to his grievance finally came saying that they investigated the grievance and it did not warrant any further investigation. He stated he then called #5-0 conveying his complaint, two separate times, with no response, so he filed this claim.

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

Respondent stated the Claimant did not file a personal injury claim, he filed a grievance at the facility. She stated he had told the investigating officer that he was angry about an earlier incident and did not think the officer meant anything sexual by the remark; the offending officer was spoken with, denied making the remark, was counseled on professional behavior, and was spoken with by the shift supervisor. The Claimant did not file his grievance until two and one-half weeks later and has not sought any mental health help due to this incident. Respondent recommended this claim be denied.

Committee Deliberation:

*Following discussion, the Joint Committee recommended that Claim No. 6271 be denied.
(See section captioned “Committee Action and Recommendation.”)*

**CARRIED OVER CLAIMS AGAINST
KANSAS STATE TREASURER
DUE TO UNDERPAID FUEL TAX REFUNDS FOR FY 2000-FY 2005**

Claimants:

Board of County Commissioners of County of Ness, KS - Claim No. 6206; Barton County - Claim No. 6213; Cowley County, KS - Claim No. 6214; Geary County - Claim No. 6215; Grant County - Claim No. 6216; Lane County - Claim No. 6217; Leavenworth County - Claim No. 6218; Rice County - Claim No. 6219; Russell County - Claim No. 6220; Shawnee County - Claim No. 6221; Trego County - Claim No. 6222; Unified Government of Wyandotte County/Kansas City, Kansas - Claim No. 6223

**v. Respondent, Kansas State Treasurer
due to underpaid motor fuel taxes refunds for FY 2000-FY 2005**

Dylan Dear, KLRD, summarized the findings of the investigation by the Senate Ways and Means and House Appropriations Committees. He stated their findings were that five counties were underpaid and will be repaid between January 2012 and 2016 by reducing payments to counties that were previously overpaid.

Claimant, represented by Jim Crowl, Assistant Shawnee County Counselor, speaking for Shawnee, Barton, and Leavenworth counties, asked that the Committee keep the claims open until payment is made, instead of withdrawing their claims. Cowley County withdrew Claim No. 6214.

Respondent, Scott Gates, Office of the State Treasurer

Respondent stated 2010 SB 572 takes care of repaying the five underpaid counties from the overpaid counties over the years 2012-2016.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim Nos. 6206, 6213, 6214 - withdrawn, 6215, 6216, 6217, 6218, 6219, 6220, 6221, 6222, and 6223 be denied without prejudice. (See section captioned "Committee Action and Recommendation.")

Tuesday, August 31

The Chairperson called the meeting to order at 9:05 a.m. The next meetings of the Joint Committee on Special Claims Against the State are scheduled for Wednesday, November 3 and Monday, December 20, 2010.

CLAIMS FROM INMATES AT TOPEKA CORRECTIONAL FACILITY

**Claim No. 6230, Claimant, Christian Webb #88208
v. Respondent, Topeka Correctional Facility
due to loss of money in the amount of \$2,000**

Claimant summarized the claim. She stated that, according to KDOC procedure, a certain amount of her income goes into forced savings. She stated that she does not meet the IMPP 04-103 requirement criterion which sets out the restricted use of funds and forced savings because she is a "lifer," off grid, with no release date. She should have access to her life savings for her education to pursue a career within the facility or to help her family in the method she alone determines. She stated she currently has approximately \$1,100 in her forced savings account.

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

Respondent stated the Claimant's paperwork did not mention anything about her life sentence. The criteria applies to all inmates, with very few exceptions. Her money is kept in savings for her release or to her estate upon her death. Respondent recommended this claim be denied.

A Committee member asked if there was a waiver to this rule in the case of life sentences. Respondent stated no, and the rule is in statutes, regulations, and IMPPs.

A Committee member asked Respondent if she would have had a different response if she had know the Claimant was a "lifer." Respondent stated the policy still applies. The courts have determined the exceptions and life sentences are not one of the exceptions.

A Committee member asked what the exceptions are. Respondent does not remember what they are, but would be glad to retrieve the information. Senator Pyle asked that the Respondent provide a list of the exceptions to the Committee at the next meeting.

Claimant stated that she believes the IMPP is meant to apply the forced savings rule to money earned by an inmate while incarcerated; however, KDOC is applying the forced savings to money sent in by private citizens to assist inmates.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6230 be denied. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6231, Claimant, Shari Bierman #49808
v. Respondent, Topeka Correctional Facility
due to personal injury in the amount of \$300,000**

Claimant summarized the claim. Claimant stated that a reporter was allowed into the facility under the guise of being a legal assistant. Claimant stated this has caused her mental anguish, due to printing untruths about her, which has caused problems with other inmates in the facility. Claimant said the information about the reporter coming in was not given to her until she received the investigative report. Anything that is not on Kasper is not public information. She stated the reporter was not a lawyer and should have been required to show identification.

A Committee member asked how the Claimant arrived at the amount of the claim. Claimant answered that it was to help her with mental health care and psychiatric treatment she will need after she is released. She stated that, while she is incarcerated within KDOC, she cannot protect herself against outside influences; the reporter entered fraudulently, for which KDOC is responsible; and the printed matter was information KDOC allowed him to get.

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

Respondent stated the Claimant does not say what policies or regulations KDOC ignored. She stated none of the material given to the reporter was given by KDOC or any employee of TCF and they did not ignore policies or procedures pertaining to media access or knowingly grant access to the facility to any member of the media. She stated an attorney appeared at the facility to meet with inmates, was permitted access, and represented the person with him as his legal assistant. The meetings were conducted under attorney/client privilege, so TCF had no way of knowing to what subject matter the conversations pertained. If the reporter identified himself as a member of the media, he would not have been permitted access. She stated there is no documentation that Ms. Bierman is suffering from emotional distress or has sought psychiatric help since the article was published. Respondent recommended this claim be denied.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6231 be denied.
(See section captioned "Committee Action and Recommendation.")

**Claim No. 6241, Claimant, Shelia Denise Hudson #34450
v. Respondent, Kansas Parole Board, State of Kansas
due to illegal restraint, mental anguish, pain, and suffering
in the amount of \$8,000,000**

Claimant summarized the claim. Claimant stated the claim pertains to the expiration of her 1981 sentence, which expired on July 6, 1991. The 1991 sentence was supposed to be aggregated, but the court said it was silent as to how it would run with the 1981 case; because it was silent, it was aggregated anyway. She stated the 1981 case had no delinquent time allocated until 1995. She stated there was absconding time in August of 1991, but the sentence had already expired in July. She stated she had an updated document from the Facilities Services Administrator saying her parole certificate stated a max date of July 6, 1991, but it is still active today, almost 30 years later. She stated they converted a sentence that had already been maxed out; it should have been allowed to be satisfied.

Respondent, Kansas Parole Board

Respondent representative was not present. Chairperson Owens summarized the recommendation. He stated the Parole Board information stated:

- The Claimant claimed the Parole Board has caused her to be illegally restrained on parole that is not attached to a judicially imposed sentence; and
- The Claimant claims the Parole Board has ignored the Legislature as it applies to her indeterminate sentence and speaks to the differences in the lengths of the sentences between pre and post guidelines.

The Respondent's recommendation was that the claim be denied.

A Committee member ask how the Claimant arrived at the amount for the claim. She stated she calculated this was the amount in wages or fees she could have earned writing grants and proposals.

A Committee member asked if she has previously submitted a claim regarding this issue. Claimant said yes.

A Committee member asked why, since 2008 SB 411 passed, when asked twice to come before the Parole Board regarding the second part of the claim the Claimant refused. The Claimant stated she should not have been under the Parole Board, because her sentence had expired.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6241 be denied.
(See section captioned "Committee Action and Recommendation.")

HEARING

**Claim No. 6270, Claimant, LaTrena Webb
v. Respondent, Topeka Correctional Facility
due to personal injury in the amount of \$100,000**

Claimant, LaTrena Webb, was not present. Dylan Dear, KLRD, summarized the situation of this claim and claimant. Ms. Webb's previous claim, Claim No. 6016, was allowed for \$500. The Claimant felt the allowed amount was insufficient. She did not sign the release from the Kansas Department of Administration and has not claimed the \$500 payment. Mr. Dear stated the rules do not speak to a situation such as this (the Committee/Legislature recommends payment on a claim, but the Claimant rejects the award amount). He stated, based on KSA 46-924, it appears the Claimant may submit a new claim based on the original claim if the Claimant has not accepted payment on the allowed claim. He stated, at this point in time, the Claimant may accept the \$500 allowed by the first claim, which would preclude her from making any further claims pertaining to this matter or receiving any other payments from the state regarding this claim.

A Committee member asked how long the Claimant has to accept the \$500 allowed payment on the first claim. Cindy Lash, KLRD, stated that, to date, the Department of Administration has no limit to the length of time the money may be claimed.

A Committee member asked if the Claimant has pursued litigation on this matter. Mr. Dear stated that up until now Claimant has not pursued litigation. Mike Heim, Office of the Revisor of Statutes, stated that the statute of limitations has expired for Claimant to file a lawsuit.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6270 be denied and that the denial letter should specify that the \$500 allowed for Claim No. 6016 is still available if the Claimant signs and returns the Department of Administration's release. (See section captioned "Committee Action and Recommendation.")

CARRIED OVER CLAIM

**Claim No. 6278, Claimant, Kathrine Burns #89378
v. Respondent, Topeka Correctional Facility
due to sexual misconduct and mental anguish in the amount of \$50,000**

Dylan Dear, KLRD, summarized the history of this claim from the 2009 Interim, the Committee's recommendation, and the results of the investigation/audit. He stated the claim was heard last interim for sexual misconduct toward Ms. Burns by a TCF guard; the claim was carried over to this interim pending investigation into correctional facility sexual misconduct by the Governor's Office, Legislative Post Audit (LPA), and Department of Corrections.

Investigation Findings:

- **LPA** indicated that its investigative phase had already been completed by the time it received the letter from the Claims Committee. Page 24 of the audit (Attachment 1) pertains to pat searches at TCF, which is at the core of this claim, but does not refer to this specific incident. Pages 49-50 of the audit contain a

letter from Roger Werholtz, Secretary, KDOC, which states he is looking to revise the pat search policy, specifically at TCF;

- **Governor's Office** indicated that its investigation was occurring on the agency level; and
- **KDOC** indicated it was looking to comply with the audit results.

Claimant summarized her claim for the Committee. She stated that a male guard stuck his hand inside her shirt pocket, caressing her breast, under the pretense of finding her badge. The Claimant states that she 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.

A Committee member asked the Claimant if she was given a video of the incident, and whether she was informed of what constituted a pat down search before this incident occurred. Claimant said she was not given a video, nor was she informed of the definition of a pat down.

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

Respondent had nothing further to add beyond the record of last interim, and recommended this claim be denied.

A Committee member asked the Respondent if, between the Governor's Office investigation and the LPA investigation, there was a third party who viewed the videos, besides KDOC. Respondent stated she did not know if anyone else reviewed the video of this incident. She stated that KDOC had viewed the video in its original investigation of the claim.

The Claimant stated the guard should have asked for the i.d., instead of going to her pocket in an attempt to retrieve it.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6278 be denied.
(See section captioned "Committee Action and Recommendation.")

**CLAIM FROM INMATE AT
NORTON CORRECTIONAL FACILITY**

**Claim No. 6269, Claimant, Micky Don Owens #94516
v. Respondent, Norton Correctional Facility
due to damage to property in the amount of \$18.00**

Claimant summarized his claim. Claimant stated that, during a routine shake-down, the officer claimed three of his magazines were altered, so he took them, and destroyed them. Claimant stated that he cannot prove that they took three magazines, since they only wrote one on the sheet and the magazines have been destroyed. Therefore, he stated, he would like to change the amount of this claim from \$18 to \$6. He stated KDOC should prove the magazine was altered; they admitted fault in their investigation, saying it should have been secured until alteration was confirmed.

Respondent, Kansas Department of Corrections (KDOC)

represented by Libby Snider, Legal Counsel, KDOC

Respondent stated the officer did confiscate the Claimant's magazine due to it having pages torn out. Claimant was correct, she said, in saying the magazine should have been secured until alteration was confirmed; however, it was destroyed. Respondent's recommendation was this claim be denied.

A Committee member asked the Respondent what constituted an alteration. Respondent stated alterations are when pages are removed, but not dog-earring, highlighting, or writing in a magazine.

The Claimant stated the pages the officer found were removed from a different magazine, not from the confiscated magazine, and the pages were perforated, intended to be torn out.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6269 be allowed in the amount of \$6.00. (See section captioned "Committee Action and Recommendation.")

**CLAIMS FROM INMATE AT
WINFIELD CORRECTIONAL FACILITY**

**Claim Nos. 6252, Claimant, Adrian M. Requena #48877
v. Respondent, Kansas Department of Corrections
due to loss of property in the amount of \$5.00**

Claimant summarized Claim No. 6252. Claimant stated an officer took his earrings during a search. Claimant stated he had mail ordered the supplies, made the earrings in his cell, and he has receipts for the supplies.

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

Respondent stated KDOC found no evidence that the earrings had been in his locker when the officer had searched the cell and there is no evidence the state was negligent. Respondent recommended the claim be denied.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6252 be denied. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6259, Claimant, Adrian M. Requena #48877
v. Respondent, Kansas Department of Corrections
due to loss of property in the amount of \$48.38**

Claimant summarized Claim No. 6259. Claimant stated he gave a pair of earrings and a necklace to an officer to lock up in property until his visitor came to pick them up, because he was on a work crew that left before 6:30 a.m. and property did not open until after the work crew was

gone. He stated the officer said he should just give the items to her to give to property. Claimant stated his visitor came up to get items, but property did not have the items. Claimant stated he has proof showing he purchased the items.

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

Respondent stated her investigation confirmed that Claimant's jewelry was given to the officer. Respondent stated the procedure was to put the items in a trash bag, label it, and give the labeled bag to the admissions officers. She stated it evidently got lost in changing hands. Respondent stated that proper procedures were not followed. Many inmates worked the same schedule and the inmate should have gone through normal channels. She stated KDOC records showed that he had purchased items to make jewelry in 2004 and 2005. Claimant was transferred into the facility in 2009 and inventory does not show jewelry making items. She stated the best evidence is that he arrived at WCF without jewelry making items. Rules are that personal property value is depreciated 10 percent per year. Respondent recommended the claim be denied; but if allowed, to limit the payout to \$24.19 due to depreciation.

Claimant states that he spoke with the officer that packed him out from EDCF. He said he did not remember art supplies, just beadwork. He stated he had stocked up on beads in 2004 and 2005, because he had a minimum wage job at the time. He also stated the depreciation value of the items would not replace the value of the jewelry; the current cost of beads would be twice the price now; and the value of jewelry created should be more than beads not made into anything.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6259 be allowed in the amount of \$24.19. (See section captioned "Committee Action and Recommendation.")

HEARINGS

**Claim Nos. 6236, Claimant, 66 Food Mart, Inc.
v. Respondent, Kansas Department of Health and Environment
due to reimbursement of cost of tank tests in the amount of \$6,769.21**

**Claimant, 66 Food Mart, Inc.
represented by Marlen Carson**

Claimant summarized the claim. Claimant stated the problem began when the telephone company complained of gasoline fumes in its new basement. The Kansas Department of Health and Environment (KDHE) report given to Claimant, he stated, was a tank lease assessment, which only said free product was found in the tank basin; it did not mention how much. Claimant stated KDHE has not responded correctly or honestly, and has not been forthcoming with facts. The claimant said his permits were current, state regulations met, the daily tank stickings, and tank reconciliation report were within regulations. He has complied with everything they have requested for the last 34 years.

The Claimant requested reimbursement of \$6,769.21 for the cost of tank tightness testing. A Committee member asked what the \$900 in undocumented expenses included in the claim are.

The Claimant stated that the \$948.53 is for the invoice on the tank tightness test. The documented \$5,820 was for the line test and overtime for a truck from Kansas City.

A Committee member indicated that some of the Claimant's expenses were corrective and would have been eligible for reimbursement from the reimbursement fund if he had applied to KDHE. [*staff note - references to the "reimbursement fund" or "Super Fund" are actually to the Underground Petroleum Tank Storage Release Trust Fund (UPSTRTF).*] The Claimant stated the deductible amount to get reimbursed from that fund is \$2,000; he did apply and it was applied to the deductible; he has still paid over \$6,778 out-of-pocket.

A Committee member asked Claimant how much he has collected from the Super Fund. Claimant stated he has collected zero from the super fund. A Committee member asked what the purpose of the reimbursement fund was. Another Committee member answered that a penny a gallon is put into the reimbursement fund to apply and help out with very expensive cleanup. He stated most owners can pay up to \$2,000 a tank, but cannot afford it if it goes up to \$40,000, so the Super Fund would kick in to pay for the cleanup.

**Respondent, Kansas Department of Health and Environment (KDHE)
represented by Gary Blackburn, Director for Environmental Remediation**

Respondent stated there are two parts to the tank program. The regulatory part of the program requires tank owners to prevent leaks and get permits for the tanks. The trust fund part of the program pays for the clean up of sites and oversees this activity. Respondent stated 66 Food Mart had a release impacting a nearby building through the sewer system. In investigating the report, district staff observed petroleum in the observation tube near the tank. The tank and tube are located in the same pit of sand and gravel. He stated that, based on the fact that the sewer lines of the telephone company that had petroleum in them ran past 66 Food Mart, the owner of the 66 Food Mart property was asked to do testing in accordance with the state laws.

Respondent stated that KAR 28-44-24 requires investigation due to offsite impacts. When required to by KDHE, the owner or operator of an underground storage tank must follow the procedure outlined in Part 52 of the regulation. Gasoline in the sewer is one of the offsite impacts that is listed in the regulation. Release investigation under Part 52, he stated, required the owner/operator to test the tank to find out if the tank system is leaking. The tank was found to be compliant with the regulations.

Respondent further stated that KDHE was within its jurisdiction to request the tests. The owner/operator is required to perform those tests. The trust fund program paid for all except the deductible of the cleanup; however, the cleanup statute, KSA 65-34-119b3, states that the KDHE Secretary may determine those costs which are allowable as corrective action and those that are ancillary to removal/retrofitting storage tanks. He stated that KDHE has determined that the testing performed by Mr. Carson was part of that required to do business, not part of responding to the release that would be eligible under the trust fund. The Respondent recommended the claim be denied.

A Committee member stated he was disappointed with the way the Secretary chose to use his discretion in this situation. Respondent stated that KDHE legal staff, in reviewing the statutes, did not believe it was within KDHE jurisdiction or discretion to pay for those costs.

The Committee discussed allowing payment out of UPSTRTF, but was uncertain whether state or federal regulations would prohibit such a transfer and requested the Legislative Research

Department to review the issue prior to the next Claims Committee meeting.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6236 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6233, Claimant, Joye L. Smith
v. Respondent, Kansas State Fair
due to personal injury in the amount of \$50,000**

Claimant, Joye L. Smith, summarized the claim. She stated, as vendors, they arrived in their recreational vehicle at the State Fair, but were not met by anyone. They were told they would be, to show them where to park. She stated that when she got out of the vehicle to find someone, she tripped over a cable, causing her to end up in the emergency room at the hospital and get 22 stitches. She got an infection, causing her to be hospitalized for surgery and be out-of-work for three months. She stated her hospital bills have run up to \$100,000.

A Committee member asked if she had insurance and if the accident was covered. Claimant did have insurance that covered the incident. The member asked how much her out-of-pocket expenses totaled, deductibles and copay. She stated approximately \$5,000 was her out-of-pocket expense.

**Respondent, Kansas State Fair
represented by Denny Stoecklein, Manager, Kansas State Fair**

Respondent stated that Sue Stoecklein, Commercial Exhibit Director, was present on the conference call, as well. He stated the State Fair personnel learned of this accident the day before the 2009 State Fair began. There were 700-800 exhibitors moving onto the grounds the day before the fair began, as well as the Smiths. He stated they were informed that 911 had been called and emergency medical personnel had taken care of the incident. He stated that an insurance policy is required of all exhibitors naming the State Fair, as well as the State of Kansas, as the second insurer. He stated that Sue Stoecklein had gone by the Smith's booth to check on Ms. Smith at least two times after the incident and spoke with Ms. Smith's husband. Respondent stated the cable Ms. Smith tripped over is a permanent steel cable barrier, 18 inches to 2 feet off the ground running through bright traffic-yellow posts with reflective tape on the cable. The cable is along State Fair Road year round to contain and direct traffic and is a barrier to define entrances for parking lots.

A Committee member asked Ms. Smith if she had seen the cable. Claimant stated that she had seen the cable as she tried to step over the cable.

Committee Deliberation:

Following discussion, the Joint Committee recommended that Claim No. 6233 be denied. (See section captioned "Committee Action and Recommendation.")

HEARINGS ON CLAIMS AGAINST
KANSAS DEPARTMENT OF REVENUE
FOR NONPAYMENT FROM THE
SPECIAL COUNTY MINERAL PRODUCTION TAX FUND

Vice-chairperson Holmes opened the hearings against the Kansas Department of Revenue (KDOR) for nonpayment from the Special County Mineral Production Tax Fund.

Claim Nos. 6242, Barton County; 6246, Reno County; 6251, Hamilton County; 6254, Montgomery County; 6255, USD 354 Claflin; 6256, USD 494 Syracuse; 6261, Ellinwood; 6266, USD 428

**v. Kansas Department of Revenue (KDOR)
due to nonpayment from the Special County Mineral Production Tax Fund**

Richard Boeckman spoke on behalf of Barton County, Hamilton County, and USD 428, regarding the claims against KDOR for nonpayment from the Special County Mineral Production Tax Fund. He stated one year ago, KDOR informed the counties that they, as well as other counties, would be losing thousands of dollars designated to go to them from the Special County Mineral Production Tax Fund. He noted 72 counties across the state had over \$960,000 swept from their budgets, which impacted schools and county budgets statewide. He said there is a history of local government losing state funds that were statutorily budgeted.

Mr. Boeckman stated the Barton County Board of County Commissioners discussed the precedent that this sweep of funds sets for future allocations and the different approaches they had to try to recoup the losses. After reading the statute, Barton County Commissioners concluded, before doing anything further and to exhaust their administrative remedies, this claim had to be brought before this Committee. Once this Committee acts, possible actions by Barton County will be to do nothing, sue the state, or request the Legislature to refund the money.

Mr. Boeckman noted that Barton County was party to the Kansas county claims represented by Shawnee County lawyers against the State Treasurer on August 30, 2010. It appears that those claims will be resolved by legislative action. Barton County Commissioners hope this claim against KDOR will have similar action taken.

Mr. Boeckman stated the actions that took place, that caused the sweep of the Mineral Production Tax Fund at the eleventh hour, may not have been understood by some of the legislators. He said the actions that helped to balance the state budget left some counties, cities, and school districts in a financial quandary. He went on to say that Barton County lost \$10,000 and, to the county's budget, \$10,000 is not a big deal. He noted the Commissioners are more concerned with the fact that this action occurred and the precedent that it sets to happen in the future.

A Committee member asked if the counties were expecting the Committee to deny these claims. He asked if submitting the claims was just a formality. Mr. Boeckman answered that he doubted the Committee was going to approve the claims. The claims were submitted to exhaust administrative remedies in the hope of keeping these sweeps of funding from happening in the future.

The Committee discussed whether filing claims prior to filing law suits was the appropriate order of action, as the Committee is viewed as the last resort in these types of claims. Mike Heim, Office of the Revisor of Statutes, stated he would research the subject.

Respondent, Kansas Department of Revenue (KDOR)

represented by James Bartle, Legal Counsel, KDOR

Respondent introduced Steve Stotts, Director of Taxation, and Jim Conant, Budget Director, who were in attendance, as well, in case of questions for their areas of expertise. Respondent explained that there are eight claims being addressed from counties and school districts totaling over \$39,000, with Barton County's claim being the largest amount claimed for \$10,000 and USD 428 in Great Bend being the least amount claimed for \$1,400. The written recommendation letter provided the same recommendation for all eight claims. In the recommendation letters, Respondent provided the following background on the Special County Mineral Production Tax Fund:

- How the Special County Mineral Production Tax Fund was established;
- It is funded by seven percent of severance tax revenues;
- On a quarterly basis, the Fund is distributed to counties that contribute to the severance tax revenue collections.

Respondent stated:

- In the 2009 Omnibus legislation, there was a decision to sweep \$2 million from this Fund. The amount was later modified to \$1.57 million;
- In the second quarter of 2009, the amount in the Fund and available for distribution to the counties was about \$962,000; instead of those distributions going to the counties, all the money went into the State General Fund (SGF) for general government purposes; and
- In the third quarter of 2009, to complete the \$1.57 million sweep, over \$600,000 from the Fund went to SGF.

Respondent stated KDOR was not in the position to distribute this money to counties, as it was a legislative decision to transfer this money into the SGF instead.

Mr. Heim reported his findings that filing a Claim Against the State with this Committee is not a prerequisite before filing a lawsuit. The example of Shawnee County coming to this Committee last year, Mr. Heim said, was out of a misunderstanding or an abundance of caution. He said they got what they wanted through legislative action and without a lawsuit. Regarding local governments, Mr. Heim stated, the Claims Committee is to be the place of last resort. One should exhaust every other administrative remedy prior to filing a claim with this Committee.

Committee deliberation:

Following discussion, the Joint Committee recommended that Claim Nos. 6242, 6246, 6251, 6254, 6255, 6256, 6261, and 6266 be denied without prejudice. (See section captioned "Committee Action and Recommendation.")

HEARINGS

**Claim No. 6257, Claimant, Board of County Commissioners Ellis County
v. Respondent, Office of the Attorney General
due to reimbursement for expenses of Shawn Kelner's Sexually Violent Predator case
in the amount of \$5,908.00**

Due to the need to have a quorum present to vote on recommendations, the Joint Committee recommended that Claim No. 6257 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6234, Claimant, Roland D. French
v. Respondent, State of Kansas Office of the Attorney General
due to illegal incarceration in the amount of \$80,000.00**

Due to not being able to reach Claimant to reschedule the time of his hearing and the need of having a quorum present to vote on recommendations, the Joint Committee recommended that Claim No. 6234 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6232, Claimant, Teresa Kay Bowens
v. Respondent, Wichita State University
due to personal injury in the amount of \$1,403.90**

Due to not being able to reach Claimant to reschedule the time of her hearing and the need of having a quorum present to vote on recommendations, the Joint Committee recommended that Claim No. 6232 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6275, Claimant, Kansas University Physicians, Inc.
v. Respondent, State of Kansas and Kansas Highway Patrol (KHP)
due to medical bills for prisoners in the custody of KHP
in the amount of \$12,477.14**

Due to the need of having a quorum present to vote on recommendations, the Joint Committee recommended that Claim No. 6275 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation.")

**Claim No. 6276, Claimant, University of Kansas Hospital Authority
v. Respondent, State of Kansas and Kansas Highway Patrol (KHP)
due to medical bills on prisoners in the custody of KHP
in the amount of \$112,938.90**

Due to the need of having a quorum present to vote on recommendations, the Joint Committee recommended that Claim No. 6276 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation.")

Discussion

The Committee discussed the following items:

- Changing Committee rules to limit the time frame for filing for reconsideration to one year from the denial of the claim;
- Consider adopting a rule that would provide a dollar limit on claims; and
- Discuss with Secretary Werholtz, KDOC, the handling of inmate funds (regarding Claim No. 6230).

These items are being researched and will be discussed further at a future meeting.

Prepared by Kathy Letch
Edited by Cindy Lash and Dylan Dear

Approved by the Committee on:

November 3, 2010
(Date)