

MINUTES

JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

July 9, 2008

Room 519-S, Statehouse

Members Present

Representative Steve Huebert, Chairperson
Senator Mark Gilstrap
Senator Dennis Pyle
Representative Virginia Beamer
Representative Pat Colloton
Representative Bob Grant
Representative Broderick Henderson
Representative Robert Olson
Representative Dale Swenson

Staff Present

Cindy Lash, Kansas Legislative Research Department
Amy Deckard, Kansas Legislative Research Department
Mike Corrigan, Revisor of Statutes Office
Kathy Letch, Kansas Legislative Research Department

Others Present

Libby Snider, Legal Counsel, Kansas Department of Corrections
Shelly Starr, Legal Counsel, Kansas Department of Corrections
John Badger, Chief Counsel, Kansas Department of Social and Rehabilitation Services
Bobbi Mariani, Kansas Department of Social and Rehabilitation Services
Laura Howard, Kansas Department of Social and Rehabilitation Services
Brenda W. Hagerman, Legal Counsel, Larned State Hospital
Tim J. Riemann, Office of the Kansas Attorney General

July 9, 2008

The meeting of the Joint Committee on Special Claims Against the State was called to order at 10:00 a.m. by Representative Steve Huebert, Chairperson. The Committee considered the adoption of Committee rules for 2008. Representative Grant moved to adopt the 2007 Rules of the Joint Committee on Special Claims Against the State, seconded by Representative Olson. The motion carried.

Representative Huebert turned the Committee's attention to the claims on the agenda under the heading, "No Hearing Requested," and requested that Cindy Lash, Kansas Legislative Research Department, summarize as many claims as possible before proceeding with the hearings scheduled for 10:15 a.m. Ms. Lash summarized Claims Nos. 6009 and 6017.

Claim No. 6009 was filed by an inmate at Hutchinson Correctional Facility, Ronald Allen Hailes, against Lansing Correctional Facility in the amount of \$5,000.00 for an improper disciplinary procedure. Ms. Lash explained that Mr. Hailes stated that, due to the frequent shakedown searches of his cell, he asked an officer to call mental health on his behalf. When the officer refused the request, he made the remark, "I'll give you a reason." The officer considered the statement as a threat and ordered him to cuff up. Later, at a disciplinary hearing related to breaking a window, he was informed that he had been found guilty of two disciplinary reports for threatening behavior. Mr. Hailes claimed that he was not given notice that he had been written up for threatening behavior and that it was inappropriate to convict him on the disciplinary reports without giving him notice.

Shelly Starr, legal counsel, Kansas Department of Corrections (KDOC), reported that facility records showed that staff attempted to serve Mr. Hailes with the disciplinary reports, but he refused to sign them. She went on to say that the Claims Committee was not the forum to address this type of claim. In her opinion, Mr. Hailes should have appealed the DR convictions at the facility. As to his request that officers call mental health, she noted that evidently mental health was called because, on that same day, he was on crisis level, which is a suicide watch. Having found no factual basis for Mr. Hailes' claim, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6009 be denied. (See section captioned "Committee Action and Recommendation".)

Claim No. 6017 was filed by an inmate at Lansing Correctional Facility, Antoine M. Phillips, against Lansing Correctional Facility in the amount of \$1,500.00 for an eye injury and negligence. Ms. Lash explained that Mr. Phillips stated that, on November 24, 2007, he washed his hands with green liquid from a soap dispenser in the max yard, and some of the liquid got in his right eye. Staff at the max clinic told him to wash out his eye with water, and his eye was covered with an eye patch. He returned to the clinic the following day because he had pain in his eye, and his vision was blurry. Staff then discovered that the liquid was a degreaser, and he was sent to KU Medical Center for treatment. He was prescribed a solution to be used for ten days and an ointment to be applied at

night for ten days. Noting that he could have lost his vision due to the incident, Mr. Phillips stated that he was seeking \$1,500.00 for pain and suffering and for neglect on the part of the Department of Corrections.

Shelly Starr, KDOC, commented that Mr. Phillips did not mention if the soap dispenser was located in the bathroom or at some other location, and she pointed out that he clearly contributed to the liquid getting in his eye. She noted that Mr. Phillips was given prompt and appropriate medical care for the injury, and it did not appear that he has any long-term consequences related to the incident. Having found no evidence of negligence on the part the facility, Ms. Starr recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6017 be denied. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearings on claims by inmates at El Dorado Correctional Facility (EDCF), Claims Nos. 6033 and 6059.

Edwin Landrum, Jr., EDCF, discussed his Claim No. 6033 against Lansing Correctional Facility in the amount of \$150.00 for the loss of his gold-framed eyeglasses. Mr. Landrum explained that, as he was being escorted to disciplinary segregation by officers in September 2007, one of the officers removed and took possession of his gold-framed eyeglasses. When his property was brought to him later, he discovered that the eyeglasses were missing. He then asked one of the officers who escorted him if he knew where his gold-framed eyeglasses were, and the officer (Officer Grady) said he had taken them to a sergeant in the cell house, and they should have been returned to him. Mr. Landrum further explained that, when he was transferred from a medium unit to a maximum unit on July 14, 2007, he had a pair of grey-framed eyeglasses in a black case which he had found at his job. He did not know to whom the eyeglasses belonged; therefore, the eyeglasses were in his cell when he was taken to disciplinary segregation in September. When he filed a facility property loss claim for his gold-framed eyeglasses, the eyeglasses in the black case were returned to him as his property. As proof that he had gold-framed eyeglasses, Mr. Landrum called attention to a KDOC photo ID attached to his claim which was taken in September 2004 when he was returned to prison for a parole violation. He explained that he purchased the gold-framed eyeglasses while he was out on parole, and he was wearing them when the photo ID was taken. He argued that KDOC should replace them because they were lost due to the negligence of facility staff, not his negligence.

Shelly Starr, KDOC, reported that the investigation of Mr. Landrum's facility property loss claim indicated that the shakedown officers denied that his eyeglasses were taken off his face as he was being escorted to segregation. She noted that, pursuant to IMPP 12-120, claims for the replacement of eyeglasses are limited to the value of those issued by the health authority. She explained that inmates are allowed to bring in wire-framed eyeglasses; however, if they are lost, they cannot be replaced because inmates often use wire frames to make a weapon. She informed Mr. Landrum that the facility clinic would provide him with state issued eyeglasses at no cost.

Following discussion, the Joint Committee recommended that Claim No. 6033 be denied. (See section captioned "Committee Action and Recommendation".)

Gary A. Ditges, EDCF, discussed his Claim No. 6059 against the Kansas Department of Social and Rehabilitation Services (SRS) in the amount of \$174.00 for the replacement of a Low Income Energy Assistance Program (LIEAP) check. The LIEAP check was mailed to him on March 24, 1999, which was after he was incarcerated. Although he had arranged for his mail to be forwarded to him in prison, he never received the check. He wrote a letter to the Wichita area SRS LIEAP supervisor requesting that a replacement check be issued. The response to his letter indicated that SRS was unable to find a paper or an electronic record of the warrant. The letter also stated that SRS records are purged after a period of time, which prevented further investigation of the matter. Thus, a replacement check was never issued. Mr. Ditges said that he used his pension money to pay an electric bill in the amount of \$109.00, and he felt that he should at least receive reimbursement for this payment.

Bobbi Mariani, Kansas Department of SRS, confirmed that no information relating to Mr. Ditges' 1999 LIEAP warrant is available because, in accordance with the agency's records retention policy, records of this nature are destroyed after five years. She contended that it was unreasonable to seek reimbursement after nine years when evidence necessary to validate or disprove the claim no longer exists. She informed the Committee that LIEAP is a federally funded program that operates on a new grant each year. The amount of the grant and the rules governing it change from year to year, and there is no workable mechanism in place to pay obligations from a previous year out of current year grant funds. Thus, too much time has passed to allow the claim. She explained that the purpose of LIEAP payments is to assist low income individuals in paying their heating and cooling bills during critical times of the year so they do not run the risk of having essential utilities shut off when they are most needed. Noting that Mr. Ditges was incarcerated at the time the check would have been delivered and that he has not been personally responsible for paying heating and cooling bills for some time, Ms. Mariani recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6059 be denied. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearings on claims by inmates at Lansing Correctional Facility (LCF), Claims Nos. 6003, 6010, 6012, 6013, 6019, 6020, and 6038.

Randy McIver, LCF, discussed his Claim No. 6003 against LCF in the amount of \$11,000.00 for lost wages. On February 21, 2007, dangerous contraband was found in the day room area of his sixteen-man pod. As a result, all inmates in the pod were rolled to the max unit, and they received a disciplinary report. Consequently, he lost his job at a private industry. At his disciplinary hearing, he was found not guilty of the charge. He had lost the income from his job for eight months (40 hours per week at \$7.64 per hour) at the time he submitted his claim on October 29, 2007. Mr. McIver informed the Committee that he will be allowed to return to his job in August 2008.

Shelly Starr, KDOC, pointed out that the courts have ruled that inmates do not have a liberty

or property interest in specific jobs or whether they have a job at all. Additionally, she noted that the officers, who deal with violent inmates on a daily basis, must have the ability to discipline those they feel require it. She emphasized that rewarding inmates because they win a disciplinary hearing undermines the authority of the corrections officers and the Department, which has a right to determine placement of inmates, including jobs, treatment, and programs. With this, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6003 be denied. (See section captioned "Committee Action and Recommendation".)

Larry Brown-Bey, LCF, discussed his Claim No. 6013 against LCF in the amount of \$2,808.00 for the denial of appropriate medical care and lost wages. He stated that, while incarcerated at El Dorado Correctional Facility, he was sent to a back and nerve specialist in June 2005. The physician recommended surgery or steroid injections for spondylolisthesis, a spinal disease. However, no treatment was provided until he was transferred to LCF. An injection was scheduled in August 2005, but the appointment had to be rescheduled because doctor was too busy at that time. When he saw the doctor later, he did not immediately receive injections due to a delay in receiving the medication. Without the injections, he could not return to work. The amount of his claim includes lost wages he could have earned in November 2007 and December 2007. In a letter to the Committee dated January 10, 2008, he stated that he was still laid in from work and that the claim would include compensation for additional days off work.

Shelly Starr, KDOC, reported that Mr. Brown-Bey's back problems are not from an injury but from a long-term degenerative disease. She noted that his medical records show that a MRI was performed on January 22, 2008. The recommendation was for either surgical correction or steroid injections. He has received at least two injections, and he has been issued a wheel chair for long distances. Ms. Starr commented that, although Mr. Brown-Bey may disagree with the timing of some of the treatment he received, she found no evidence of negligence on the part of the Department. In light of her investigation, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6013 be denied. (See section captioned "Committee Action and Recommendation".)

Aaron R. Alger, LCF, summarized his Claim No. 6012 against LCF in the amount of \$2.36 for the loss of his mono adaptor. He explained that officers packed out his property in his one-man cell after he was transferred to the segregation unit. He said that the officers packed out two legal boxes but did not inventory the contents of the boxes. The mono adaptor was in one of the boxes. When his property was returned to him after his release from segregation, he found that the adaptor was missing. He noted that LCF canteen records showed that he purchased an adaptor.

Libby Snider, KDOC staff attorney, noted that Mr. Alger stated in his claim that the adaptor was very small and could be easily misplaced or lost. She went on to say that the one of the officers who packed out Mr. Alger's property stated that the property in Mr. Alger's cell was inventoried when it was packed, and an adaptor was not found in his cell. Ms. Snider pointed out that an adaptor

was not listed on the inventory sheet which Mr. Alger signed, certifying that the inventory was correct. Having found no evidence of negligence on the part of the officers who packed out Mr. Alger's property, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6012 be denied. (See section captioned "Committee Action and Recommendation".)

John F. Francis, LCF, discussed his Claim No. 6010 against LCF in the amount of \$14.00 for damage to his lamp. He explained that he was escorted to the segregation unit immediately after being found guilty at a disciplinary hearing on September 17, 2007; therefore, he was not present when the property in his cell was packed out by shakedown officers. He claimed that the officers damaged the lamp as they inventoried his property. He did not discover that the lamp was damaged until one of two boxes of his property was returned to him on October 1, 2007.

Libby Snider, KDOC, noted that Mr. Francis stated in his claim that a screw was missing in the base of the lamp, and there was evidence that the shakedown officers looked inside the lamp and damaged it. She reported that shakedown officers denied damaging the lamp, and there was no indication that they did look inside it, although they are entitled to do so to search for contraband. She further reported that Mr. Francis refused to sign the property inventory sheet or verify that inventory was correct, but he did not indicate on the inventory sheet that any item was missing or damaged. Having found no evidence to show negligence on the part of the officers, Ms. Snider recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6010 be denied. (See section captioned "Committee Action and Recommendation".)

Keith Mann, LCF, discussed his Claim No. 6019 against KDOC in the amount of \$1,000,000.00 for personal injury and his Claim No. 6020 against KDOC in the amount of \$1,000,000.00 for injuries to his hip, back, and shoulder.

With regard to Claim No. 6019, Mr. Mann explained that, although he was a medium custody inmate, he was housed in maximum security. When he informed his unit team that he had been threatened, he was told that he could not be transferred to the medium custody unit because there was no room there. During a meal call in maximum security, several inmates who were gang members, grabbed him from behind, placed a bag over his head, and severely beat him in the head. His head was "split open," and he had several bumps and bruises. He continues to have headaches and neck problems. The amount of his claim was for possible long-term physical and emotional problems.

Libby Snider, KDOC, commented that, while the attack was unfortunate, there was no evidence that the incident was foreseeable or that Mr. Mann sought protective custody. Additionally, she pointed out that Mr. Mann was given appropriate medical care at no cost to him, and he will continue to receive medical care. With this, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6019 be denied. (See section captioned "Committee Action and Recommendation".)

With regard to Claim No. 6020, Mr. Mann explained that he was seriously injured on a prison bus while he was being transported to another facility. When a tire blew out, he was thrown to the floor. His hip was injured, and hip replacement surgery was required. He further explained that he also continues to receive treatment for a torn rotor cuff in his left shoulder and a back injury. He said that he would be released in six months, and he would never be able to work again. The amount of his claim included compensation for current and future lost wages and for pain and suffering.

Libby Snider, KDOC, recommended that the claim be denied. She went on to say that there was no evidence that the tire blew out due to negligence on the part of the Department. In addition, she noted that Mr. Mann's claim for future lost wages was based upon his own assessment that he will never be able to work again, not on any supporting documentation.

Following discussion, the Joint Committee recommended that Claim No. 6020 be denied. (See section captioned "Committee Action and Recommendation".)

Toby Dillingham, LCF, discussed his Claim No. 6038 against KDOC in the amount of \$66.96 for the loss of a new pair of boots and a watch. He was present when the property in his cell was packed out before his transfer to the segregation unit. When he received his property later, a new pair of boots, a watch, and some other items were missing. He explained that only the second page of his property inventory sheet was brought to him while he was in segregation. At that time, the officer told him that the first page would be brought to him later, and he signed the second sheet, which only listed six items. However, the first page was never brought to him. When he received his property a few days later, he told an officer that his old pair of boots were returned, but his new pair of boots and his watch were missing. He informed the Committee that his property was packed out of his cell in big boxes, but his property had been repacked in small boxes when returned to him. He contended that officers failed to pack the missing items.

Libby Snider, KDOC, commented that it was unclear how Mr. Dillingham's property could have not been packed and inventoried while he was watching. She reasoned that the only logical explanation was that the property was not in his cell when officers packed his property. Having found no negligence on the part of the facility, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6038 be denied. (See section captioned "Committee Action and Recommendation".)

Representative re Huebert turned the Committee's attention to the remaining claims under the heading, "No Hearing Requested," Claims Nos. 6035, 6040, and 6042. Ms. Lash summarized the claims.

Claim No. 6035 was filed by an inmate at Hutchinson Correctional Facility, Isaac Darnell

Horn, against Hutchinson Correctional Facility in the amount of \$100,000.00 for personal injury. Ms. Lash explained that Mr. Horn stated in his claim that he told several staff members in November 2007 that other inmates were threatening to beat him up, and he asked to be transferred from maximum to medium custody. On December 10, 2007, another inmate attacked him during a basketball game, and a fight ensued. He spent four days in the facility clinic due to the injuries received, and he continues to suffer from back pain and sometimes sees a black dot in his right eye. He was prevented from having a job because he received a disciplinary report for fighting, and he was placed in segregation from December 10, 2007, until April 1, 2008. In his opinion, correctional employees were negligent in failing to understand the seriousness of the problem and correcting it before the attack occurred.

Libby Snider, KDOC, noted that only one of the communications with staff which Mr. Horn attached to his claim made reference to being threatened by inmates. In that communication, he stated that he was “tired of being threatened by other inmates.” However he made no request for protective custody, only a change from maximum to medium custody. All other copies of communications with staff which Mr. Horn attached to his claim related to privileges and job placement. Ms. Snider emphasized that, if Mr. Horn felt threatened, he could have requested protective custody. Noting that very little could be done to protect Mr. Horn unless he was placed in protective custody, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6035 be denied. (See section captioned “Committee Action and Recommendation”.)

Claim No. 6040 was filed by an inmate at El Dorado Correction Facility, Milo A. Jones, against Lansing Correctional Facility in the amount of \$2,000.00 for violation of his constitutional rights and for pain and suffering. Ms. Lash noted that Mr. Jones stated that he was seeking punitive damages because correctional officers intentionally violated his constitutional rights when he was punitively placed on MRA (more restrictive area) status within the segregation unit and also when staff refused to call mental health after he notified them that he felt suicidal and had begun cutting himself. In response, he began a hunger strike. He stated that, in mid-September 2007, he did not receive bedding for 48 hours, and he had to endure two freezing nights with no covers. In addition, he stated that his legal materials were not promptly provided, which made it impossible for him to record events relating to his complaints. He also claimed that he was transferred to a cell with no running water; therefore, he had to go four days without brushing his teeth, washing himself, or having drinking water.

Libby Snider, KDOC, reported that Mr. Jones was written up for and convicted of a disciplinary report for lewd acts. Since he was already in segregation, he was placed on MRA status, and more of his property was taken from him in order to bring more control to the situation. Having found that the facility had sound reasons for placing Mr. Jones on MRA status and that the action was not done punitively, Ms. Snider recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6040 be denied. (See section captioned “Committee Action and Recommendation”.)

Claim No. 6042 was filed by an inmate at Lansing Correctional Facility, Mark S. Narducci II, against KDOC in the amount of \$250.00 for the loss of his I-Pod and accessories. Ms. Lash explained that Mr. Narducci submitted documents that indicated that his I-Pod and accessories were seized as dangerous contraband during a shakedown at his workplace, and he was given a disciplinary report. He stated that facility staff destroyed his property even though the hearing officer indicated that the material could be mailed out at his expense.

Libby Snider, KDOC, reported that Mr. Narducci was found to have possession of an I-Pod, which is not sold in the prison canteen or allowed in any correctional facility or at any inmate workplace. She noted that the I-Pod was found in a bag with his name on the receipt at his place of employment. She informed the Committee that an inmate is not allowed to mail out contraband property. Pursuant to applicable regulations, Mr. Narducci was required to forfeit the I-Pod, and it was destroyed as dangerous contraband. Having found that the facility's disposition of Mr. Narducci's property was lawful, Ms. Snider recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6042 be denied. (See section captioned "Committee Action and Recommendation".)

Representative Huebert called attention to a carried over claim which was scheduled to be heard at 3:00 p.m., Claim No. 5841 by Kim J. White against the Kansas Department of SRS in the amount of \$51,000.00 for mental and emotional anguish he suffered when he lost parental rights to his sons. Ms. Lash informed the Committee that Mr. White requested that the claim be carried over once again to allow more time to pursue his attempt to gain custody of one of his sons.

Following discussion, the Joint Committee recommended that Claim No. 5841 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation".)

Ms. Lash discussed claims on the agenda under the heading, "Claims Withdrawn," which were scheduled to be considered at 4:30 p.m., Claims Nos. 5989 and 6029.

Ms. Lash noted that Claim No. 5989 was filed last year by Northwest Kansas Educational Service Center Head Start against Norton Correctional Facility in the amount of \$170.48 for damage to a school bus window. At a hearing last year, Shelly Starr, KDOC requested that the claim be carried over so that the claim could be paid immediately instead of waiting for approval through the legislative process in 2008. Ms. Lash called attention a statement signed by the claimant which indicated that the claimant had accepted \$160.00 as full and final settlement.

Following discussion, the Joint Committee recommended that Claim No. 5989 be denied. (See section captioned "Committee Action and Recommendation".)

Ms. Lash noted that Claim No. 6029 was filed by Michael Lee Strope, a/k/a Gordon Strope against KDOC in the amount of \$12.08 for the loss of his cooler. She explained that Shelly Starr, KDOC, reported that the facility replaced Mr. Strope's cooler. Ms. Starr also provided a copy of a property receipt for an Igloo Polar Six cooler, which Mr. Strope signed, acknowledging that he

received it. However, Ms. Starr did not have a signed statement from Mr. Strobe that he wished to withdraw his claim.

Following discussion, the Joint Committee recommended that Claim No. 6029 be denied without prejudice. (See section captioned “Committee Action and Recommendation”.)

The meeting was recessed for lunch at 11:30 a.m.

Afternoon Session

Representative Huebert called the meeting to order at 1:30 p.m. at which time he opened the telephone hearings on claims by inmates at Larned Correctional Mental Health Facility (LCMHF), Claims Nos. 6007, 6008, 6015, 6030, and 6039.

Michael Kenyatta Mattox, LCMHF, discussed his Claim No. 6015 against LCMHF in the amount of \$1,000,000.00 for the loss of his business plans, which had “billion dollar ideas.” He explained that he sent paperwork for his business plans to A & D to be mailed out to his family in order to get a copyright. Instead of sending out the plans or returning them to him, A & D staff destroyed them. In his opinion, staff had no right to destroy his property. He said that destruction of the plans for which he “put in tons of research and work” prevented him from accomplishing his goal to have a livelihood from a business enterprise.

Libby Snider, KDOC, pointed out that Mr. Mattox provided absolutely no documentation to substantiate his claim. Nonetheless, she was confident that Mr. Mattox’s claim was without merit and should be denied.

Following discussion, the Joint Committee recommended that Claim No. 6015 be denied. (See section captioned “Committee Action and Recommendation”.)

Larece Terrell Hutton, LCMHF, filed the following claims: Claim No. 6007 against Larned State Hospital in the amount of \$1,550,000.00 for personal injury, Claim No. 6008 against LCMHF in the amount of \$77,100,000.00 for property loss, Claim No. 6030 against Larned State Hospital in the amount of \$3,500.00 for property loss, and Claim No. 6039 against LCMHF in the amount of \$150,000,000.00 for property loss.

With regard to Claim No. 6008, Mr. Hutton said that his property was lost in the process of his being transferred from one cell to another. He explained that he was not allowed to have some of his property, and he asked where it was when it was not shown on his property inventory sheet. Instead of telling him where the property was, officers gave him the “run around.” Therefore, he became frustrated and filed several facility grievances. The missing property was never returned to him. He contended that the property was lost after it was taken to A & D.

Libby Snider, KDOC, pointed out that the documentation Mr. Hutton attached to his claim

did not support his claim. She noted that the documentation showed no proof of ownership and included nothing to establish the value of the alleged lost property. Because Mr. Hutton failed to provide substantiation of his losses or evidence that the facility was responsible for the loss of any of his property, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6008 be denied. (See section captioned "Committee Action and Recommendation".)

With regard to Claim No. 6039, Mr. Hutton explained that, after he was transferred to segregation, a shakedown officer went to his cell and took his eyeglasses, Italian dictionary, French dictionary, pocket history of the United States, a Bible, five paperback books, a photograph of his girlfriend, a magazine, 20 pens, 20 pencils, and several other items. But the officer did not provide him with a shakedown inventory sheet. Instead, the officer told him that could not have the property because he had stolen it. Mr. Hutton then submitted several Form 9s to A & D officers. His eyeglasses were returned to him, but he did not receive anything else.

Libby Snider, KDOC, noted that, unfortunately, Mr. Hutton failed to provide the date he sustained the alleged property loss. However, an inventory sheet he provided stated that his eyeglasses were in his property and that they were returned to him on February 19, 2008. She noted that the copies of the inventory sheets he provided were not very legible; however, he did sign them, certifying that the inventory was correct and that all of the property was returned to him. Having found nothing to substantiate Mr. Hutton allegations, Ms. Snider recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6039 be denied. (See section captioned "Committee Action and Recommendation".)

With regard to Claim No. 6007, Mr. Hutton explained that, while in the shower area at Larned State Hospital, another patient stabbed him with an antenna. As a result of the attack, x-rays and stitches were required, and his shoulder was numb for two hours. He explained that the amount of his claim was based upon a recommendation by his attorney "on the street."

Brenda W. Hagerman, legal counsel for Larned State Hospital, reported that the investigation of the claim revealed that Mr. Hutton instituted a fight with another patient over a racial issue on August 8, 2007, at 7:45 p.m. in the shower room. When staff intervened and separated the two patients, a two inch metal piece with a smashed end fell out of Mr. Hutton's jeans to the shower room floor. His medical records show that the only injuries he sustained were two superficial scratches on the left side of his neck, and Betadine was applied to the abrasions after his neck was cleansed with soap and water. His injury required no follow up attention, and he incurred no personal financial liability. No other injuries were noted, including any injuries that might have resulted from falling to the shower room floor during the incident. Ms. Hagerman noted that Mr. Hutton's medical records also reflect that he denied knowledge about the metal object that fell from his pocket or why the metal piece was in the shower room. In light of her investigation, she recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6007 be denied. (See section captioned "Committee Action and Recommendation".)

With regard to Claim No. 6030, Mr. Hutton explained that his property was not packed and ready to take with him at the time he was scheduled to be transferred from Larned State Hospital to Larned Correctional Facility. Larned State Hospital staff denied his request to pack his property and said that they would pack it for him. He never received his property. Mr. Hutton felt that his property was lost due to the negligence of hospital staff. When he asked where his property was, he was told that staff was not responsible for his property.

Brenda W. Hagerman, legal counsel for Larned State Hospital, recommended that the claim be denied. She noted that Mr. Hutton was involved in an aggressive assault of another patient at Larned State Hospital wherein he threatened to kill the other patient. Subsequently, he was returned to the custody of the Department of Corrections on August 9, 2007. On November 28, 2007, he filed a property loss claim with Larned State Hospital, alleging that hospital staff lost some of his property while he was a patient. Ms. Hagerman pointed out that, as in his Claim No. 6030, he presented no proof that he ever owned the property. She went on to say that the Larned State Hospital special investigator found that there were no records to substantiate that the alleged missing items were ever in his possession while he was a patient at the hospital or that the same was lost or destroyed.

Following discussion, the Joint Committee recommended that Claim No. 6030 be denied. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearing on a claim by a former Topeka Correctional facility inmate, Claim No. 6014 by Nichole M. Reed against the State of Kansas in the amount of \$10,000.00 for violation of due process rights, mental anguish, and lost wages. Ms. Reed informed the Committee that she filed an appeal regarding the same facts and circumstances as the claim, and the appeal was still pending. Representative Huebert told her that the Committee would carry over the claim until she notified the Committee that the appeal was resolved.

Following discussion, the Joint Committee recommended that Claim No. 6014 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearing on a claim by a former Lansing Correctional Facility inmate, Claim No. 6028 by Matthew L. Church against Lansing Correctional Facility in the amount of \$59.90 for the loss of his Georgia Giant work boots. Mr. Church's mother answered the call, and she informed the Committee that her son was not at home because he had to go to Manhattan. Ms. Lash informed Mrs. Church that the hearing would be rescheduled.

Following discussion, the Joint Committee recommended that Claim No. 6028 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the hearing on a claim which was carried over in December 2007 at the claimant's request, Claim No. 5993 by Roland D. French, Jr., against the State of Kansas

in the amount of \$100,000.00 for an illegal sentence. Mr. French was not present. Ms. Lash informed the Committee that she was uncertain if Mr. French received the Notice of Hearing sent to him by certified mail because the return receipt had not yet been received.

Following discussion, the Joint Committee recommended that Claim No. 5993 be denied without prejudice. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearings on the following claims against Larned State Hospital (LSH) by persons in the Sexual Predator Treatment Program (SPTP) for a refund of overpayments for treatment:

Claim No. 6021 by Dustin J. Merryfield in the amount of \$1,238.90,
Claim No. 6022 by Earl Hoffman in the amount of \$462.55,
Claim No. 6023 by Boyd "Stan" Huntington in the amount of \$70.40,
Claim No. 6024 by Carlos Lively in the amount of \$213.10,
Claim No. 6025 by Lawrence Huff in the total amount of \$521.60,
Claim No. 6026 by Perry Isley in the amount of \$122.11,
Claim No. 6043 by Edward Johnson in the amount of \$176.13,
Claim No. 6044 by Mark Dowling in the amount of \$1,250.35,
Claim No. 6060 by George "Roy" Allen, Jr., in the amount of \$164.59,
Claim No. 6061 by Brandon Kelsch in the amount of \$463.78,
Claim No. 6062 by Dustin Straith in the amount of \$1,653.56, and
Claim No. 6070 by George E. Gilmore in the amount of \$412.42.

Mr. Merryfield, who filed Claim No. 6021, spoke on behalf of all claimants. He stated that LSH places persons in SPTP under the Kansas Economic and Employment Support Manual (KEESM), which is against Kansas law and the manual itself. Therefore, the claimants should be reimbursed for the money they paid from earnings in the LSH Therapeutic Patient Work Program as partial payment for the cost of their hospital care. He went on to explain that it was difficult for patients to obtain a copy of the manual, but he recently was able to obtain a copy. He noted that Section 1121 of the KEESM lists the statutes which set forth eligibility requirements. He then quoted the following from K.A.R. Chapter 30, Article 4: "Any applicant or recipient living in a public institution shall be ineligible. Public institution means any institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control." Mr. Merryfield commented that a state hospital is a governmental unit, and the government exercises control over the facility. Thus, participants in the SPTP are ineligible to be under the manual. He explained further that Section 7532.3 of the manual states that persons are not obligated under the manual as long as they are obligated to pay for their stay in the hospital. He noted the Kansas Sexual Predator Act states that sexual predators must pay for their stay in a state hospital and any assistance provided. Additionally, he pointed out that the state did not meet the following requirements listed in the manual: (1) a face-to-face interview with the claimants and (2) placement of information about them on public access, which would be illegal under the Patient's Bill of Rights. In conclusion, he said that the manual was meant for people on the street who are either blind or mentally retarded to the point that the only way they can gain employment is through KEESM. He noted that none of

the claimants were physically or mentally handicapped. In fact, the LSH Therapeutic Patient Work Program requires that participants cannot be mentally or physically impaired. He informed the Committee that LSH staff told SPTP patients in a meeting in October 2005 that they had ten days to sign a new work agreement and agree to pay a portion of their cost of care, and, if they did not sign the agreement, they would no longer have a job. As background information, Mr. Merryfield explained that SPTP participants' requests for copies of the manual and a copy of Commissioner's Letter No.930 relating to the matter was denied. Therefore, it took two years for the claims to be filed because the claimants had to do work on their own.

In response to a question from a Committee member, Mr. Merryfield confirmed that the claimants received no help from an attorney and that no lawsuits had been filed. In response to question from a Committee member who asked if any of the claimants planned to file a lawsuit if the claims were denied, Mr. Merryfield said that the claimants were "in a bind" because they did not know of any legal remedies due to the fact that they have limited access to the courts and law library material, and no legal assistance is provided at LSH. He explained that most of the claimants are not trained to use the computer, and some of them are not allowed to use computers. Furthermore, updated statutes are not available online. He stated that, as far as he knew, the Joint Committee on Special Claims was the only avenue the claimants had to pursue reimbursement of overpayments. He argued that the claimants were never made aware of the amount they owed and given a chance to pay; therefore, payments should not have been deducted from their accounts.

Brenda W. Hagerman, legal counsel for LSH, commented that all of the claimants are involuntarily committed sexual predators which the court ordered to be under the "control, care, and treatment" of the Secretary of the Department of SRS per the Kansas Sexual Predator Act. She explained K.S.A. 59-29a12 allows for the payment of costs for commitment under the Kansas Sexual Predator Act by the "person, by the conservator of such person's estate, or by any person bound by law to support such person." She noted that, specifically, this law allows the Secretary of SRS to recover the cost of treatment from the residents themselves. She explained that K.S.A. 59-2006 provides for the assessment of the costs for the maintenance, care, and treatment of any patients in any state institution irrespective of the manner of such patient's admission to the institution. Additionally, she noted that SRS policy and procedure (Commissioner's Letter No. 930) requires patients, spouses, parents, and other responsible parties to be liable for the cost of care and treatment according to their ability to pay. In figuring the patient's personal financial obligation, financial resources the patient might possess are taken into account, including whether the payment will cause an undue hardship. SRS policy and procedure further requires patients employed in sheltered workshops or in therapeutic institutional employment programs to pay any amount for cost and care which exceeds the allowable for SSI, Medicaid, etc.

Ms. Hagerman explained that the LSH Financial Services Department took steps in December 2005 to begin the implementation of a new special assessment based on a special wage certificate program administered by the U.S. Department of Labor. To implement this room and board wage assessment, residents were asked to read and acknowledge a new form titled, "Larned State Hospital Vocational Training Program Agreement." By signing the form, residents agreed to work conditions, which included having an automatic withdrawal from their patient trust fund

account for amounts due LSH according to SRS guidelines. Based on legal requirements, all of the claimants were assessed a board and care assessment on the wages they earned through voluntarily participating in the LSH Vocational Training Program. At this point, she called the Committee's attention to page 7 of her written response to the claim which included an explanation of the KEESM formula for deductions from earned income and examples of how the deduction formula is applied to a worker's monthly earnings. Emphasizing that the board and care assessments for all of the claimants were correct and lawful, Ms. Hagerman recommended that all of the claims be denied.

Following discussion, the Joint Committee recommended that Claims Nos. 6021, 6022, 6023, 6024, 6025, 6026, 6043, 6044, 6060, 6061, 6062, and 6070 be denied without prejudice. (See section captioned "Committee Action and Recommendation".)

Representative Huebert opened the telephone hearing on a claim on the agenda under the heading, "Claims Carried Over," Claim No. 5988 by an inmate at LCF, Alan W. Kingsley, against KDOC in the amount of \$1,712.12 for failure to properly deduct restitution payments from his paycheck. Mr. Kingsley explained that he was employed at a private industry from August 24, 2004, until September 3, 2005, while incarcerated at LCF. When he got the job, he signed an agreement that five percent of his earnings would go toward paying court restitution (court costs and fees) he owed in a 1991 criminal case. He believed that the facility was deducting and paying five percent of his earnings to the district court until he received notice from the court on August 17, 2005, that, due to nonpayment, collection of the court costs and fees had been turned over to a collection agency. He then discovered that, instead of sending payments to the court as he requested, payments were sent to the Crime Victims Compensation Fund. The collection agency added a fee of \$1,126.84. He argued that KDOC should reimburse him for the inappropriately handled funds and the interest and fees charged by the collection agency because the facility negligently failed to properly process the paperwork to make payments to the court as he requested.

Libby Snider, KDOC, clarified that Mr. Kingsley was actually ordered to pay court costs and fees, not restitution. She informed the Committee that, during the time period in which Mr. Kingsley was employed, K.S.A. 75-5268, which sets forth what can be deducted from inmates pay, did not include a provision for payroll deductions for court costs. The statute was amended to allow deductions for court costs on July 1, 2007, which was long after the debt was incurred and long after the debt was turned over to a collection agency. She explained further that, when restitution is not ordered, inmates are required to pay at least five percent of their private industry pay to the Crime Victims Compensation Fund. Therefore, the payments made to the fund were appropriate and would have been paid in lieu of court ordered costs. She noted that Mr. Kingsley had notice of how the five percent deductions were being directed because his bank statements would have indicated that the payments were going toward Crime Victims Compensation rather than being paid to the court for costs and fees. With this, Ms. Snider recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 5988 be denied. (See section captioned "Committee Action and Recommendation".)

The meeting was adjourned at 3:40 p.m.

Prepared by Shirley Higgins, Committee Secretary
Edited by Cindy Lash

Approved the Committee on:

August 27, 2008

(date)