

## MINUTES

### JOINT COMMITTEE ON SPECIAL CLAIMS AGAINST THE STATE

November 12-13, 2008  
Room 535-N—Statehouse

#### Members Present

Representative Steve Huebert, Chairperson  
Senator Phillip Journey, Vice-Chairperson  
Senator Terry Bruce  
Senator Mark Gilstrap  
Senator Dennis Pyle  
Representative Bob Grant  
Representative Broderick Henderson  
Representative Rob Olson

#### Staff Present

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

#### Others Present

Libby Snider, Legal Counsel, Kansas Department of Corrections  
John J. Gillett, Attorney at Law  
Patricia Short, Home Sweet Home Care  
Charles E. Moore, Kansas Department of Health and Environment  
Joseph Kroll, Kansas Department of Health and Environment  
Gregory E. Skinner, Kansas Department of Health and Environment  
Estelle Montgomery, Kansas Legislative Research Department  
George Welch  
Martha Cooper, Kansas Department of Health and Environment  
Donna Calabrese, Kansas Department of Health and Environment  
Lou Saadi, Kansas Department of Health and Environment  
Kenny Hughes, Kansas Department of Health and Environment  
Robin Weefe, Kansas Department of Health and Environment  
Susan Kang, Kansas Department of Health and Environment  
Erick Smith  
Jonnell Johnson  
LaTrena Webb

Darrick Chinn  
Heather O'Hara, Kansas Legislative Research Department  
Chris Tymeson, Kansas Department of Wildlife and Parks

**Wednesday, November 12  
Morning Session**

The meeting of the Joint Committee on Special Claims Against the State was called to order at 10:30 a.m. by Representative Steve Huebert, Chairperson.

*Representative Grant moved to approve the minutes of the August 27-28, 2008 meeting of the Joint Committee on Special Claims Against the State, seconded by Senator Journey. The motion carried.*

The Chairperson opened the telephone hearings on claims filed by inmates at El Dorado Correctional Facility (EDCF), Claim Nos. 6084, 6089, 6090, 6095, 6096 and 6097.

James L. McIntosh, EDCF, discussed his Claim No. 6084 against El Dorado Correctional Facility in the amount of \$14.34 for postage and handling fees on outgoing mail. Mr. McIntosh explained that he sent a large envelope with four pieces of paper in it. He was charged \$14.34 for postage and handling for his envelope to be sent through Goin' Postal, the organization that the Kansas Department of Corrections (KDOC) contracted with at that time. If the envelope had been mailed using the U.S. Postal Service, Mr. McIntosh said it would have cost him \$.97, making an overcharge of \$13.37.

Libby Snider, Kansas Department of Corrections (KDOC), explained that KDOC was contracted to use Goin' Postal at that time and they had no recourse but to charge Mr. McIntosh \$14.34 for his parcel. This policy was explained to inmates at the time and procedure was followed by staff. She recommended that the claim be denied.

A legislator requested clarification from Mr. McIntosh on the size and weight of his parcel, and was told it was a 10 x 13 inch envelope with four sheets of paper in it. The legislator asked Ms. Snider if this was still KDOC's mailing policy, to which she replied negatively.

*Following discussion, the Joint Committee recommended that Claim No. 6084 be allowed in the amount of \$13.37. (See section captioned "Committee Action and Recommendation.")*

Carl Butler, EDCF, summarized his Claim No. 6089 against KDOC in the amount of \$500 for property loss. He explained that none of his medications arrived with him when he was moved from Hutchinson Correctional Facility to El Dorado Correctional Facility. He asked an officer where the medications went upon arrival at El Dorado. The officer said the medications were checked in at the pharmacy. Mr. Butler noted that the unit officer changed the written statement to say "sealed envelope may have contained medications." Mr. Butler stated the change made the statement erroneous, because the medications were in a zip-lock bag. Another officer called the medical unit to check on the status of the medications and he was told they were thrown away due to "wrong name" on medications. Mr. Butler was originally booked in under an alias name of Thomas A. Butler and the medications had the name Carl A. Butler on them.

Libby Snider, KDOC, explained that actual content of medications is uncertain upon a transfer from one facility to another, so the routine procedure is that medications are destroyed. Ms. Snider

also mentioned that the cost of the medications was \$150.00, instead of the \$500.00 amount of the claim. She recommended that the claim be denied.

Mr. Butler stated that the \$350.00 discrepancy between the cost of the medications and the claim amount had to do with doctors' office visits and gasoline to and from doctors offices.

*Following discussion, the Joint Committee recommended that Claim No. 6089 be denied.*  
*(See section captioned "Committee Action and Recommendation.")*

Carl Butler, EDCF, summarized Claim No. 6090 by saying that he was moved from Hutchinson Correctional Facility to Ellsworth Correctional Facility. His property did not arrive at Ellsworth from storage. Then Mr. Butler was sent to Norton Correctional Facility and his inventory sheet did not include his television, as it was already missing from the previous move.

Libby Snider, KDOC, stated that the proper ownership of this brand of television was not established. A different brand of television was recorded as being owned by Mr. Butler. She recommended that the claim be denied.

Mr. Butler responded by stating that he cannot help that someone put the wrong brand name for the television on the inventory sheet for the first move. The size, model number and all identifying marks were identical to the television KDOC has recorded that he owned. The brand name was the only discrepancy and that was a guard's error.

*Following discussion, the Joint Committee recommended that Claim No. 6090 be denied.*  
*(See section captioned "Committee Action and Recommendation.")*

Carl Butler, EDCF, summarized Claim No. 6095 by saying that his property was stolen from his secured locker after he was taken to court. Officers did not remove his locker contents and television and secure them elsewhere, as is usually done.

Libby Snider, KDOC, responded by stating that Mr. Butler's property was secured in his locked locker and that the state fulfilled its responsibility in seeing this done. She recommended that this claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6095 be denied.*  
*(See section captioned "Committee Action and Recommendation.")*

Johnny Taylor, EDCF, summarized Claim No. 6096 by stating that he was trying to get the attention of a corrections officer, but the officer ignored his efforts for more than two hours. Mr. Taylor said he "made some racket, knocking on (his) door" trying to get the unit team to come to his door, so that he could request he be put on the Segregation Review List. When an officer finally came to his door he asked an extremely inappropriate question of Mr. Taylor. This was confirmed by another officer, who then persuaded Mr. Taylor to file a grievance against the officer who made the inappropriate remark, which he did.

Libby Snider, KDOC, answered this claim by stating that Mr. Taylor was willing to let the inappropriate question be forgotten until he was persuaded, otherwise. The corrections officer was disciplined by KDOC for his inappropriate question. Therefore, she recommended that this claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 6096 be denied.*  
*(See section captioned "Committee Action and Recommendation.")*

Thomas Everson, EDCF, summarized Claim No. 6097 by explaining that he was packed out of his cell and did not get his ice chest and a few other items back when his property was returned to him.

Libby Snider, KDOC, responded by saying that the ice chest was found to have been altered and, therefore, automatically became contraband. She recommended that this claim be denied.

Mr. Everson rebutted by saying that he was packed out three times within one month and the ice chest had never been marked or declared altered any of those times, so he doesn't understand how it could have all of a sudden be declared altered.

Following discussion, the Joint Committee recommended that Claim No. 6097 be denied.  
(See section captioned "Committee Action and Recommendation.")

The Chairperson turned the Committee's attention to claims on the agenda under the heading, "Hearing," Claim Nos. 6110, 6109, and 6101.

Betty Jean McCoy summarized Claim No. 6110 by explaining that while at the Kansas State Fair with her family, she sat down to rest and something hard hit her on her head. She was transported to the State Fair's First Aid Station in a Highway Patrol car, where they recommended that she visit her personal doctor, which she later did. She had headaches for a few weeks subsequent to the incident. She is looking for reimbursement of expenses to Medicare and other insurance, and to compensate for the disruption to her and her family's day at the Fair.

Denny Stoecklein, Kansas State Fair, stated that they did not locate what may have hit Ms. McCoy on the head, but recognizes that she was indeed hit. He is not sure that it is the State Fair's responsibility to reimburse Medicare, but he would be willing to send Ms. McCoy free tickets to next year's Fair. He recommends, however, that the Committee deny her claim.

A legislator asked if Ms. McCoy had any out-of-pocket expense due to the injury. She said she did not, other than missing the enjoyable day planned with her family at the Fair.

Legislators discussed with Mr. Stoecklein the possibility of a gift certificate or vouchers for Ms. McCoy and her family for dinner and tickets to the 2009 Fair. The Chairperson directed staff to send a letter to Mr. Stoecklein expressing the Committee's support for such an offer and requesting to know the outcome of any offer prior to the December meeting.

Following discussion, the Joint Committee recommended that Claim No. 6110 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation.")

John Brooks summarized Claim No. 6109 by stating that he was leaving the Kansas State Fair after dark at approximately 9:00 p.m., when his vehicle got high-centered on a tree stump, which damaged the car. He had to get help from the parking attendants to disengage his car from the stump and did not notice the extent of the damage until he got home. He would like the State Fair to pay for the repairs to his car.

Denny Stoecklein, Kansas State Fair, responded that the only stump that could be located anywhere near where Mr. Brooks stated he got stuck was not in a normal path of travel. The stump measured between five and six inches tall. There were no other incidents reported involving the stump, and the Highway Patrol had no record of any such incidents. He recommended that this claim be denied.

Mr. Brooks said that the parking attendant mentioned that others had hit the stump that evening, but had no damage.

Mr. Stoecklein provided photographs for the Committee of a stump that he believes is the one Mr. Brooks hit.

Following discussion, the Joint Committee recommended that Claim No. 6109 be denied.  
(See section captioned "Committee Action and Recommendation.")

George Welch summarized Claim No. 6101 for the Committee, explaining that he was speaking for his cousin Judy Walsh, who is a resident of Utah. Prior to applying for Social Security, Ms. Walsh requested a certified copy of her Kansas birth certificate from the Division of Vital Statistics, Kansas Department of Health and Environment (KDHE). The document she received from the Division was handwritten, and the date of birth had been altered by two days. Ms. Walsh had in her possession a typed birth certificate which showed the correct date of birth, which had been obtained by her parents when she was a child.

Mr. Welch said he was unsuccessful in getting the Division of Vital Statistics to agree to correct the birth certificate, so he hired a Kansas attorney to get a court order to have the certificate corrected. As a result, Ms. Walsh incurred court costs and legal fees of \$737.76 and had miscellaneous undocumented expenses of \$150.00. She asks to be reimbursed for these amounts, stating that the birth certificate she received as a child was correct, and the Division had provided her with a handwritten birth certificate on which the date of birth had been altered.

Martha Cooper, KDHE, said Mr. Welch was given a list of documents that serve as acceptable sources of identification for correcting a birth certificate. The Division can correct a birth certificate upon receipt of two of these alternate sources of identification. She said the Division did not receive two copies of acceptable alternate identification for Ms. Walsh.

Donna Calabrese, KDHE, pointed out that the original certificate of live birth was handwritten by the doctor; this is the birth certificate Ms. Walsh asserts has been altered. Ms. Calabrese said the 1951 typewritten certificate was created by the Olathe City Clerk, and is not the original record.

Elizabeth Saddi, State Registrar, KDHE, pointed out that the process for getting a birth certificate corrected does not require an attorney. Therefore, she noted, the expense was not necessary. KDHE recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6101 be denied.  
(See section captioned "Committee Action and Recommendation.")

The Chairperson turned the Committee's attention to claims on the agenda under the heading, "No Hearing Requested," Claim Nos. 6049 and 6100.

Cindy Lash, Kansas Legislative Research Department, summarized Claim No. 6049 saying it was filed by an inmate at El Dorado Correctional Facility, Scott Staggs, against El Dorado Correctional Facility in the amount of \$25,000 for the loss of his legal papers. According to Mr. Staggs' claim form, more than 2,275 pages of legal papers were to be taken to the mail room. They were his application for legal assistance from the Paul E. Wilson Defender Project at the KU Law School. Two officers took the mail to the unit team's office and put it on the desk where it sat for three days. The only manner Mr. Staggs can send legal mail is on credit. The unit team opened some of the mail, but not in front of Mr. Staggs, which is not allowed. The mail was subsequently thrown away. [Staff note: When legal mail is sent on credit, it is subject to inspection and cursory reading by staff, in the presence of the inmate, to insure it is actually legal mail.]

Libby Snider, KDOC, responded by informing the Committee that inmates are required to exhaust all administrative remedies, which Mr. Staggs had not. When Mr. Staggs discovered that

his papers had disappeared, he was informed that he should file a property claim; he did not. Legal mail is required to be inspected, but as his package was sealed, it had to be opened. The institution cannot confirm that the mail was thrown away, but areas were searched and it was not located. He originally claimed the cost of the papers was over \$550, but the claim is for \$25,000 for unknown reasons. She recommended that his claim be denied.

A legislator asked what could have happened to Mr. Staggs' papers, noting that the facility should be aware of what they did with over 2,000 sheets of paper. Ms. Snider responded that she was unable to determine what happened to the papers. She noted there is no documentation to substantiate the value of the papers.

Following discussion, the Joint Committee recommended that Claim No. 6049 be denied.  
(See section captioned "Committee Action and Recommendation.")

Cindy Lash summarized Claim No. 6100 stating it was filed by Wilbur McElroy against KDOC in the amount of \$22,680 for unlawful incarceration. Because the Kansas Supreme Court reversed his conviction in Sedgwick County District Court for an Offender Registration Violation, he ended up serving 28 months and 13 days in prison illegally. He seeks reimbursement of lost income, calculated at \$5.25 an hour.

Libby Snider, KDOC, stated that Mr. McElroy was convicted of a new Offender Registration Violation for failure to report. On November 4, 2003, he was charged and he appealed while in custody for the post-release violation. In March of 2006, the Kansas Supreme Court reversed the conviction. By April 21, 2006, he was re-released to post-release. Despite his successful appeal, he was convicted of the new offense while on post-release and was, therefore, required to serve out the remainder of his post-release sentence in prison. As soon as the new conviction was reversed, he was released back to post-release. The Department acted in conformity with the law that requires him to be held in custody. She recommended that this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6100 be denied.  
(See section captioned "Committee Action and Recommendation.")

The meeting recessed at 12:15 p.m. for lunch.

### **Afternoon Session**

The Chairperson called the meeting to order at 1:30 p.m.

The Chairperson opened the telephone hearings on claims by inmates at Lansing Correctional Facility (LCF), Claim Nos. 5954, 6027, 6051, 6088, 6091, 6092, 6094, and 6103.

Daniel Dias summarized Claim No. 5954 by saying that he was slammed up against a wall by an officer for no reason. He injured his hip, knee and head. He is still suffering from the injuries.

Libby Snider, KDOC, responded by stating that Mr. Dias had provoked the use of force by refusing to cuff up when ordered to do so and approached an officer aggressively. Two officers signed off on a use-of-force report, and Mr. Dias received a Disciplinary Report (D.R.) for threatening. Mr. Dias appealed the D.R. to the Leavenworth District Court, which decided against Mr. Dias. His medical record indicates that, at the time he was seen, he had no further medical complaints. He

will receive nearly free medical care until the time he is released, which will be around the age of 96. She asked that the claim be denied.

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

James Lee Jamerson summarized Claim No. 6027 by stating when he was put in segregation for an arson that he did not commit, he was denied his medications, there was urine and feces all over the cell, he had no clothing, he was not allowed to shower for five days, he was not given toilet paper for two days.

Libby Snider, KDOC, replied that she cannot substantiate any of Mr. Jamerson's claims. There is no documentation. She did find the daily segregation reports, which indicate that he was permitted to shower and get new clothes routinely, and that medical staff was in the unit every day, once during each shift, throughout his time in segregation. He claims that he filed a grievance that went unanswered, but Ms. Snider was unable to find any documentation of this. She recommended that the claim be denied.

Mr. Jamerson stated that he spoke with Ms. Woldoc of the unit team in segregation and told her about the problem. He wrote a Form 9 to Mr. Muckenthaler, which was answered; and he submitted a grievance, as that is the proper procedure. He still has a copy of these papers. Ms. Woldoc eventually got him cleaning supplies and toilet paper.

Following discussion, the Joint Committee recommended that Claim No. 6027 be denied.  
(See section captioned "Committee Action and Recommendation.")

Tyrone Lamar Staten summarized Claim No. 6051 by stating that he ordered tennis shoes while at Winfield Correctional Facility. He was sent to segregation to await transfer to El Dorado Correctional Facility. Upon arriving at the El Dorado facility, all of his property was there except his tennis shoes and a few miscellaneous insignificant items. There were two parts to his inventory sheet and this could be the reason for the mistake.

Libby Snider, KDOC, responded by stating the shoes were on the inventory that Mr. Staten signed, thereby showing the shoes were evidently returned to him. She recommended that the claim be denied.

Mr. Staten said again that there was a second inventory sheet, signed by Ms. Martinez. The shoes are missing and the second inventory sheet shows this.

The Chairperson told Mr. Staten the Committee did not receive a copy of the second inventory sheet. Mr. Staten said he would send it to the Committee.

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

At the request of the Department of Corrections, the Joint Committee recommended that Marc Showalter's Claim No. 6088 be carried over to the next meeting to allow the Department to complete its investigation.

Patrick L. Bartley summarized Claim No. 6091 by stating that he went to the shower and when he returned to his cell his fan no longer oscillated. He asked the officer if he had bothered the fan; the officer said he was looking for contraband in it. Mr. Bartley asked him if he would fix it. The officer tried to fix it, but could not.

Libby Snider, KDOC, responded by saying that the officer who was searching for contraband found that the fan had been altered. The back housing was loosened and screw caps to the electrical wires had been removed. The fan should have been confiscated at that time. She recommended that the claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6091 be denied. (See section captioned "Committee Action and Recommendation.")

At the request of the Department of Corrections, the Joint Committee recommended that James Gail Cody Crawford's Claim No. 6092 be carried over to the next meeting to allow the Department to complete its investigation.

At the request of the Department of Corrections, the Joint Committee recommended that Jeffrey S. Collier's Claim No. 6094 be carried over to the next meeting to allow the Department to complete its investigation.

Ricky Alan Cranford summarized Claim No. 6103 by stating that an officer left his cell door open while Mr. Cranford was at work. When he returned, he found that two of his four lockers, all of which had been securely locked, were broken open. The officer on duty made a report. Mr. Cranford made a property claim, which was denied. Three officers, Sargent Freeman and corporals Burghart and Zacharias, will all testify that when they came on shift they found cell doors opened, and other areas that are to be secured were unsecured. Mr. Cranford was not allowed to get their written statements.

Libby Snider, KDOC, responded by stating that locks are not to protect property, but to keep inmates in or out of secured areas and that personal property is owned at their own risk. Mr. Cranford was provided with lockers. If inmates are not satisfied with this security, they should not own personal property. Also, the receipts Mr Cranford provided are for consumable goods for the most part. They may or may not have been consumed by the time of the breach. She can look into the issue of Mr. Cranford not being allowed to get written statements from the officers. Ms. Snider recommended that this claim be denied.

Mr. Cranford stated that his receipts dating back to 2007 were for stocking up on toothpaste and soap, because he is never sure if he will have money for purchasing items when he needs them.

Following discussion, the Joint Committee recommended that Claim No. 6103 be denied. (See section captioned "Committee Action and Recommendation.")

Cindy Lash explained that Corey A. Simmons is requesting reconsideration of his Claim No. 6041. He was released from prison before the Committee heard his claim at the August meeting and was expecting a phone call from the Committee (based on the letter he received while incarcerated) to allow him to speak in his behalf. As a result, he was not at the meeting. The Committee denied his claim. He requests reconsideration of the claim to allow him to be present by telephone for discussion of the claim.

Following discussion, the Joint Committee recommended reconsideration of Claim No. 6041 at the December meeting. (See section captioned "Committee Action and Recommendation.")

Claim No. 6045 was submitted by Ronnie Davis. Cindy Lash summarized Mr. Davis' claim, in which he requests \$7.23 for reimbursement of the cost of sweat pants that were never returned to him from the laundry.

Libby Snider, KDOC, recommended that this claim be denied due to the fact that Mr. Davis still owes money on the purchase of the sweat pants.



Following discussion, the Joint Committee recommended that Claim No. 6045 be denied.  
(See section captioned "Committee Action and Recommendation.")

Jonnell Johnson appeared in front of the Committee and summarized Claim No. 6098. Upon entering Topeka Correctional Facility, she was supposed to be housed in minimum security. Instead she was placed in maximum security. A maximum security inmate attacked Ms. Johnson, breaking her nose, and causing her to almost lose her eye.

Libby Snider, KDOC, responded by saying that no complaint or personal injury claim was filed by Ms. Johnson. A use of force report from September 14, 2008, described an altercation between Ms. Johnson and another inmate, who was a maximum custody inmate. According to the report, both inmates threw punches. Both were taken into custody and charged with disciplinary violations, and both were found guilty. Ms. Johnson was treated immediately after the incident and her nose was described as "bleeding heavily and being pushed a little to the right." Based on everything Ms. Snider could find, it appears that Ms. Johnson was an active participant in the incident that led to her injury.

Ms. Snider mentioned that KDOC has the discretion to house inmates as it sees fit or necessary due to limited space. She recommended that this claim be denied.

A legislator asked about the discretion KDOC has in housing inmates. Ms. Snider responded that it has become a necessity of prison management for wardens to have this discretion. There are waiting lists for certain units as room becomes available in some Kansas prisons.

Ms. Johnson said there was room in minimum security space on the compound, so she should not have had to go to maximum security. As to the fight, she was defending herself from the antagonist. She said this is one of the reasons they let her out of segregation. The facility has the x-rays and medical reports showing the broken nose.

Committee members asked Ms. Snider to report back on whether there was available space in minimum custody housing when Ms. Johnson was admitted and the reasons for housing Ms. Johnson in maximum.

Following discussion, the Joint Committee recommended that Claim No. 6098 be carried over to the December meeting. (See section captioned "Committee Action and Recommendation.")

Charles Parker was called on the telephone regarding Claim No. 6079. Mr. Parker summarized his claim by stating that he was placed in segregation in Hutchinson Correctional Facility. As the doors closed, Mr. Parker's claustrophobia caused him to panic; he felt the walls closing in on him; he started hyperventilating, couldn't breathe, and started sweating. The mental health staff came to check on him each day for the three months he was in solitary confinement. Mr. Parker asked them every day if could get medication for the symptoms. He never received any medication. He is currently out of prison and continues to get mental health assistance. He is still not able to cope, even while on the medications that are prescribed for him. He is hoping to get better so that he can integrate back into society and hold down a job.

Libby Snider, KDOC, responded by saying that Mr. Parker did not include his inmate identification number nor the dates of the alleged incident, so KDOC was unable to investigate this claim. There are numerous former inmates by the name of Charles Parker who spent at least part of their sentence in Hutchinson Correctional Facility. Ms. Snider said she would be able to investigate this claim and respond at a future meeting if Mr. Parker would provide his inmate number.

Mr. Parker told Ms. Snider his inmate number was #55922.

Following discussion, the Joint Committee recommended that Claim No. 6079 be carried over to the December meeting. (See section captioned "Committee Action and Recommendation.")

Erick Smith appeared and summarized Claim No. 6078 by stating that he was working in the Hutchinson Correction Facility kitchen in June. There was a problem with the dishwasher. Because inmates were still coming in and they needed to continue washing dishes, they began washing them with a water hose. The floor flooded with water. While walking into the kitchen, Mr. Smith slipped and fell, hurting his back and his hip, and receiving a severe concussion. His supervisor sent him to the clinic. They took x-rays.

Mr. Smith was released in July. He has not been able to work at construction as he did previously due to the pain. He takes Ibuprofen 600 mg. and has been trying to get medical help. He applied for disability, but was turned down. He would rather have a job.

A legislator asked how his work skills had been diminished by this accident.

Mr. Smith explained that he used to construct concrete walls which he cannot now do, he cannot drywall anymore, he cannot do a lot of bending, he has constant migraine headaches, he cannot reach high or stand on his feet for hours on end, and he can no longer work 12 to 14 hours a day at construction jobs.

Libby Snider, KDOC, said the incident report regarding this incident stated the "why did this happen" as "not wearing the proper footwear that Aramark has available for this area." She said he was seen in the clinic immediately after this incident, was given Ibuprofen, and complained of pain in his lower back. She recommended the claim be denied as it was Mr. Smith's responsibility to wear the proper footwear and he was provided with immediate medical attention.

A Committee member discussed the contractual "hold harmless provision" between Aramark and KDOC, which requires Aramark to reimburse KDOC if the injury is due to Aramark's negligence for Mr. Smith not wearing the appropriate shoes. This is not a case where Mr. Smith continues to get medical care from the state, because he has been released. By Committee rules, the Committee should approach this claim through normal workers' compensation stipulations. There is no doubt the accident occurred and there was no negligence on Mr. Smith's part.

The Committee member recommended that Mr. Smith renew his efforts to hire an attorney and have that attorney provide the Committee with some medical documentation at its December.

Following discussion, the Joint Committee recommended that Claim No. 6078 be carried over to the December meeting. (See section captioned "Committee Action and Recommendation.")

At the request of the Department of Corrections, the Joint Committee recommended that Tom Lightsey's Claim No. 6083 be carried over to the next meeting to allow the Department to complete its investigation. (See section captioned "Committee Action and Recommendation.")

John J. Gillett, attorney for Patricia L. Short d/b/a Home Sweet Home Care, was present and summarized Claim No. 6065. Mr. Gillett reviewed the time line of Ms. Short's situation with regard to KDHE licensing and her certification application awaiting approval by the Centers for Medicare and Medicaid Services (CMS). He quoted part of a letter from CMS to Ms. Short. He reiterated that Ms. Short did not receive nor has KDHE, upon request by Mr. Gillett, provided a copy of any letter to Ms. Short reflecting that she had been advised that she had the option of having a private survey performed.

Patricia Short stated that she has, since the last meeting, received her Medicare provider number. She then had to apply for an EDI number. She has submitted billing to Medicare, but has not yet received payment.

Gregory Skinner, staff attorney, KDHE, said that "all applicants for initial surveys are provided a letter that explains the situation and the options of becoming certified by virtue of the survey being conducted by private accreditation organizations approved by CMS. That option of private accreditation was also in the form of an attachment to a letter that was alluded to by counsel that we sent on October 11, 2007, that had the attachment from CMS that talked about Tier IV priorities, which would be the tier in which her agency would fall into, that provided . . . the accreditation options, and that is the option that . . . she finally . . . took it upon herself to take . . . That letter was not specifically addressed to Ms. Short, so we couldn't produce a letter that says it went to Ms. Short, but actually it went out with every application for this kind of a survey."

Mr. Skinner noted that the letter KDHE sent to Ms. Short on October 11, 2007, stated that no survey could be conducted at that time, and she could request special consideration. This is a critical date, because Ms. Short did not meet all the requirements to be eligible for the survey until September 17, 2007.

With regard to Ms. Short's concerns about why CMS allowed her former partner to retain their provider number, he noted that CMS determined that "the transfer of ownership would result in the automatic assignment of the Medicare payment to the former partner without a break in certification, based in part on Ms. Short quit-claiming the property to her former partner. They figured same location, same facility, the number would just transfer."

He added that CMS did direct Ms. Short in February, 2008, to send copies of any letters concerning the results of her survey with "deemed status" by the Joint Commission to KDHE. The survey by the Joint Commission was conducted in June. On September 15, 2008, she was notified that her agency was approved for Medicare effective July 28, 2008. To this date, Ms. Short has not provided any copies of these items to KDHE. Therefore, the "results of Ms. Short's failure to be diligent in compliance with CMS's requirements in order to insure timely . . . approval process should not be attributed to this agency." KDHE recommends that this claim be denied.

After the November hearing, Mr. Gillett had asked Ms. Short if she had received any "boiler-plate" form letter saying that she could have a private survey performed. She could not find any such letter and never had received anything informing her of this. The only thing she found was information telling her that the state agency would be doing the survey which they never did.

Mr. Gillett noted the Committee might consider the claim to be for the \$150,000 that Ms. Short is out for services she performed prior to the July 28, 2008, date that Medicare began paying.

The Chairperson pointed out that the Committee can only find in favor of the state paying the claimant if it finds negligence on the part of KDHE.

Mr. Gillett stated that at no time did KDHE inform Ms. Short she had the option of a private company performing the survey that her home health care agency required.

A Committee member asked if it was the duty of the State to impart that information to Ms. Short. He asked if there is a statutory reference or administrative reference that puts that duty on KDHE.

Mr. Gillett responded that all the correspondence from the state agency told Ms. Short that they would be doing the survey, and she relied on that.

A Committee member asked Mr. Skinner (KDHE) if it is KDHE's responsibility to inform the applicants for certification that there are other options.

Mr. Skinner responded that one might contend that someone in the business should know what the options are, but further, in the letter KDHE sent Ms. Short on October 11, 2007, they attached a document from CMS that speaks to "Tier IV priorities and . . . accreditation options." He stated further that if she did not know what that meant, she could have inquired at that time.

A Committee member asked staff of Legislative Research to report back to the Committee on the number of initial surveys for new home health agencies conducted by private accrediting organizations both before and after KDHE stopped doing initial surveys.

Following discussion, the Joint Committee recommended that Claim No. 6065 be denied.  
(See section captioned "Committee Action and Recommendation.")

The meeting was adjourned at 4:20 p.m.

### **Thursday, November 13**

The Chairperson opened the telephone hearings on claims filed by inmates at Topeka Correctional Facility (TCF), Claim Nos. 6081, 6085, and 6102.

At the request of the Department of Corrections, the Joint Committee recommended that Jacqueline Hudson's Claim No. 5762 be carried over to the next meeting to allow the Department to complete its investigation.

Valerie Williams summarized Claim No. 6085 by saying she was illegally detained when KDOC denied conversion of her sentence. According to the sentencing grid, her case should have been converted. KDOC denied the conversion because she had an aggravated robbery conviction that was not convertible based on the grid. The other case was mandatory for conversion, however. Ms. Williams states that not converting this sentence caused her to be held for almost eight years longer than allowable.

Libby Snider, KDOC, stated that Ms. Williams was ineligible for conversion of her sentence due to her prior record of aggravated cases. It was not the severity level of the 1992 case that made her ineligible for conversion, but her criminal history. She did not fall within the nine-month window mentioned in KSA 21-4724, which applies to crimes committed on or after July 1, 1993. Her offense was committed in 1992. Ms. Williams argues that her sentence should not have been aggregated with the earlier case, but the regulations do require aggregation, because the offense was committed while she was on parole or post-release from the earlier case. She recommended this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6085 be denied.  
(See section captioned "Committee Action and Recommendation.")

At the request of the Department of Corrections, the Joint Committee recommended that Debbie Meyer's Claim No. 6102 be carried over to the next meeting to allow the Department to complete its investigation.

The Chairperson opened the telephone hearings on claims filed by inmates at Ellsworth Correctional Facility (ECF), Claim Nos. 6037, 6076, and 6087.

Following discussion, the Joint Committee recommended that John F. Francis' Claim No. 6037 be carried over to the December meeting. (See section captioned "Committee Action and Recommendation.")

Alan K. Copridge summarized Claim No. 6076 by stating that before his arrival at ECF, he was in El Dorado Correctional Facility, where he purchased ankle braces due to multiple ankle injuries. He has receipts.

The Chairperson noted that KDOC's recommendation was that he be paid the prorated amount of \$44.08 for the ankle braces.

Following discussion, the Joint Committee recommended that Claim No. 6076 be allowed for \$44.08. (See section captioned "Committee Action and Recommendation.")

At the request of the Department of Corrections, the Joint Committee recommended that John F. Francis' Claim No. 6087 be carried over to the next meeting to allow the Department to complete its investigation.

The Chairperson opened the telephone hearings on claims filed by inmates at Hutchinson Correctional Facility (HCF), Claim Nos. 6086 and 6099.

Ernest Luna summarized Claim No. 6086 by stating that he did not receive all of his property when he got out of the medical unit at El Dorado Correctional Facility. He said the officer had him sign the inventory sheet while the officer got Mr. Luna's property out of storage.

Libby Snider, KDOC, responded by stating all the property was in fact packed up, but some of the property was found to be disallowed property, at which time a property removal form was given to Mr. Luna. He was given a certain amount of time to respond, which he did not. The property that was disallowed was then destroyed. The inventory sheet signed by Mr. Luna reflects that he received his property. Ms. Snider recommended that this claim be denied.

Following discussion, the Joint Committee recommended that Claim No. 6086 be denied. (See section captioned "Committee Action and Recommendation.")

John E. Penn summarized Claim No. 6099 by stating that his sentences should not have been aggregated and run consecutively, but should have run concurrently.

Libby Snider, KDOC, responded that KSA 21-4608 requires a consecutive sentence for events while on parole. KAR 44-6-138 dictates that consecutive sentences are to be aggregated. That is what KDOC has done with these sentences. She recommended that this claim be denied.

Mr. Penn quoted KSA 21-4608 (c) to explain his perspective. He also explained *Barnett v. Harrison*, which ended in vacated sentences. He also said double jeopardy would apply.

Following discussion, the Joint Committee recommended that Claim No. 6099 be denied. (See section captioned "Committee Action and Recommendation.")

The Chairperson opened the telephone hearing on Claim No. 6093 filed by Larkin Richard Adams.

Mr. Adams was contacted by telephone and summarized Claim No. 6093 by explaining that he leases 533 acres of his land at \$6.50 per acre to hunters from Georgia. When the hunters arrived, they found that Kansas Department of Wildlife and Parks (KDWP) had posted 20 acres of Mr. Adams property as "Walk-in Hunting Area" (WIHA) and saw two tree stands. The hunters did not hunt on Mr. Adams property and went back to Georgia. Mr. Adams credited their money, \$3,464, to them toward the next year's hunting season. Upon notification, KDWP removed the signs.

Chris Tymeson, Chief Counsel, Kansas Department of Wildlife and Parks, responded by stating that Mr. Adams contacted them twice; once to tell KDWP that his land was misposted and the second time when his hunters left due to a sign on a tree and the two tree stands. KDWP offered to settle with Mr. Adams for \$500, which is ten times what they would have paid for WIHA property.

Mr. Adams stated that the \$500 was not adequate compensation for the monetary loss he experienced from the KDWP error. This piece of property had 149 acres on one side of Elk River and 88 acres on the other side of the river. The 20 acres posted kept the Georgia hunters from hunting, not just on this 237 acres, but from hunting on any of the 533 acres.

*Following discussion, the Joint Committee recommended that Claim No. 6093 be allowed in the amount of \$1,540.50. (See section captioned "Committee Action and Recommendation.")*

Cindy Lash summarized Lena Ferguson's Claim No. 5168 as she is not able to be located. Ms. Ferguson claimed Topeka Correctional Facility planned to move all medium custody inmates into a new area that was to have barbed-wire fence and stricter security. Previously, medium custody inmates were housed with minimum custody. White inmates and one black inmates in medium custody were reclassified to minimum custody, so they would not be subject to the stricter environment. She however would be, which has caused her severe mental anguish, which in turn caused her to be written up for disciplinary actions and caused her to lose her custody status and her level.

Libby Snider, KDOC, stated that Ms. Ferguson was never moved to the new unit from the central unit, and was not directly affected by any of the housing changes of which she complains. She recommended that this claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 5168 be denied. (See section captioned "Committee Action and Recommendation.")*

Susie Anna Monarrez summarized Claim No. 5761 by stating that she was to receive probation, but was incarcerated. They did reverse the fines.

Libby Snider, KDOC, stated that Ms. Monarrez' claim is that her criminal history of B placed her in presumptive prison when she should have been in presumptive probation. She did not explain how or why this was wrong or how it is KDOC's fault. She noted Ms. Monarrez objected to the imprisonment in court and the district court overruled the objection. She got reversal of fines in her appeal, but not a change in criminal history score. She claims mental anguish, but does not offer anything to substantiate any emotional damages as a result of what she claims is an illegal sentence. Ms. Snider recommended this claim be denied.

*Following discussion, the Joint Committee recommended that Claim No. 5761 be denied. (See section captioned "Committee Action and Recommendation.")*

Cindy Lash explained to the Committee that Gregory Spight requested in writing to withdraw Claim No. 5762.

Following discussion, the Joint Committee recommended that Claim No. 5762 be denied.  
(See section captioned "Committee Action and Recommendation.")

LaTrena Webb summarized Claim No. 6016 by stating that, after being released from TCF, she was reincarcerated due to a parole violation. Upon reincarceration, she was assigned to a top bunk. She explained to the facility staff that she has a bottom bunk order by medical determination due to diabetic seizures. They ignored her argument and she followed the directions she was given. During the night, she fell off the top bunk and received injuries resulting in loss of memory, hearing loss, and back pain.

Libby Snider, KDOC, responded by concurring with the information that she had previously had a bottom bunk restriction, but upon reincarceration was assigned a top bunk. She did fall from the top bunk and was sent to the emergency room and admitted. The hospital did a urinalysis which showed positive for amphetamines. She received appropriate care for the head injury. Her record of sick call shows that she presented a couple of times with headaches, but most of her sick calls were for other chronic conditions. There is no indication that there was any permanent damage. She was treated appropriately. Ms. Snider recommended that this claim be denied.

Committee members asked if it was determined at the hospital whether she had experienced a seizure causing the fall or not. Ms. Snider replied that she could look into this.

They also asked what the other chronic conditions were that Ms. Snider mentioned and if there were any other lasting conditions due to the injuries from the fall. Ms. Snider said she would have to look into records on these issues, as well. No names were mentioned by Ms. Webb pertaining to her admission, or with whom she spoke about the other parts of the time-line.

Members asked if the bottom bunk order information and the top bunk assignment issue were investigated, and, if so, whether the investigation showed that it happened as Ms. Webb stated.

Ms. Snider replied that her understanding was that Ms. Webb was admitted and assigned to a top bunk before she was able to get a new sick call, new orders and new evaluation for current needs. She does not know if the old medical restriction would have been applicable to a later readmission.

Committee members said that since Ms. Webb's medical issue was diabetes, which a person does not get over, it would seem that all the old medical restrictions should apply.

Members asked what time of day she was incarcerated. Ms. Webb stated that she arrived at night, showered, took her medication and went to bed. The next thing she knew was she woke up in the hospital.

Members asked if it was noted when she was processed that she should be on a bottom bunk. Ms. Webb answered affirmatively that the information was in her records on the computer.

Members asked how Ms. Webb came up with the \$100,000 figure and if it was just an arbitrary number. Ms. Webb agreed it was.

The Chairperson asked if KDOC had given Ms. Snider any direction or input as to how this case might be acknowledged, because mistakes were made. She replied that Shelly Starr had previously provided the recommendation. The Chairperson asked Ms. Snider to get back with KDOC to see how they feel the situation should be addressed.

Following discussion, the Joint Committee recommended that Claim No. 6016 be carried over to a future meeting. (See section captioned "Committee Action and Recommendation.")

The date of the next meeting was set for December 17th beginning at 9:30 a.m.

The meeting was adjourned at 10:55 a.m. In the afternoon, members toured Topeka Correctional Facility.

Prepared by Kathy Letch  
Edited by Cindy Lash

Approved by the Committee on:

December 17, 2008  
(Date)