

**REPORTS**  
OF  
Cases Argued and Determined  
IN THE  
**COURT of CLAIMS**  
OF THE  
STATE OF ILLINOIS

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**VOLUME 36**

Containing cases in which opinions were filed and  
orders of dismissal entered, without opinion  
for: Fiscal Year 1984 — July 1, 1983-June 30, 1984

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**SPRINGFIELD, ILLINOIS**  
**1985**

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# PREFACE

The opinions of the Court of Claims reported herein are published by authority of the provisions of Section 18 of the Court of Claims Act, Ill. Rev. Stat. 1983, ch. 37, par. 439.1 *et seq.*

The Court of Claims has exclusive jurisdiction to hear and determine the following matters: (a) all claims against the State of Illinois founded upon any law of the State, or upon any regulation thereunder by an executive or administrative officer or agency, other than claims arising under the Workers' Compensation Act or the Workers' Occupational Diseases Act, or claims for certain expenses in civil litigation. (b) all claims against the State founded upon any contract entered into with the State, (c) all claims against the State for time unjustly served in prisons of this State where the persons imprisoned shall receive a pardon from the Governor stating that such pardon is issued on the grounds of innocence of the crime for which they were imprisoned, (d) all claims against the State in cases sounding in tort, (e) all claims for recoupment made by the State against any Claimant, (f) certain claims to compel replacement of a lost or destroyed State warrant, (g) certain claims based on torts by escaped inmates of State institutions, (h) representation and indemnification cases, (i) all claims pursuant to the Law Enforcement Officers, Civil Defense Workers, Civil Air Patrol Members, Paramedics and Firemen Compensation Act, (j) all claims pursuant to the Illinois National Guardsman's and Naval Militiaman's Compensation Act, and (k) all claims pursuant to the Crime Victims Compensation Act.

A large number of claims contained in this volume have not been reported in full due to quantity and general similarity of content. These claims have been listed according to the type of claim or disposition. The categories they fall within include: claims dismissed without opinions, claims based on lapsed appropriations, claims for replacement of lost or expired warrants, State employees' back salary claims, prisoner and inmates-missing property claims, claims in which orders and opinions of denial were entered, Law Enforcement Officers, Civil Defense Workers, Civil Air Patrol Members, Paramedics and Firemen Compensation claims and certain claims based on the Crime Victims Compensation Act. However, any claim which is of the nature of any of the above categories, but which also may have value as precedent, has been reported in full.

## OFFICERS OF THE COURT

JOHN B. ROE, *Chief Justice*  
Rochelle, Illinois  
April 20, 1979—

S. J. HOLDERMAN, Judge  
Morris, Illinois  
March 10, 1970—

LEO F. POCH, Judge  
Chicago, Illinois  
June 22, 1977—

JAMES S. MONTANA, JR., Judge  
Chicago, Illinois  
November 1, 1983—

ANDREW RAUCCI, Judge  
Chicago, Illinois  
February 28, 1984—

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JIM EDGAR  
*Secretary of State and Ex Officio Clerk of the Court*  
January 5, 1981—

---

HARRY H. HALL  
Deputy Clerk and Director  
Springfield, Illinois  
October 15, 1981—December 31, 1983

CHLOANNE GREATHOUSE  
Deputy Clerk and Director  
Springfield, Illinois  
January 1, 1984—

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CASES ARGUED AND DETERMINED  
IN THE COURT OF CLAIMS  
OF THE STATE OF ILLINOIS  
REPORTED OPINIONS

FISCAL YEAR 1984

(July 1, 1983 through June 30, 1984)

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(Nos. 73-CC-0205, 73-CC-0206 cons.— Claimants awarded \$154,666.54.)

L. E. ALPORT & COMPANY and DOLAN LANDSCAPING, INC.,  
Claimants, v. THE STATE OF ILLINOIS, Respondent.

*Order filed September 22, 1983.*

COLLINS & AMOS, for Claimant L. E. Alport & Co.

KORNFELD & CAPLAN, for Claimant DOLAN LANDSCAPING, INC.

NEIL F. HARTIGAN, Attorney General (SAUL WEXLER, Special Assistant Attorney General, of counsel), for Respondent.

STIPULATIONS—*lawn-mowing contracts—awards allowed.* Awards granted on claims arising out of series of lawn-mowing contracts which were terminated at request of Attorney General, where parties executed stipulation after pretrial discovery and negotiations.

HOLDERMAN, J.

This consolidated cause arises out of a series of lawn-mowing contracts which the Claimants entered into with the Illinois Department of Transportation for the year 1972, which contracts were terminated at the request of the then Attorney General. Claimants thereupon filed the instant actions which were consolidated and to which the Respondent filed a counterclaim and affirmative defense.

Thereafter, the Court gave leave to the United States of America acting through the Internal Revenue Service, Fidelity and Deposit Company of Maryland, Illinois State Bank of Chicago, J. H. Slattery Co., and All Work, Inc., to intervene in this cause pursuant to section **26.1** of the Civil Practice Act (Ill. Rev. Stat. **1979**, ch. **110**, par. **26.1**), now codified as section **2-408** of the Illinois Code of Civil Procedure (Ill. Rev. Stat. **1981**, ch. **110**, par. **2-408**).

After extensive pretrial discovery the parties entered into a series of negotiations which culminated in a stipulation executed and tendered to the Honorable Joseph P. Griffin, commissioner of this Court, on August **22, 1983**. The commissioner has recommended that the stipulation settling the case be adopted, and after a thorough review of the record herein, we agree. Accordingly, the following awards are hereby entered:

**1. \$64,459.04** in favor of Claimants, L. E. Alport & Company and Dolan Landscaping, Inc., and their attorneys, in full satisfaction of the claims presented herein.

**2. \$48,128.50** in favor of the United States of America, provided that the funds for this award are disbursed prior to January **1, 1984**. If disbursement occurs after that date, then the United States will be entitled to interest thereon at the rate of 10% per annum, which interest will be deducted *pro rata* from the other awards herein, or otherwise as this Court may direct.

**3. \$6,480.00** in favor of Fidelity and Deposit Company of Maryland and its attorneys.

**4. \$28,732.00** in favor of Illinois State Bank of Chicago and its attorneys.

**5. \$5,647.00** in favor of J. H. Slattery d/b/a J. H. Slattery Company, and its attorneys.

6. \$1,220.00 in favor of All Work, Inc., and its attorney.

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(No. 74-CC-0623—Claimants awarded \$30,000.00.)

ROBERT E. SCHROEDER and JAMES C. SCHROEDER, d/b/a Schroeder Sign Company, a Co-Partnership, and PEARL IRENE SCHROEDER and THE FIRST NATIONAL BANK OF ELGIN, ILLINOIS, as Co-Trustees of the Estate of Ernest F. Schroeder, Claimants, o. THE STATE OF ILLINOIS, Respondent.

*Opinion filed February 16, 1984.*

GROMER, WITTENSTROM & STROM (WARREN STROM, of counsel), for Claimants.

NEIL F. HARTIGAN, Attorney General (JAMES A. KOCH, Assistant Attorney General, of counsel), for Respondent.

**STIPULATIONS—*stipulations not binding on court.*** The Court of Claims is not bound by stipulations, but where a stipulation appears 'reasonable and fair, there is no reason to question its validity or force the parties to take the time and expense of proving facts which are not in dispute.

**HOSPITALS AND INSTITUTIONS—*escaped inmate of State hospital—property damage—stipulation—claim awarded.*** Based on stipulation entered into by parties with full knowledge of facts and law, award was granted for property damage which occurred when escaped inmate of State hospital set fire to Claimants' business during escape.

HOLDERMAN, J.

This matter comes before the Court upon the joint stipulation of the parties, which states as follows:

1. That instant claim was brought as a tort under section 8(d) of the Court of Claims Act (Ill. Rev. Stat. 1981, ch. 37, par. 439.8(d)).

2. That instant claim arose from a fire set by Francis J. Osewski, resident at Elgin State Hospital, to the Claimants' real estate and damaging property belonging

to the Claimants' business after he escaped from the Respondent's custody.

**3.** The Claimants sought the statutory limit for tort claims of \$100,000.00:

**4.** The Respondent admits that Francis J. Osewski was an inmate at Elgin State Hospital and did in fact escape from said mental institution while in the custody of the Respondent.

**5.** The Respondent admits that the fire to the Claimants' business was started by Francis J. Osewski during his escape.

**6.** That after careful consideration of the issues and facts pertaining to the instant claim, as well as the potential time, preparation and expense of litigation and its possible outcome, the parties have agreed to settle the claim for the sum of \$30,000.00.

**7.** That this amount is offered by Respondent and accepted by Claimants as full, complete and final satisfaction of the instant claim or any other claim arising out of the incident in question.

**8.** That there are no disputes of fact or law between the parties.

**9.** That both parties waive hearing, the submission of evidence and the filing of briefs.

**10.** That both parties have entered into this stipulation with full knowledge of all facts and law relating to the claim, and feel that an award in the amount agreed upon is a fair and reasonable sum, and that the granting of such an award would be in the best interest of all concerned.

Although the Court is not bound by a stipulation such as this, it is also not desirous of interposing a

controversy where none appears to exist. As long as the stipulation appears reasonable and fair, we see no reason to question its validity or to force the parties to take the time and expense of proving facts which are not in dispute.

We find the stipulated facts to be sufficient to sustain a finding of liability on the part of Respondent and an award in the agreed amount.

Claimants are hereby awarded the amount of \$30,000.00 (thirty thousand dollars and no cents).

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(No. 75-CC-1102—Claimant awarded \$40,000.00.)

**SHARON A. SMITH, Claimant, v. THE STATE OF ILLINOIS,  
Respondent.**

*Opinion filed May 25, 1984.*

**TERRENCE E. LEONARD, for Claimant.**

**NEIL F. HARTIGAN, Attorney General (SAUL R. WEXLER, Assistant Attorney General, of counsel), for Respondent.**

**HIGHWAYS—flooded viaduct— State had constructive notice of dangerous condition.** State had constructive notice of dangerous condition resulting from flooded viaduct, where testimony established that condition had been recurring regularly after heavy rains for many years, and condition had existed long enough for State to have corrected condition or given proper warnings to public.

**NEGLIGENCE—automobile collision—flooded viaduct— State's negligent maintenance was proximate cause.** State's negligence in failing to repair viaduct which had history of being flooded after heavy rains or to give warning to public of dangerous condition was proximate cause of automobile collision which occurred when Claimant's vehicle was struck by other vehicle which went out of control and crossed into Claimant's lane of traffic after driving through flooded viaduct.

**PERSONAL INJURY—automobile collision—flooded viaduct—award granted.** Claimant was awarded \$40,000 where she sustained personal injuries when her vehicle was struck by vehicle which went out of control after driving through flooded viaduct and crossed into Claimant's lane of traffic.

ROE, C.J.

This is an action for personal injuries sustained by Claimant as a result of an automobile accident which occurred on June 16, 1973, at First Avenue approximately 150 feet south of Parkview Road, Riverside, Illinois.

The undisputed facts were that Claimant was operating a vehicle southbound on First Avenue and was struck by a northbound vehicle driven by Eleanor Jones who crossed the center line of First Avenue and entered into the southbound lanes of First Avenue, striking Claimant's vehicle. Claimant filed suit against Eleanor Jones and others and recovered insurance policy limits of \$10,000.00.

The issues in this case are (a) whether the State had notice of any dangerous condition of the roadway, (b) whether the State was negligent in its maintenance of the roadway, and (c) whether such negligence was the proximate cause of the Claimant's injuries.

Claimant testified that on the date in question at about 10:48 p.m. she was travelling in a southerly direction on First Avenue approaching a viaduct. The weather was rainy. She noticed an accumulation of water on the pavement in the vicinity of the viaduct. As Claimant proceeded toward the viaduct, the vehicle operated by Eleanor Jones came northbound through the underpass, hit water causing a large splash, changed lanes and fishtailed over the center line and struck Claimant's vehicle. Claimant's vehicle at all times was in the southbound lane of First Avenue.

Claimant testified further that whenever it rains, water accumulates under the viaduct.

John McCarthy and his son, Brian McCarthy, testified as post-occurrence witnesses that there was an

accumulation of water under the viaduct after heavy rains for years.

Claimant's husband also testified that for about eight years there had been water accumulations at that location every time there was a steady rain.

The investigating police officer of the Riverside Police Department, Joseph Kastner, testified that it was raining hard at the time of the accident but that he did not recall looking under the viaduct. Officer Robert Johnson recalled water covering at least the curb lanes of traffic for both north and southbound traffic on First Avenue at the underpass of the viaduct. Both officers agreed that after heavy rains there were accumulations of water under the viaduct, sometimes to the point where traffic would have to be rerouted. Sometimes police had been obliged to assist vehicles that had been stalled there because of the water.

Eleanor Jones, the driver of the other vehicle, testified, as a hostile witness, that there was standing water on the highway immediately prior to the accident and that on occasions prior to the accident the road had a lot of potholes. She denied any further recollection of the incident but did not deny that she had previously testified at a deposition in the lawsuit brought by Claimant against her that as she passed the viaduct there was a puddle of water that covered a hole where her right front wheel entered causing her to weave from the right hand lane and causing her car to go out of control. She had not seen the hole because of the water and a visit by her to the scene after the accident revealed a hole large enough for her right tire to go into. Her previous testimony was somewhat impeached by her prior statement to the investigating officers that water splashing on her ,wind-shield caused her to lose control of her vehicle.

As to the issue of notice of a dangerous condition, it is clear that the State had constructive notice of a flooding condition under that viaduct, a condition which had been recurring with regularity after heavy rains for many years. Thus, we find that the State had constructive notice of a dangerous condition for a long enough period to remedy the same or to warn the public of the condition.

On the question of whether the State was negligent, it is clear to this Court that allowing a flooding condition to continue to exist, without remedy or warning to the public, constitutes a failure to properly maintain the highway which is a breach of Respondent's duty and is negligence.

The question of whether that negligence was the proximate cause of the injuries to Claimant is more vexing.

Respondent claims that it is mere speculation that water caused or contributed to Jones losing control of her car, citing the fact that neither the investigating officer nor the condition witnesses were able to state whether there was a significant water accumulation on the evening in question. However, in view of Claimant's testimony that the Jones car veered after a splash and in view of Jones' previous testimony to the same effect, and no contrary testimony brought by Respondent, we find as fact that the accumulation of water caused the Jones vehicle to strike Claimant's vehicle.

Respondent argues that the sole or intervening proximate cause of the accident was Jones' negligence in entering an area where she knew potholes existed, citing *Dellorto v. State* (1979), 32 Ill. Ct. Cl. 435, and *Storen v. City of Chicago* (1940), 373 Ill. 530, 27 N.E.2d 53, as authority for the proposition that the Respondent is not

liable for merely creating a condition which makes an injury possible.

The *Dellorto, supra*, case is not applicable because that case concerned a rut in the shoulder of the road. A driver hit this rut, lost control of his car and killed the claimant. In view of the fact that the driver had to leave the road in order to strike the rut, it was clear to the Court that the driver and not the condition of the roadway was the sole proximate cause of the accident.

In the case at bar, there is no evidence in the record of any intervening negligence on the part of Jones. Thus, in the instant case, it was the dangerous condition itself which was the sole proximate cause of the accident and resultant injuries to Claimant.

Since the evidence showed Claimant was not guilty of any negligence at all, any questions of whether contributory or comparative negligence is applicable to this case are moot.

As a result of the accident Claimant was hospitalized at Foster McGaw Hospital for 55 days with multiple injuries including a fracture of the right olecranon; fracture of the right fibula; central dislocation of the left hip; fracture of the pubic rami; and multiple facial lacerations. She underwent the surgical procedures of open reductions of the right hip with insertion of rod, wire and dowel pin in the hip; open reduction of the right elbow and a wiring together of bone fragments. Her doctor and hospital bills amounted to **\$6,934.00**.

She had been employed part-time at \$75.00 per week and lost eight months from work, for a total lost earnings of \$2,600.00.

As a result of her injuries, Claimant will permanently lack **30** degrees full extension of the elbow and **20**

degrees full flexion of the elbow. There is a strong possibility of traumatic arthritis of the left hip in the future. Her surgical scars are permanent. At present, on occasion, she walks with a limp.

We find Claimant's damages to be \$50,000.00. Setting off \$10,000.00 already received from Eleanor Jones, her net is \$40,000.00. For the reasons set forth hereinabove, it is hereby ordered that the Claimant be, and hereby is, awarded the sum of \$40,000.00 in full and final satisfaction of this cause of action.

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(No. 76-CC-1400—Claim denied.)

**JOYCE EDWARDS**, Individually and as Administratrix of the Estate of Chester Edwards, Deceased, and **EVELYN EDWARDS**, **DAVID EDWARDS** and **JOHN EDWARDS**, minors, by their mother, and next friend, Joyce Edwards, Claimants, *v.* **THE STATE OF ILLINOIS**, Respondent.

*Opinion filed January 11, 1984.*

*Order on denial of rehearing filed April 3, 1984.*

**BRADLEY, BRADLEY & NEDERMAN**, for Claimants.

**NEIL F. HARTIGAN**, Attorney General (**JAMES A. KOCH**, Assistant Attorney General, of counsel), for Respondent.

**HIGHWAYS**—*state is not insurer of persons traveling on its highways.*

**NEGLIGENCE**—*Claimant's burden of proof.* Claimant must prove by preponderance of evidence that State breached duty of reasonable care and that negligence flowing from breach proximately caused Claimant's injury.

**HIGHWAYS**—*automobile collision—death—State had no notice of highway defect—claim denied.* Claim for death in automobile collision which was allegedly caused by drop-off between paved portion of highway and shoulder was denied where evidence was conflicting as to whether decedent lost control of his vehicle, crossed lane, and struck oncoming vehicle because of drop-off or because of decedent's own negligence, and record was devoid

of any evidence that State had actual or constructive notice of alleged defect in roadway.

**HOLDERMAN, J.**

This is a claim brought by Joyce Edwards against the State of Illinois for damages resulting from an automobile accident which occurred on July 11, 1974, at 8:55 p.m., which resulted in the death of her husband, Clarence Edwards. The accident occurred on Illinois Route 132, approximately three-tenths of a mile east of Deep Lake Road in Lake Villa Township, Lake County, Illinois. The vehicle that Claimant's decedent was operating left the paved portion of the highway onto a gravel shoulder, subsequently re-entered the highway, and collided with a vehicle traveling in the opposite direction.

It is Claimant's contention that her husband's death was caused by the State's negligence in designing and maintaining the highway area in question. Specifically, Claimant contends the State was negligent in allowing the existence of a three- to four-inch drop-off between the paved roadway and the gravel shoulder which allegedly caused Edwards to lose control of his vehicle. The State was also negligent, it is contended, by failing to post a speed limit lower than 55 miles per hour, by failing to post "no passing" signs, by failing to maintain adequate lane width, and by failing to provide adequate street lighting. Claimant seeks damages in the amount of \$100,000 for funeral and burial expenses, as well as loss of support for herself and her three minor children.

Both parties in this case have devoted considerable time to the question of whether or not there did in fact exist a drop-off as claimed at the point where the Edwards vehicle first left the roadway, and if so, whether it gives rise to negligence by the State. It is Claimant's contention that the drop-off was considerable and this

caused the decedent to lose control of his vehicle, resulting in his death.

The evidence discloses the decedent had met his brother-in-law, Scott York, at a riding and boarding stable located immediately south of Route **132**, a highway which runs in an east-west direction, at and near the accident site. Edwards as the driver, with York as his passenger, left the stables in Edwards' vehicle and entered Route **132** via the stable entrance near the top of a hill located approximately three-tenths of a mile west of a newly paved section of highway. The Edwards vehicle proceeded east down the hill and onto the newly paved section where the drop-off allegedly existed. Immediately east of the newly paved section, there is another hill. At some point during this short trip, Edwards left the roadway, lost control of his car, and had the fatal collision.

The accident was witnessed by two individuals, Scott York, the passenger in the decedent's vehicle, and George Davison, the driver of the other vehicle involved in the collision. It is their testimony that is crucial to the resolution of this case. Their versions of the accident differ substantially as to the location where Edwards first lost control as well as the manner by which he did so.

Scott York testified that the vehicle in which he was a passenger and which was operated by Mr. Edwards was proceeding down the hill west of the newly paved portion of the highway. He testified there were about six vehicles proceeding from the other direction, and suddenly one of these cars began passing and was therefore in Edwards' lane of travel. At the shoulder of the road located at the bottom of the hill where the newly paved portion, and alleged four-inch drop-off began, Edwards

pulled onto the shoulder to avoid a head-on collision with the passing vehicle. York further testified that Edwards' car immediately began jerking back and forth, went into a slide, re-entered the roadway, and the accident occurred. His testimony was from the time the car first left the road and until the collision, Edwards was "fighting the wheel." York concluded that it was the drop-off that caused Edwards to lose control of his car.

On cross-examination, York was confronted with his testimony given at his deposition during which he testified the Edwards car was going down the hill, that a black car was coming towards them in the opposite direction, and at this point he closed his eyes and put his head down. He stated he remembered nothing after that. He admitted there was no drop-off or other defect on the hill and that the Edwards car could have left the roadway on the hill and not on the newly paved portion of the highway at the bottom of the hill. He further stated that the Edwards car could have left the roadway more than one time prior to the collision.

George Davison testified he was traveling westbound on Route **132** at the time of the accident. He was proceeding rather slowly in his pickup truck since he was carrying a large load of shingles. He was followed by several vehicles before he reached the top of the hill lying east of the newly paved portion of highway and that a vehicle did pass him at a high rate of speed and proceeded west down the hill. When Davison reached the top of the east hill, he observed the Edwards vehicle travel across the top of the west hill at a high rate of speed. At this point, there was no traffic between the Edwards and Davis vehicles. The car that had earlier passed Davison was now out of sight and therefore beyond the Edwards vehicle.

Davison testified the Edwards car first left the roadway at a point on the west hill and substantially away from the newly paved area, the point where York stated the car entered the shoulder and its drop-off. Davison further testified the Edwards car was traveling down the hill at a high rate of speed, moving erratically and swerving on and off the road. After it re-entered the highway for the third time, it collided with the Davison vehicle head-on in Davison's lane of travel.

At the point of impact, Davison had slowed his vehicle considerably and moved far to his right because, according to Davison, he was concerned that Edwards was driving on and off the road, making no apparent effort to slow his vehicle down. He further testified there was 1800 feet from the top of the west hill where Davison first observed Edwards drive off the roadway to the point of impact, which did in fact occur on the newly paved portion of the highway lying between the two hills.

It appears, therefore, that the accident was caused by the negligence of Edwards himself. It further appears from the testimony of Davison that Edwards did not leave the road, at least initially, at the drop-off point as claimed by York, whose testimony on this point was substantially impeached by his own words.

In light of Davison's testimony regarding the high speeds and erratic movement of the Edwards car for some 1800 feet, it is clear that the drop-off was not the cause of the collision but instead this accident was caused by Edwards' own negligence. The driver of a vehicle that leaves the roadway and enters a lower shoulder is under a duty to take certain steps to safely remove himself from the situation. Edwards clearly did not take reasonable steps to correct the problem in which

he found himself. The State cannot be held responsible under these circumstances based upon the evidence produced at the trial. See *Sommer v. State* (1952), 21 Ill. Ct. C1.259; *Lee v. State* (1964), 25 Ill. Ct. C1.29; *Alsup v. State* (1976), 31 Ill. Ct. Cl. 315; *Hill v. State* (1978), 32 Ill. Ct. Cl. 482.

This Court has repeatedly held that the State is not an insurer of all persons traveling upon its highways. See *Bloom v. State* (1957), 22 Ill. Ct. Cl. 582.

The Court has also laid down the rule that Claimant must prove by a preponderance of the evidence that the State breached its duty of reasonable care and that the negligence flowing from the breach proximately caused Claimant's injury. See *Brockman v. State* (1975), 31 Ill. Ct. Cl. 53; *Laine v. State* (1977), 32 Ill. Ct. Cl. 10.

There is further evidence in the record that the drop-off was comparatively minor. Within five to seven days after the accident, Davison was released from the hospital and returned to the scene of the accident. He measured the distance between the point of impact and the spot where the car driven by Edwards first left the roadway. It was nearly 1800 feet. He testified that there was no drop-off between the roadway and the shoulder at and near the point of impact and along the new asphalt patch. He stated at a point of about 100 to 200 feet from the crest of this hill, a slight drop-off of between two and four inches was found.

The pickup truck that Davison was driving was struck with such force that it caved in the front end of the truck, caused the steering column to be driven almost up to the roof of the cab nearly to the back window, the shingles in the back caved in the back wall of the cab, and the collision broke the back of the pickup truck.

The record is devoid of any evidence to the effect that the State had actual or constructive notice of the alleged defect in the roadway where the accident occurred. The State, in this instance, did not have either actual or constructive notice of any condition that would show it was the proximate cause of the accident.

Claimant having failed to prove the accident was caused by the negligence of the State and the evidence indicating that the cause of the accident was from the acts of decedent, award is hereby denied. Case dismissed.

#### ORDER ON DENIAL OF REHEARING

HOLDERMAN, J

This matter comes before the Court upon petition of Claimants for rehearing and Respondent's response to said petition.

Claimants' petition sets forth, among other things, that the Court ignored the comparative negligence rules of the State of Illinois. The Court did not ignore said rules but was of the opinion there was not any negligence on the part of the Respondent.

It is hereby ordered that the petition of Claimants for rehearing be, and the same is, denied, and the Court's original decision is affirmed.

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(No. 76-CC-1788—Claim dismissed.)

**JAMES H. MESKIMEN and PHYLLIS MESKIMEN, Claimants, v. THE DEPARTMENT OF TRANSPORTATION OF THE STATE OF ILLINOIS, Respondent.**

*Opinion filed August 29, 1983.*

F. DON KELLY, for Claimants.

NEIL F. HARTIGAN, Attorney General (WILLIAM E. WEBBER, Assistant Attorney General, of counsel), for Respondent.

*NEGLIGENCE—burden of proof—Structural Work Act claim.* Before civil liability can arise under Structural Work Act, Claimant must prove both that Respondent was in charge of work and that Respondent committed a wilful violation of the Act.

*SAME—claim under Structural Work Act denied.* Claim under Structural Work Act for injury sustained when Claimant slipped on ladder was denied, as evidence established that Claimant was working as employee of contractor hired by State to build bridge, inspectors on the site were Federal inspectors, and the record was devoid of any showing that any complaints had been made regarding any violations of the Structural Work Act, and therefore Claimant failed to meet the burden of proof necessary to establish liability under the Act.

HOLDERMAN, J.

This is a claim against the State of Illinois as the result of the Claimant's foot **slipping** on a ladder. It is being brought under the Structural Work Act. Claimant is basically alleging violation of the Structural Work Act because of the manner in which the ladder on which Claimant was injured was constructed.

It appears that the accident involved occurred on May 3, 1975, at about 11:45 a.m. on a construction project known as 1-474 bypass bridge in Bartonville, County of Peoria, State of Illinois. Claimant was working on said project as an employee of S. J. Groves & Sons Company, and Claimant's employer was hired by Respondent to aid in the erection and construction of said bridge. Claimant was injured while attempting to descend a ladder on said job. Mr. Meskimen was an operating engineer out of Peoria Local 649 and had worked out of this local about 20 years. He was sent to the 1-474 project by the union for the purpose of running the watering system. On the date in question, Claimant descended a ladder to the area of one of the pumps, the pump being about nine feet below ground level. The ladder was

resting at the top against a dirt wall and had been in the same position for as long as Mr. Meskimen had been on the job. The construction of the ladder had not been changed nor had it been replaced by another ladder during the time Mr. Meskimen had worked there. Mr. Meskimen further stated that he would go up and down the ladder at least 12 to 14 times a day. The ladder was described as having had a hand rail with the rungs being constructed by 1 x 4 lumber. As Mr. Meskimen got to the bottom rung of the ladder and started to get off, his left foot slipped off the rung and got caught between the rail and the dirt wall and he then fell sideways. The rung of the ladder did not break.

There is some controversy as to the position of the bottom of the ladder in reference to the wall of the pit in which it was being used. It appears from reading the testimony of the various witnesses that the bottom of the ladder was approximately one foot away from the side wall. In view of the fact the pit was about nine feet deep, the bottom of the ladder had to be some distance from the wall or it would have a tendency to fall backward. There was no evidence of any kind or character to indicate this was the case.

The evidence is clear that Claimant had used this ladder ever since he first started working on this job and had used it many times a day. He was therefore familiar with the position of the ladder and the condition of the pit in which it was placed.

There is no question that Claimant suffered a severe injury. This is emphasized by the fact that he received a favorable decision under the Illinois Workmen's Compensation Act.

Claimant testified that the ladder in question was constructed with 2 x 4 siderails with 1 x 4 rungs and a

handrail. He further testified it had been raining as he descended the ladder and when he got to the bottom, his foot slipped and he fell, sticking his leg between the ladder and the embankment, and he fell to the side injuring his leg. He testified he came down the ladder backwards hanging onto the rungs of the ladder.

It is Respondent's contention that there are two issues involved in this case, the first being whether the State of Illinois, as the owner of the bridge, was in the position of "having charge of the project" as envisioned by the statute, and the second being whether the ladder in question was "erected and constructed in the safe, suitable and proper manner" as required by the Act.

It is Respondent's position that Respondent was not in charge of the project as envisioned by the statute and further that the record fails to show there was anything wrong with the ladder in question or that the State committed any wilful violation.

The evidence shows it had been raining on the day in question and that the bottom of the pit was muddy. Claimant testified he had cleaned his shoes with a screwdriver and the mud was already drying. The record is abundantly clear that the ladder in question had been used many times by Claimant who was thoroughly familiar with its position and the area where the accident occurred. The record also shows that a considerable number of individuals had used this ladder every day and the record is devoid of any evidence that any complaints had been made by anyone that the ladder was dangerous or did not conform to the Act.

Respondent argues very strongly that the record indicates that the control exercised by Respondent was directed solely to the quality of the product to assure that the end product would meet the engineering speci-

cations spelled out in the contract documents. Respondent was also concerned not with *how* the result was achieved but only with the quality of the result.

Before Claimant can recover, he must prove that the Respondent was in charge of the work and committed a wilful or actual violation of said Act.

“Thus, before civil liability can arise under the act, the plaintiff must prove both that the defendant was in charge of the work and committed a wilful violation.” *Smith v. Georgia Pacific Corp.* (1980), 86 Ill. App. 3d 391,395-96.

“The plaintiff, however, must establish an actual violation of the act before he can recover.” *Zizzo v. Ben Pelin Corp.* (1979), 79 Ill. App. 3d 386, 393.

The record discloses that there were OSHA inspectors on the job and that the inspectors were Federal inspectors and not State inspectors. The record is devoid of any showing that any complaints had been made to the inspectors regarding any so-called violations of the Act.

It is the Court’s opinion that while this accident was unfortunate, Claimant has not met the proof required to establish liability on the part of Respondent.

Award is denied and this cause is dismissed.

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(No. 76-CC-2240—Claim denied.)

ROBERT MCKINNEY and ROXIE MCKINNEY, Claimants, *v.* THE STATE OF ILLINOIS, Respondent.

*Opinion filed October 31, 1983.*

ROBERT MCKINNEY and ROXIE MCKINNEY, *pro se*, for Claimants.

NEIL F. HARTIGAN, Attorney General (WILLIAM E. WEBBER, Assistant Attorney General, of counsel), for Respondent.

*DAMAGES—inaccurate truck license information—no damages proven—claim denied.* Claimants alleged that they lost profits when their truck was impounded after an arrest for operating with a “trip permit” which was used on the basis of inaccurate information supplied by employees of the Secretary of State, but their claim for lost profits was denied in the absence of any evidence as to the exact amount of lost profits.

ROE, C.J.

The Claimants, Robert McKinney and Roxie McKinney, brought this action to recover damages allegedly sustained due to actions attributed to the Respondent. A hearing was held before Commissioner Robert J. Hillebrand, who heard testimony offered by both parties.

The incident complained of occurred on September **24, 1974**. The Claimants, residents of Illinois, owned and operated a trucking business with a business address in St. Louis, Missouri. Claimants allege that when they requested from the local office of the Illinois Secretary of State information as to what kind of license plates they needed for their truck, which was operating in Illinois, they were told they could use “trip permits”. (See section **3—403** of the Illinois Vehicle Code (Ill. Rev. Stat. **1973**, ch. **95½**, par. **3—403**.) They were arrested while using such a permit on the truck because they, as owners of the truck and business, were in fact residents of Illinois. See Ill. Rev. Stat. **1973**, ch. **95½**, par. **3—402B**.

Claimants allege they lost income from their truck when it was impounded after the arrest, and this resulted from the failure of the Secretary of State’s employees to give accurate information.

Only Claimant Roxie McKinney testified on Claimants’ behalf at the hearing before the commissioner. Her testimony as to damages follows:

“Q. (Commissioner): You said here in your complaint that because of the impoundment of your trucks, you lost some money?

A. Yes. I figure.

- Q. (Commissioner): What do you have to prove that?
- A. I don't have anything to prove it. We just could have worked those days.
- Q. (Commissioner): **How** do you know that?
- A. It didn't rain and everybody worked everyday from that day on.
- Q. (Commissioner): **How** many days were you down?
- A. I would say roughly thirty days.
- Q. (Commissioner): Thirty working days or thirty days altogether?
- A. Not working days. It would be probably twenty, twenty-five working days. They were out there about a month, so I figured—
- Q. (Commissioner): How long had you been working at this job?
- A. I don't remember.
- Q. (Commissioner): I mean before the impoundment, how long **up** to that time?
- A. A week or two, maybe a month.
- Q. (Commissioner): And how much were you earning?
- A. We were making \$25.00 an hour.
- Q. (Commissioner): **Your** complaint here, or the claim you filed, says you were making \$16.00 an hour.
- A. No. I believe it was twenty-five.
- Q. (Commissioner): Do you have anything to indicate, any document to show what you were earning?
- A. No.
- Q. (Commissioner): How many hours were you working?
- A. Eight hours a day.
- Q. (Commissioner): What were your expenses? I mean all of that is not net income to you. **You** had expenses?
- A. Yes. Gas, oil, fix flats and pay a driver.
- Q. (Commissioner): Do you have any idea how much you were earning clear a day?
- A. **No.**
- Q. (Commissioner): None at all?
- A. No. At least it would be a little more or less, depending on if you had a flat **or** a breakdown or how much gas. Sometimes you use more **gas** and sometimes you use less gas, depending on how many trips you made."

Furthermore, testimony by both the Claimant and the State of Illinois indicated that the Claimant could have had the truck released the next day if the Claimant

had simply applied for a proper license plate. According to Claimant's testimony, however, Claimant waited three weeks before mailing an application for new license plates.

According to Illinois law, if there is no evidence as to the exact amount of profit and overhead and no evidence is presented to prove the specific components of the overhead and expenses, a court will not grant an award for lost profits. (*F. E. Holmes & Son Construction Co. v. Gualdoni Electrical Service, Inc.* (1982), 105 Ill. App. 3d 1135, 435 N.E.2d 724.) Therefore, since Claimants have failed to prove any damages, an essential element of their claim, it is not necessary to decide whether Respondent was negligent or guilty of any action which would allow Claimants to recover. (It is difficult to ascertain from the pleadings the theory upon which Claimants base their claim.) An award cannot be granted unless there are damages proven.

Assuming, without deciding, that Claimants have stated a theory upon which relief could be granted, this Court orders, based on the foregoing, that this claim be, and hereby is, denied.

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(No. 76-CC-2599—Claim denied.)

**LUCILLE CATALDO, ROSEANNE GARRITANO, MARY LOU VIVACQUA,**  
and **CONCETTA LENTI**, Claimants, *v.* **THE STATE OF ILLINOIS**,  
Respondent.

*Opinion filed June 15, 1983.*

*Order on denial of reconsideration filed September 19, 1983.*

**SANDMAN & LEVY (STEWART M. ZELMAR, of counsel),**  
for Claimants. .

NEIL F. HARTIGAN, Attorney General (KEVIN J. CAPLIS, Assistant Attorney General, of counsel), for Respondent.

**HIGHWAYS—Claimant's burden of proof—dangerous condition.** In action arising from injury allegedly caused by dangerous condition of highway, Claimant must prove State had either actual or constructive knowledge of condition, that proximate cause of injury was State's failure to remedy condition, and that Claimant was free from contributory negligence.

**SAME—State's duty to maintain highways.** State has duty to public to use reasonable care in maintaining highways under its control.

**SAME—blown tire—defective manhole cover—claim denied.** Claimant failed to sustain burden of proving that State had actual or constructive knowledge of defective manhole cover which caused tire blowout on Claimant's vehicle and resulted in accident which caused injuries to passengers in vehicle, and therefore claim was denied.

**HOLDERMAN, J.**

This is a claim filed as a result of a one-car automobile accident which occurred on May 9, 1976, at 127th Street West and Kedzie in Blue Island, Illinois.

Claimants allege that the proximate cause of the accident was a defective manhole cover which caused a tire blowout to the car involved. Claimant Cataldo was the driver of the vehicle involved in the accident. She testified that at approximately 9:00 p.m. on May 9, 1976, she was driving her automobile in a westerly direction on 127th Street in the right hand lane about one and one-half feet from the curb. The weather was clear and dry. She was familiar with the area and it was well lit. Shortly after she crossed Kedzie Avenue, she heard a noise, a thud on the right rear side of her car, and the car went out of control. Her vehicle swerved to the left and right and travelled approximately 40 feet after the thump was heard. The car was brought to a stop without colliding with any other object. After stopping, the driver walked back behind her vehicle and saw an open manhole cover with part of the cement rim missing. In her discovery deposition, Claimant indicated she saw no cracks or

depressions around the hole. There was no property damage other than a flat tire to her right rear wheel.

While approaching the scene of the accident, Claimant testified she noticed nothing unusual about the manhole cover and that she had passed the area previously and noticed nothing out of the ordinary in the area. Neither she nor any of the other Claimants knew how long the alleged defect had existed.

The other Claimants were passengers in the vehicle at the time the accident occurred. They all had claims for alleged injuries suffered in the accident and they testified to the fact that previous to the day in question, they had no occasion to complain about the manhole cover.

Respondent offered no evidence except a departmental report which was to the effect that there had been no previous complaints about this particular manhole cover. There is no evidence showing Respondent had previous knowledge of any defect in said manhole cover.

All of the testimony of Claimants as to obvious defects in the manhole cover was impeached by Claimants' discovery depositions and it is apparent the State did not have either actual or constructive knowledge of the alleged defect.

This Court has consistently held that the claimant must prove the State had either actual or constructive knowledge of the dangerous condition which caused the accident complained of, that the proximate cause of the accident was the failure of the State to remedy the dangerous condition, and that claimant was free from contributory negligence. See *Container Transit, Inc. v. State* (1979), 33 Ill. Ct. Cl. 225, 226.

This Court has held on many occasions that the State

is not an insurer of the conditions of the highways under its control but does have a duty to the public to use reasonable care in maintaining its roadways.

In view of the fact the State did not have either actual or constructive knowledge of the dangerous condition which allegedly caused the accident, Claimants have failed to prove liability on the part of Respondent.

Claim denied.

### ORDER ON DENIAL OF RECONSIDERATION

**HOLDERMAN, J.**

This matter comes before the Court upon motion of Claimants for reconsideration of the Court's order heretofore entered.

It is hereby ordered that Claimants' motion for reconsideration be, and the same is, denied, and this caused is dismissed.

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(No. 77-CC-0521—Claimants awarded \$7,108.68.)

**JAMES R. POTTER and THOMAS F. LONDRIGAN, Claimants, v. THE STATE OF ILLINOIS, Respondent.**

*Opinion filed November 8, 1983.*

**LONDRIGAN & POTTER, for Claimants.**

**NEIL F. HARTIGAN, Attorney General (WILLIAM WEBBER, Assistant Attorney General, of counsel), for Respondent.**

*ATTORNEY GENERAL—when Special Assistant Attorney General may be appointed. A court may appoint special counsel in place of the Attorney General whenever the Attorney General is interested in any cause or proceeding, civil or criminal, which it is or may be his duty to prosecute or defend.*

**ATTORNEY FEES—outside counsel for State department—fees allowed.** Reasonable compensation was allowed from State for services provided by outside counsel retained by Illinois Department of General Services to prosecute suit seeking to enjoin Attorney General from interfering with Department's hiring of outside legal services in telephone rate increase proceedings, as Attorney General was named party to suit.

**ATTORNEY GENERAL—Attorney General is sole officer entitled to represent State in administrative reviews.** Illinois Constitution of 1970 provides Attorney General shall be legal officer of State, and this provision has been held to mean that Attorney General is sole officer entitled to represent State in administrative reviews, and any legal representative of State agency before any administrative review board not authorized by Attorney General's Office is in violation of law.

**SAME—conflicting State agencies may be represented by Attorney General.**

**ATTORNEY FEES—illegal appointment of outside counsel—fees denied.** Attorney fees for outside counsel representing Department of General Services in telephone rate increase proceedings were denied, as evidence established that outside counsel was appointed without allowing Attorney General to evaluate whether a potential conflict existed which would warrant appointment of outside counsel.

**CONTRACTS—absent State authority to contract, claim will be denied.** When services are rendered at instance of persons mistakenly purporting to have State authority to contract, claims for compensation will be denied, no matter how unjust, as those dealing with State are presumed to know law and deal at their own peril when they go beyond limitations of law.

## **HOLDERMAN, J.**

James R. Potter and Thomas F. Londrigan bring this claim for attorney fees alleged to be due Claimants for services rendered to the State of Illinois Department of General Services (hereinafter called DGS).

In September of 1973, DGS was preparing to challenge Illinois Bell Telephone's request for a rate increase in proceedings before the Illinois Commerce Commission. DGS had been granted leave to intervene in the proceedings because the State of Illinois is a consumer of telephone services and the increase, if granted, would have increased State expenditures for telephone service by \$3 million. The Director of DGS, Roland Burris,

believed that in proceedings of such magnitude, the Department would be best served if it was represented by an attorney. He therefore contacted the Claimant James Potter to discuss the matter.

On September 5, 1975, Kenneth Whitney, Chief Counsel for DGS, sent the following letter to William I. Goldberg, Chief Counsel to the Governor:

“Dear Mr. Goldberg:

Director Burris suggested that I send to you for approval the enclosed letter addressed to Attorney General Scott.

As you are aware, we have retained Mr. Potter to represent us in the Illinois Bell Telephone Company rate case (Illinois Commerce Commission, Docket No. 59666).

Mr. Potter is to be paid at the hourly rate of \$55.00, and reimbursed for incidental expenses, including, but not limited to, travel and accommodations.

If the letter meets with your approval, please forward to the Attorney General. If not, please advise.

Very truly yours,

Kenneth A. Whitney  
 . Chief Counsel

KAW:mjl  
 Enclosure”

Goldberg replied by writing the following advice on the original letter, which he then sent to Whitney:

“He (Potter) does not need to be appointed to represent (the) Department in (an) administrative proceedings. Arrangement is fine.”

Goldberg also enclosed copies of correspondence between Thomas Murphy, Director of the Illinois Liquor Control Commission, and Bernard Genis of the Attorney General’s Office, dated July 7, 1975, in which Mr. Genis states:

“It is the policy of this office to avoid any and all situations where a conflict of interest may arise. This would come about in situations where, as here, two state agencies are adverse or may take an adverse position in a particular matter. Since we are also the attorneys for the Fair Employment Practices Commission which may take an adverse position to yours in this matter, we must decline your request for representation herein.

Moreover, we will decline to represent either agency herein unless, and until their positions are compatible, as on administrative review, should it occur.”

Goldberg believed that these comments were relevant, since the Attorney General’s Office is required by statute to represent the Illinois Commerce Commission.

There is no evidence that Goldberg had ever been in contact with the Attorney General’s Office regarding the appointment of Potter, nor is there any evidence that DGS had been in contact with the Attorney General’s Office regarding the appointment of Potter. Potter did not contact the Attorney General’s Office and the Attorney General’s Office was never apprised of a potential conflict.

On September **24, 1975**, Burrell sent Potter a letter confirming the oral agreement to pay Potter **\$55.00** per hour, plus expenses, up to a sum not to exceed **\$25,000.00**. All bills were to be submitted to DGS for payment. This letter was accepted and signed by Potter.

According to the itemized bills submitted by Potter, he began preparing for the hearing on December **1, 1975**, and he performed **135.75** hours of service for DGS between that date and March **8, 1976**. On February **4, 1976**, the Illinois Commerce Commission issued a ruling granting Illinois Bell a rate increase of **\$70.4** million dollars, which was **\$115** million dollars less than originally requested. Illinois Bell immediately sought administrative review in the Circuit Court of Sangamon County and appealed those rate increases which had been denied, and Governor Walker ordered DGS to cross-appeal the increase which the Illinois Commerce Commission decision granted. On March **8, 1976**, Walter Russell, the then-acting director of DGS, wrote to the Attorney General’s Office and requested that Potter be appointed as a special assistant attorney general for the Department of

General Services. Attorney General Scott answered on May 18, saying that he was instead appointing special assistant attorneys general John P. Meyer and Randall Robertson in the administrative review proceedings. On April 7, Potter entered his appearance in the circuit court for DGS. Director Burris answered Attorney General Scott's letter on April 13, 1976, and stated that DGS did not find the appointment of Meyer and Robertson to be satisfactory. He felt that "it would be more efficient" to continue with Potter. Attorney General Scott answered on April 14 by stating that the appointing of an attorney by DGS was illegal and that he would notify the Comptroller, George Lindberg, that payment of funds to any attorney appointed by DGS would be unauthorized. Mr. Burris' response of April 21, 1976, follows:

"I am in receipt of your letter of April 14, 1976 regarding the Department of General Services proposed arrangement for representation in the above-entitled matter.

You stated that you were very surprised to learn, from my letter of April 13th that I 'had appointed an attorney to represent the Department of General Services in the Illinois Bell rate case.' I have not 'appointed' an attorney to represent the Department in the appeal of the I.C.C. decision. Indeed, on March 8, 1976, Walter Russell, then Acting Director of this Department, wrote to Dean Herzog of your office summarizing the status of the proceedings and requesting your authorization to have the same attorney represent us in the appeal who had represented the Department in the administrative proceedings. A copy of that letter is enclosed. Indeed, I had assumed that, in view of the public importance and notoriety given to those proceedings you were aware of the Department's intervention and representation in that matter.

I was, frankly, surprised and disturbed at your March 18 reply to the March 8 letter; which implicitly refused our request and designated—without consultation—two attorneys who have no familiarity with the case.

In this regard, I understand that your office represents the Illinois Commerce Commission, the administrative agency whose decision we are contesting. In these circumstances there would, I believe, be a conflict of interest if your office insisted on choosing and controlling the attorneys who are to represent the interests of this Department which are directly adverse to the Commission.

In our judgment, Mr. Potter ably represented this Department in the administrative proceedings before the Commission. He is thoroughly familiar

with the record. If you do not wish to appoint Mr. Potter as Special Assistant Attorney General, then I would request that you give your consent to his representing the Department in this matter so that we can prosecute the appeal without disputes as to authority.”

Burris received no further reply from the Attorney General’s office.

On May 3, 1976, Potter refused to sign a stipulation on behalf of DGS, since he had not received authorization from the Attorney General’s Office. Potter then sought directions from the Sangamon County Circuit Court on June 15, 1976. On June 30, the Circuit Court ruled that it would not give directions to either DGS or to Potter. Potter then signed a new agreement with DGS and filed a separate complaint for an injunction and declaratory judgment on behalf of DGS against the Attorney General that same day, in which DGS sought a declaration that a conflict of interest existed in the Attorney General’s attempt to represent the Department and the Illinois Commerce Commission and also an injunction restraining the Attorney General from seeking to represent the DGS or from interfering with its right to contract for legal services. On July 23, 1976, after notice and hearing, the Circuit Court entered a preliminary injunction restraining the Attorney General from representing either the Illinois Commerce Commission or the Department of General Services and also restraining the Attorney General from interfering with DGS’ retention of “contractual legal services independent of (the Attorney General’s) Office.” On August 6, at the request of the Illinois Commerce Commission, this order was modified to allow the Attorney General to represent the Illinois Commerce Commission. On August 9, the Attorney General sought to withdraw its representation of the Illinois Commerce Commission, but the request was denied by the Circuit Court. On August 20, 1976, the Attorney General sought review of both the injunction and the subsequent order

in *mandamus* actions before the Illinois Supreme Court. Meanwhile, pursuant to the circuit court orders, Potter and his partner, Thomas F. Londrigan, the other Claimant, represented DGS in the supreme court proceedings. (*Scott v. Cadigan* (1976), 65 Ill. 2d 477, 358 N.E.2d 1125.) According to the itemized billing submitted by Potter, he spent 6.75 hours on the appeal to the Sangamon County Circuit Court and he and his partner spent 133.0 hours preparing for the suit against the Attorney General's Office and the subsequent review by the Illinois Supreme Court. Potter also alleges that he incurred \$322.18 in expenses. Of that \$322.18 in expense money, \$176.43 was from the Illinois Commerce Commission hearing, \$111.41 was from the administrative review, and \$34.34 was from the suit against the Attorney General. Claimants state that they are therefore entitled to \$15,152.50 in fees for legal services and \$322.18 in expenses, for a total of \$15,474.68. Vouchers for these claims were submitted to the Comptroller of the State of Illinois, who has refused payment. The facts are presented by stipulation of the parties.

In the opinion of the Court, the claims must be divided into two parts: (1) those claims arising out of the Illinois Commerce Commission hearing; and (2) those claims arising out of the Claimants' suit against the Attorney General.

The claims arising out of the DGS suit against the Attorney General are clearly allowable. Section 6 of "An Act in regard to attorneys general and state's attorneys" provides that a court may appoint special counsel in place of the Attorney General whenever the Attorney General "is interested in any cause or proceeding, civil or criminal, which it is or may be his duty to prosecute or defend." (Ill. Rev. Stat. 1975, ch. 14, par. 6.) The term

“interest” had been defined to include two situations. The first situation is where the Attorney General is interested as a private individual; the second is where the Attorney General is an actual party to the action. (*E.P.A. v. Pollution Control Board* (1977), 69 Ill. 2d 394,396,372 N.E.2d 50, 52.) In the suit seeking to enjoin the Attorney General from interfering with DGS’ hiring of outside legal services, the Attorney General was a named party to the suit. DGS was therefore entitled to court-appointed counsel. The circuit court authorized Claimants to prosecute this suit. They are therefore entitled to reasonable compensation from the State for the services provided in the suits filed by DGS in the circuit court and in the *mandamus* actions in the supreme court. The claim for legal services rendered in the Illinois Commerce Commission hearings is somewhat different, however.

Article V, section 15 of the Illinois Constitution of 1970 provides that “The Attorney General shall be the legal officer of the State, and shall have the duties and powers that may be prescribed by law.” In *People ex rel. Scott v. Briceland* (1976), 65 Ill. 2d 485, 359 N.E.2d 149, the Illinois Supreme Court held that this provision means the Attorney General is the sole officer entitled to represent the State in administrative reviews, and therefore any legal representation of a State agency before an administrative review board which is not authorized by the Attorney General’s Office is in violation of Article V, section 15.

Claimants argue that DGS sought the approval of the Attorney General but that William Goldberg, chief counsel to the Governor, informed them that the Attorney General’s approval was not necessary pursuant to a policy that the Attorney General had recently adopted not to take sides where two agencies might come into conflict. Since the Attorney General is required to repre-

sent the Illinois Commerce Commission, Claimants argue that they were not required to seek the approval of the Attorney General. Claimants' argument must fail for at least two reasons. First, according to the supreme court, the Attorney General is the sole legal representative of the State of Illinois unless the Attorney General is named in the suit or unless he is involved as a private individual. The Attorney General may even represent conflicting State agencies if it chooses to do so. (*E.P.A. v. Pollution Control Board* (1977), 69 Ill. 2d 394, 372 N.E.2d 50; *People ex rel. Scott v. Briceland, supra.*) Therefore, implicit in the Attorney General's powers is the right to examine the legal position of State agencies involved in conflicts and the right to determine on a case-by-case basis whether the Attorney General should become involved in the conflict. The Attorney General was never given such an opportunity in this case. Neither Goldberg, nor anyone from DGS, nor anyone from Potter's office ever contacted the Attorney General.

Second, Claimants' argument is based on their belief that Genis' letter to Murphy at the Illinois Liquor Control Commission granted to DGS implied permission to contract for outside legal services without informing the Attorney General if DGS believes that a potential conflict of interest may arise. The Court, however, does not believe that the facts support Claimants' position. Genis' letter was interoffice correspondence between the Attorney General's Office and the Liquor Control Commission. There is no evidence in the record that the letter was meant to be a blanket policy that allows any department to unilaterally commission outside legal services. Even accepting that the letter represents a strict policy of the Attorney General and that this policy has no exceptions, all State agencies are still required to inform the Attorney General of potentially conflicting positions

between State agencies so that the Attorney General can evaluate whether potential conflict does in fact exist. Furthermore, the Court is not satisfied that the letter represents a strict policy of the Attorney General. Office policies are not rules of law and are subject to change at any time. In a situation such as this one, it is incumbent upon the agency involved to contact the Attorney General to determine whether the general policy applies based upon the specific factual situation present. No contact was made with the Attorney General regarding the appointment of Claimant Potter before the Illinois Commerce Commission hearings. The appointment of Potter was therefore clearly in violation of State law.

This Court has repeatedly held that in such cases where a person has rendered services at the instance of persons mistakenly purporting to have State authority to contract, those claims must go uncompensated no matter how unjust it may seem. (*Schutte & Koerting Co. v. State* (1957), 22 Ill. Ct. Cl. 591; *Wasson v. State* (1939), 10 Ill. Ct. Cl. 497.) In *Wasson*, this Court held

“that whoever deals with a municipality does so with notice of the limitations on it *or* its agent’s powers. All are presumed to know the law, and those who contract with it or furnish it supplies, do so with reference to the law, and, if they go beyond the limitations imposed, they do so at their own peril.” 10 Ill. Ct. Cl. 497.

The Court finds that \$7,074.34 in legal fees and \$34.34 in expenses are attributable to the cases for which compensation should be granted. The Court hereby awards Claimants the amount of \$7,074.34 in legal fees and \$34.34 for expenses.

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(No. 77-CC-0967—Claim denied.)

**BRIGHTON BUILDING MAINTENANCE Co., KRUG EXCAVATING Co.,**  
and **WESTERN ASPHALT PAVING Co.**, an Illinois joint venture,  
Claimant, *v.* **THE STATE OF ILLINOIS**, Respondent.

*Order filed May 17, 1982.*

*Order denying petition for relief from judgment filed January 11, 1984.*

**WARREN FULLER**, for Claimant.

**NEIL F. HARTIGAN**, Attorney General (**SAUL R. WEXLER**, Special Assistant Attorney General, of counsel), for Respondent.

**CONTRACTS**—*extra work may be treated as separate claim.* Claim for extra work may be treated as separate claim from matter of original contract which was tainted by fraud in procurement, as law allows Court of Claims to disallow claims, or such parts thereof, as are burdened with fraud.

**CONTRACTORS**—*claims based on contract tainted with fraud should be dismissed.* Claims based on contract entered into in which bid rigging is involved are contrary to Illinois statutes and should be dismissed, including claim for extra work performed under contract, since allowance of such claim would dilute declared public policy.

*SAME*—*bid rigging by contractor—subcontractor's claim denied also.* Innocent subcontractor's petition to intervene and obtain compensation for work performed under general contract which was obtained through bid rigging was denied, as public policy against fraud would be diluted by allowing claim to be sustained which was derived through a fraudulent contract.

**CONTRACTS**—*quantum meruit not within jurisdiction of Court of Claims.*

**SUBCONTRACTORS**—*subcontractor not third-party beneficiary.* Subcontractor is not a third-party beneficiary as the benefits to him arise as an incidental benefit from the prime contract, and therefore subcontractor cannot directly sue owner.

**HOLDERMAN, J.**

This matter comes before the Court upon motion of Respondent for summary judgment and objections to said motion by Claimant.

The issue in this matter is whether or not Rossetti Contracting Company, Inc., a subcontractor doing work for the Brighton Building Maintenance Co. and others,

should be paid for extra work done for the State despite the fact that the original contractors suffered the following penalties: Fines of **\$537,000.00** against each of the three companies; the suspension from eligibility to bid on both State and Federal contracts; and the imprisonment of its two principal officers and shareholders.

It is Claimant's contention that it should not be barred by section **14** of the Court of Claims Act (Ill. Rev. Stat. **1983**, ch. **37**, par. **439.14**) from pursuing its action and alleges that it had no part in any of the proceedings that led to the punishment of the original contractors.

This Court is faced with the decision of whether or not the taint of Claimant's original fraud in the procurement of the original contract carries over to taint the separate, though related, claim for extra work performed in the saw-cutting operation.

Our interpretation of section **14** of the Court of Claims Act permits us to treat the extra work as being a separate claim, as the rule plainly states that we may disallow claims, or such *parts* thereof as are burdened with fraud.

The Claimant makes a strong, logical and well reasoned case why the original fraud should be blocked out of the Court's consideration in determining the merit of his present claim. Based on his reasoning, we agree we have authority to do so.

This Court, in *Metal Air Corp. v. State* (1977), **32** Ill. Ct. Cl. **103**, stated that contracts entered into in which bid rigging is involved are contrary to Illinois statutes and therefore should be dismissed.

The nature of the fraud involved is so blatant that both congressional acts and acts of our legislature have declared a public policy by providing a severe criminal

penalty and civil remedy for treble damages, that we are of the opinion for us to allow the claim would be diluting this public policy declared by our legislative bodies in the type of fraud engaged in by Claimant.

Claim denied.

ORDER DENYING PETITION FOR RELIEF  
FROM JUDGMENT

**HOLDERMAN, J.**

The questions now before the Court arise out of the following history of this case:

Brighton Building Maintenance Co. *et al.* had a prime contract with the State of Illinois for certain road improvements. Claimant here, Rossetti Contracting Co. Inc., was a subcontractor working under the prime contract and had performed substantial services in connection with extra work required. Brighton filed a claim before this Court for the unpaid balance due the prime contractor.

The State moved to dismiss the claim of the prime contractors based on so-called "bid rigging" constituting fraud against the State and thus subject to disallowance under section 14 of the Court of Claims Act. (Ill. Rev. Stat. 1983, ch. 37, par. 439.14.) The fraud was substantiated by evidence and on May 17, 1982, this Court dismissed the claim of the prime contractor. The fraud was the basis of criminal prosecution resulting in guilty verdicts.

Rossetti, as a subcontractor, filed a petition in the original proceedings to intervene on June 20, 1978, which petition was denied by this Court. The petition had been filed by Rossetti because it felt that in light of the State's charge of fraud against the original Claimants, its (Ros-

setti's) interests could or might be inadequately represented and that the State "may attempt to utilize its affirmative defense (fraud) charging the other Claimants with attempting to defraud the State of Illinois, in some fashion so as to deny herein to Rossetti, an acknowledgedly innocent third party". It stated it previously did not intervene as it was not felt necessary because (absent the charge of fraud) the "present Claimants adequately represented its interest".

We were of the opinion in denying the subcontractor's petition to intervene that notwithstanding it was free of any fraudulent conduct, it would be a dilution of the strong public policy against fraud when public funds were involved, to permit the subcontractor to sustain a claim when it was based on or derived through the fraudulent contract involved. (*Wayne Sales Financial Corp. v. State* (1979), 32 Ill. Ct. C1.963.) For the Court to direct payment to subcontractors or others who performed under prime contractors would inure to the direct benefit of the prime contractors, thus accomplishing indirectly what couldn't be obtained directly. *Wayne Sales, supra*.

While we recognize that the State has received a benefit from the subcontractor's work, there is a long line of cases which hold that our jurisdiction does not encompass *quantum meruit*. (See *Schutte & Koerting v. State* (1957), 22 Ill. Ct. Cl. 591, 626; *Hofer v. State* (1978), 32 Ill. Ct. Cl. 745.) In this respect we differ from the ordinary courts of general jurisdiction. In addition, persons dealing with the State are held to whatever terms the legislature may impose. (*Talandis Construction Corp. v. Illinois Building Authority* (1978), 60 Ill. App. 3d 715.) The result of these limitations are oftentimes seen to be harsh, but the legislature has never authorized this Court to act otherwise.

Rossetti, as a subcontractor, had a remedy, had it chosen to pursue it, under section 23 of the Mechanics' Liens Act (Ill. Rev. Stat. 1983, ch. 82, par. 23), which set forth a procedure whereby subcontractors can place a lien on public funds. Rossetti apparently neglected to avail itself of the provisions of this Act.

Even in a court of general jurisdiction, a subcontractor may not maintain a law action against the owner alone. Not having privity of contract with the owner, he may not sue to establish a quasi contractual liability on the theory that it would be an unjust enrichment for the owner to retain the benefit thereof without payment therefore. *Sloan v. Cleveland, Cincinnati, Chicago & St. Louis Ry. Co.* (1908), 140 Ill. App. 31, 33; *Vanderlaan v. Berry Construction Co.* (1970), 119 Ill. App. 2d 142, 255 N.E.2d 615; *Phillip S. Linder & Co. Znc. v. Edwards* (1973), 13 Ill. App. 3d 365, 300 N.E.2d 283.

In *Vanderlaan v. Berry Construction Co.* (1970), 119 Ill. App. 2d 142, 144, the court said, "In the absence of an express contract with the owner, a subcontractor, or one contracting with a principal contractor, cannot recover against the owner upon a contract theory for there is no employment between them. (Cites omitted.) As to recovery from the owner, the rights of a subcontractor arise under the mechanic lien statute," citing *Suddarth v. Rosen* (1967), 81 Ill. App. 2d 136, 224 N.E.2d 602.

As to being a third-party beneficiary, the applicable rule is set out in *Carson Pirie Scott & Co. v. Parrett* (1931), 346 Ill. 252, 178 N.E. 498, which states that if the contract is a third-party beneficiary contract, then the third party may sue for breach. The test is whether the benefit to the third party is direct to him or is but an incidental benefit to him arising from a contract. If incidental, he has no right of recovery thereon. This case

cited was not a mechanic lien case, however. A subcontractor is not a third-party beneficiary, as the benefits to him arise as an incidental benefit from the prime contract. Therefore he cannot sue the owner directly.

It now appears from the record before us that Rossetti on December 27, 1982, filed an action in the Circuit Court of Cook County titled *Rossetti Construction Co., Inc. v. The State of Illinois Court of Claims*, No. 82-L-51326. The Respondent moved to dismiss and the motion was argued. On September 22, 1983, the circuit judge directed Rossetti to petition the Court of Claims for redress and if “no relief is granted within 60 days of the Order, Rossetti is given leave to petition this Court for relief at that time”. On October 19, 1983, Rossetti filed its present motion to intervene and for relief from judgment. It requests this Court to set aside our order of May 17, 1982, to the extent of its claim. The State moved to strike by motion filed December 5, 1983. From the transcript of the proceedings in the circuit court, it appears that the circuit judge said: “But based on the pleadings only, Rossetti was treated manifestly unfairly,” *i.e.*, by the Court of Claims.

The State’s position has been at all times that there was no privity between Rossetti and the State, and its claim is derived through the prime contract of Claimants and their claim stands in no better position than the prime contractor; that to permit Rossetti’s claim to prevail in such a situation would inure to the benefit of the prime contractors—the wrongdoers; that Rossetti’s claim lies solely against the prime contractor, not having pursued the remedy available under the mechanic lien act cited above.

While Rossetti was not and is not charged with any fraud, its position that its claim should have separate

treatment was considered by this Court in the original proceedings.

We are of the opinion that based on the general rules of law relating to rights of subcontractors against owners and based on the overriding matter of public policy being involved, the original order of dismissal entered May 17, 1982, shall stand without alteration.

Motion for relief from judgment denied.

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(No. 77-CC-1033—Claim dismissed.)

STEVEN SHADDEN, by Judith Brems, his mother and next friend,  
Claimant, **v. THE STATE OF ILLINOIS**, Respondent.

*Order filed October 3, 1983.*

WINSTEIN, KAVENSKI, WALLACE & DOUGHTY, for Claimant.

NEIL F. HARTIGAN, Attorney General (WILLIAM E. WEBBER, Assistant Attorney General, of counsel), for Respondent.

**PRACTICE AND PROCEDURE**—*all remedies must be exhausted before seeking final determination.* Person who files claim before Court of Claims shall, before seeking final determination of claim, exhaust all other remedies and sources of recovery.

**SAME—claim not diligently pursued— cause dismissed.** Delay occasioned by Claimant's failure to diligently pursue cause filed in circuit court resulted in violation of Rule 6 of Court of Claims and warranted dismissal of action on Respondent's motion.

HOLDERMAN, J.

This matter comes before the Court upon motion of Respondent for dismissal of said cause.

Respondent's motion sets forth that **by** status report, dated March 31, 1983, Claimant advised the Court for the first time that the suit filed on April **4**, 1977, for

Steven Shadden, by Judith Brems, his mother and next friend, against the Village of Colona, cause No. 77-L-50, in the Circuit Court of Henry County, Illinois, was dismissed on June 9, 1977, with leave granted to the plaintiffs to file an amended complaint within 28 days, and that no such amended complaint was ever filed.

Respondent's motion also stated that Claimant filed one status report, undated or file stamped, one was filed on April 9, 1981, and another was filed on or about March 30, 1982. It was not until the filing of the status report on April 4, 1983, dated March 31, 1983, that Claimant informed the Court of the June 9, 1977, dismissal of its case in the Circuit Court of Henry County.

Respondent's motion further sets forth as follows:

"8. Respondent has subsequently received *a* certified copy of the Complaint, No. 77-L-50 filed in the Circuit Court of the Fourteenth Judicial Circuit, Henry County, Illinois, captioned Steven *Shadden* by *Judith Brems*, his mother and next friend *v.* Village of Colona, *Illinois*. Said certified complaint contains a certified copy of Notice of Hearing and a certified copy of the Judge's Order dismissing said Complaint dated June 9, 1977 with paragraph 2 granting leave to Plaintiff to file an amended complaint within twenty-eight days, no amended complaint having therein been filed.

9. The Judge's Order of dismissal shows on its face the attendance, on behalf of the Plaintiff, of Attorney Kavensky. A copy of certified record being attached hereto and made *a* part hereof.

10. The failure of the Claimant to follow through with its right to file an amended complaint constitutes a disregard for its obligations under Section 25 of the Court of Claims Act, which requires that:

'Any person who files a claim before the Court shall, before seeking final determination of his claim, exhaust all other remedies and sources of recovery whether administrative, legal, or equitable; except that failure to file or pursue suits against State employees, acting within the scope of their employment, shall not be *a* defense.'

11. Such failure to file an amended complaint further constitutes *a* violation of the Claimant's responsibilities under Rule 6 of this Court which states that:

'As required by Section 25 of the Court of Claims Act, the Claimant shall before seeking final determination of his claim before the Court of Claims exhaust all other remedies, whether administrative, legal or equitable.'

12. Rule 9 of this Court provides that failure to comply with Rule 6 shall be grounds for dismissal.

13. As the result of the long delay occasioned by the Claimant's failure to diligently prosecute this action, the defense of this matter has become exceedingly more difficult, if not impossible, by the virtue (sic) of the passage of time which has resulted among other things in the resignation of the vital witness and that witness' removing himself from the State of Illinois, last reported residence in Missoula, Montana."

Respondent's motion to dismiss was filed on July 27, 1983, and, to date, there has not been any response by Claimant or anyone on his behalf.

Claimant having failed to comply with Rule 6 of the Court of Claims, this cause is dismissed.

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(No. 77-CC-1874—Claim dismissed.)

**LOREN HARDESTY, Claimant, v. THE STATE OF ILLINOIS, Respondent.**

Order filed February 14, 1984.

**LOREN HARDESTY, pro se**, for Claimant.

**NEIL F. HARTIGAN**, Attorney General (**WILLIAM E. WEBBER**, Assistant Attorney General, of counsel), for Respondent.

**PREVAILING WAGE—policy of State.** State's policy concerning prevailing wage rates is that unions submit industry contracts to Department of Labor which applies its time stamp upon receipt of the contracts, and then the contracts are forwarded to the Department of Personnel; which adjusts hourly rates accordingly based on when the rates were time-stamped.

**SAME—retroactive compensation claim denied.** Electrician who worked for State filed claim for retroactive compensation based on difference between union scale and prevailing rate paid by State for interim period between industry agreement and State's adjustment of its scale, but claim was dismissed, as State's policy for making adjustments based on new industry contracts was followed and Claimant was not entitled to any retroactive compensation.

**ROE, C.J.**

This matter comes before the Court on Respondent's motion to dismiss.

The Claimant, an electrician who worked for the State, is seeking retroactive compensation based on a difference between the union scale agreed to by the industry and the prevailing rate paid by the State during the interim period between the date of the industry labor agreement and the time the State changed its prevailing rate scale. The issue involved in this case has long been settled and is exemplified by the case of *Hollender v. State* (1944), 14 Ill. Ct. Cl. 40, wherein this Court stated in effect that merely because contractors in a particular locality agreed to recognize and pay an increase in the hourly wage demanded by the union, the State, not having been a party to the agreement, is not bound to pay the same scale unless and until it agrees to do so. The State is therefore free to set its own policy as to prevailing rates.

This Court supports the long-standing policy of the State concerning prevailing wage rates. That policy as set forth in a Department of Personnel memorandum dated September 20, 1974, is basically as follows:

1. International unions submit the industry contracts to the Department of Labor.
2. The Department of Labor applies its time stamp upon receipt of union contracts.
3. The Department of Labor forwards the time-stamped copies of the contracts to the Department of Personnel.
4. The Department of Personnel edits the contracts to remove "pyramid" items and adjusts the hourly rates accordingly.
5. Prevailing rates which are time-stamped before midnight of a calendar quarter and which have contractually effective dates on or before said quarter are released to be effective on that quarterly date (January 1, April 1, July 1, October 1).

6. Prevailing rates which are time-stamped after midnight of the appropriate quarter are held for release on the first day of the next quarter. For example: A negotiated effective rate is April 1. The time stamp is April 2. The release date for the Department of Personnel will be July 1.

The Department of Labor received 'and applied its time stamp to the first contract upon which the Claimant bases his claim on June 24, 1974. In accordance with the policy of the Department of Personnel as set forth above, this contract was released to be effective on the first day of the quarter following its receipt by the Department of Labor, which was July 1, 1974.

The second contract relied on by the Claimant was received and stamped by the Department of Labor on June 18, 1975. In accordance with the above-mentioned policy of the Department of Personnel, this contract was also released to be effective on the first day of the quarter following its receipt by the Department of Labor, which was July 1, 1975.

Since this claim is for retroactive compensation for periods of time prior to the release dates by the Department of Personnel for the effective application of these contracts, this claim must be, and hereby is, dismissed.

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(No. 77-CC-2037—Claimant awarded \$44,925.57.)

MCDONNELL DOUGLAS AUTOMATION COMPANY, Claimant, *v.*  
THE STATE OF ILLINOIS, Respondent.

Opinion filed July 7, 1983.

GILLESPIE, CADIGAN & GILLESPIE (PATRICK CADIGAN,  
of counsel), for Claimant.

NEIL F. HARTIGAN, Attorney General (WILLIAM E.  
WEBBER, Assistant Attorney General, of counsel), for  
Respondent.

**CONTRACTS—contract will be construed least favorably to drafter.** Well-settled contract law in Illinois is that conditions inserted in contract for benefit of party who made them will be construed least favorably to the party making the conditions if the conditions are ambiguous.

**SAME—instrument should be read as whole in determining intention.** In construing contract or determining intention of parties, instrument as whole should be considered and meaning of particular language enlarged or limited according to true intent of parties as manifested by various provisions of contract as whole.

**SAME—contractor's failure to meet target rate was not breach—data entry contract—claim allowed.** Provision of contract for data entry work to be performed for State set target rate for project, but was not a guarantee, which would constitute a breach if the rate was not met, and therefore, when the State terminated the project after determining the rate was not being met, the Claimant was entitled to compensation for work performed **up** to time of termination.

## ROE, C.J

Claimant, McDonnell Douglas Automation Company (McAuto) comes before this Court seeking recovery for services rendered pursuant to a contract with the Secretary of State's Data Processing Department. A hearing on this matter was held before Commissioner Parsons on November 30, 1979. It is the Court's opinion that Claimant, McAuto, be awarded \$44,925.57 as consideration for the data entry work it performed.

It appears that on or about May 26, 1977, Alex Martinegro, a regional marketing manager for McAuto, met with representatives of the Secretary of State's office. The representative informed Martinegro that the Data Processing Department was overburdened with a large backlog of data entry work that required urgent completion. Since the Department's usual vendors could not handle the volume, McAuto's assistance was needed in reaching a July 12 deadline.

On June 7, the parties agreed to a contract, the terms of which seemed well suited to the particular exigencies confronting the parties. The most troublesome provision

for the parties to agree upon was the means of ascertaining the consideration that the State would provide. The Secretary of State's office customarily used a "per stroke" method whereby a certain amount was paid for each letter converted. McAuto was reluctant to agree to a method that hinged upon quantity of output. They stressed that before acceding to that type of arrangement, a lengthy analysis would have to be undergone to determine exactly what price "per stroke" would be acceptable. This however, would be time consuming and frustrate the Department's goal of quick completion.

Alternatively, McAuto proposed a time and materials contract. The terms provided that McAuto's costs would be compensable at fixed rates irrespective of their rate of production. In response to the Department's inquiries as to rate of production, McAuto stated that on an easy job they could average 6,500 strokes per hour. Upon this assumption, the Department expressly agreed to compensate McAuto on a time and materials basis. Yet, sensitive to binding itself to a contract with a party with whom it had not before done business, and in light of its accepting McAuto's pricing mechanism, the Department added Clause **15** to the contract:

"It is assumed that McAuto will average 6,500 strokes per hour. If McAuto does not, the State has the right to cancel the contract."

Evidently the State sought to leave itself an out should there arise dissatisfaction with McAuto's rate of production. In fact, due to the following circumstances, the Court's decision turns on construing this vital provision.

The seven weeks following June 7 were marked by concern and confusion over McAuto's rate of production. Communication between the parties was fairly regular. McAuto consistently voiced its concern to the Data Processing Department that work was not going as fast

as the parties had planned. It is noteworthy that the Department continuously encouraged McAuto, apparently convinced that efficiency would increase as time progressed. Alex Martinegro's unchallenged testimony is illustrative of the point:

"We were told not to get discouraged; that this is in fact as easy job that as you do it over a period of time, they have found with their other vendors that it becomes much easier. And we were told to continue progress and to attempt to keep them informed.

Only at one point, on July 14, did McAuto represent that the results being attained were parallel to those envisioned at the time of contract. Soon thereafter, however, McAuto realized that their pace was, as before, half as fast as the parties had anticipated. Faced with this, on July 26, the Data Processing Department cancelled the contract pursuant to the aforementioned Clause 15. The Department's letter stated that cancellation was necessary because McAuto had not averaged over 6,500 strokes per hour as the contract "required".

What must be determined in this case is how much the Data Processing Department owes McAuto. Although the State of Illinois asserts in its brief that McAuto breached the contract, with an air of magnanimity it offers \$19,205.95 as a fair settlement. The State says when a party breaches a contract "they have no right to claim compensation as if the contract had not been breached" and that "a party breaching a contract has no right to recover under the contract". However applicable these legal principles are in other circumstances, here they are inapposite and the State's analysis and settlement must be disregarded.

The State's analysis misconstrues the plain meaning of Clause 15 and ignores the reason for which it was inserted. This is evidenced by the language in the Data Processing Department's letter referring to the "required"

rate of 6,500 strokes per hour. The only sense in which the 6,500 strokes per hour rate was a requirement was as a necessary condition prior to cancellation. The rate was clearly not a guarantee, the failure of which to meet, constituted a breach. Nowhere is the word “breach” mentioned. In fact, the circumstances that gave rise to the contract indicate that the rate was a target or a standard that the parties hoped McAuto could meet. If the rate was not met, the State had the option to minimize its dissatisfaction and terminate the relationship. Thus, when the Department did become unhappy with McAuto’s progress, they acted in accordance with the contingency expressly provided for. They simply released themselves from further obligation. The clause did not, however, allow the Department to renege on payments for work already performed. Furthermore, it is well-settled contract law in Illinois that in construing conditions inserted in a contract for the benefit of the party who made them, where the clause is ambiguous, the construction will be adopted which is least favorable to the party drafting it. (*Richmond v. Brandt* (1905), 118 Ill. App. 624.) Thus, even if the clause’s plain meaning and the surrounding circumstances weren’t clearly dispositive, the Data Processing Department would still bear the onus of the faulty draftsmanship.

“In construing a contract, and determining the intention of the parties, the instrument should be read and considered as a whole, and the meaning of particular language may be enlarged or limited according to the true intent of the parties as made manifest by the various provisions of the contract as a whole.” (*Illinois Law and Practice*, sec. 215 Contracts, pp. 372-73, and cases cited therein). In applying this fundamental principle, the Court finds that McAuto correctly determined the amount due it. Item 12 of the contract states that upon termina-

tion of the contract, the customer must pay all charges. Item one states that all charges are to be determined on a time and materials basis. Individual costs are itemized on page two. Using these figures, the amount due McAuto can be determined as follows:

Data Entry	4734.7 hours x	8.95 per/hour	\$42,375.51
Card Load	25.5 hours x	100.00 per/hour	<u>2,550.00</u>
		Amount Due	..... \$44,925.57

It is hereby ordered that the claim be granted in the amount of \$44,925.57.

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(No. 78-CC-0738—Claim denied.)

**THOMAS BEGG, JR., Claimant, v. THE STATE OF ILLINOIS,**  
Respondent.

Opinion filed November 8, 1983.

**McKENNA, STORER, ROWE, WHITE & FARRUG,** for Claimant.

**NEIL F. HARTIGAN,** Attorney General (**FRANCIS DONOVAN,** Assistant Attorney General, of counsel), for Respondent.

**STATE EMPLOYEES' BACK SALARY CLAIMS**—uncompensated overtime work—special agent—ZBI—claim denied. Claim by special agent of Illinois Bureau of Investigation for uncompensated overtime pay was denied, as Claimant's job was never designated as being eligible for such compensation according to the rules and regulations of the Department of Personnel, Claimant admitted he was told that overtime work would not be paid for in cash, and the Illinois Bureau of Investigation had a written policy denying overtime pay.

**HOLDERMAN, J.**

This is a claim by one Thomas Begg, Jr., a former special agent for the Illinois Bureau of Investigation, who is seeking to collect overtime pay alleged to be due him.

Claimant is a former special agent, Department of

Law Enforcement, Illinois Bureau of Investigation, and was employed in that capacity from April 1970 through May 31, 1977. He received his training at the Illinois State Police Academy and in June 1970 he became a special agent assigned to either the Organized Crime Division or the Special Investigation Division until he terminated his employment.

At the training academy, Claimant was advised that as a special agent he would be required to work additional hours over and above the normal hours of a work week and, after receiving this warning, he still continued to work for the State in his capacity as special agent. Claimant was not required to punch a clock nor report to his office on a daily basis. The nature of the work required working odd hours and working hours in addition to the usual 40-hour week. Overtime was an authorized part of his duties and his supervisors expected overtime in order to complete assignments. Claimant voluntarily worked overtime in order to complete his investigations on many occasions.

In view of the fact the job entailed additional hours, the Illinois Bureau of Investigation instituted a policy of granting compensatory time off. For each hour worked in excess of 40 hours each week, agents would be allowed an hour of compensatory time.

As a result of the heavy case load and insufficient manpower in the Department, none of the agents were able to take all of the compensatory time earned but were limited to two compensatory days off per month from 1970 to June 1, 1971, and to four compensatory days off per month from 1971 through 1977. Time worked and compensatory time earned and taken were reported by each agent on special forms supplied by the Illinois Bureau of Investigation.

Despite the fact that Claimant's supervisors knew that no more than four days per month compensatory time would be allowed, Claimant's request for compensatory time was granted by his supervisors. Claimant earned much more than four days of compensatory time each month but he was never able to take more than the allowed four days. He was told by his supervisors that earned compensatory time not taken within an 18-month period would be lost. He was also informed that no monies would be paid *to* him for unused compensatory time. Claimant did not know of any other special agents who were paid for unused compensatory time and he admitted that no persons in authority ever advised him that he would be paid for unused compensatory time.

Claimant, during the term of his employment, accumulated 2,242.5 hours of unused compensatory time, amounting to \$14,170.07 based on his regular pay.

William O'Sullivan, the present deputy director of the Illinois Department of Law Enforcement, and Thomas Howard, Sr., formerly division chief of the Illinois Bureau of Investigation, both confirmed that overtime was expected of agents; that no authorization was ever made to pay special agents for unused compensatory time; and that because of case loads the special agents were not allowed to take all of the compensatory time earned.

On September 1, 1973, the superintendent of the Illinois Bureau of Investigation issued a general order which mandated that all compensatory time which was not used as of the time of termination of employment would be forfeited. Although Claimant could not remember reading the general order, he admitted that special agents were required *to* read each general order, **sign** it, and retain a copy for themselves.

The issue in this case is whether there are any rules of the Department of Personnel which provide for payment in cash of unused compensatory time and, if not, whether there was any contractual arrangement which would require Respondent to pay cash for unused compensatory time.

There are three Department of Personnel rules in question. Rule **3-340** became effective May 1, 1970, and is as follows:

“Rule 3-340. *OVERTIME*: Authorized work in excess of an approved work schedule shall be overtime. Such work may be compensated for in cash or compensatory time as determined by the Director. Overtime work shall be distributed **as** equitably as possible among employees competent to perform the services required, and they shall be given as much advance notice as possible. Time spent in travel shall not be considered overtime.

Compensatory time shall be scheduled at the convenience of the employing agency, after consideration of the employee’s preference, but within **12** months of its accrual. If such compensatory time off is not liquidated within **12** months of its accrual the agency shall pay the employee for such overtime by adding a sum equivalent to its value at the employee’s rate of pay at the time the overtime **was** performed, to the employee’s salary voucher within 30 days after the expiration of such 12-month period.

The Director shall maintain lists of those positions which are exempt from the payment of overtime in any form.

This Rule shall be subject to such modification **as** may be necessary to comply with such provisions of Public Law **89-601** as may be applicable to positions in the State service. (As revised January **20**, 1970).”

Rule **3-340** was revised and the following became effective on October 1, 1970:

“Rule 3-340. *OVERTIME*: Authorized work in excess of an approved work schedule shall be overtime. Such work may be compensated for in cash or compensatory time as determined by the Director. Overtime work shall be distributed **as** equitably as possible among employees competent to perform the services required, and they shall be given **as** much advance notice as possible. Time spent in travel shall not be considered overtime.

Compensatory time shall be scheduled at the convenience of the employing agency, after consideration of the employee’s preference, but within the fiscal year during which the related overtime **was** worked. If such compensatory time is not liquidated within the fiscal year during which it has been earned, said time must be liquidated in cash at the end of the fiscal year.

The Director shall maintain lists of those positions which are exempt from the payment of overtime in any form.

This rule shall be subject to such modification as may be necessary to comply with such provisions of Public Law 89-601 as may be applicable to positions in the State service. (As revised September 22, 1970)."

On June 1, 1975, Rule 3-320 became effective. It is as follows:

"Rule 3-320. *OVERTIME*: For those positions approved by the Director and designated on lists maintained by the Director, authorized work in excess of an approved work schedule shall be overtime. Such work may be compensated for in cash or compensatory time as determined by the agency provided such designation is in accordance with the Fair Labor Standards Act, as amended. Overtime work shall be distributed as equitably as possible among qualified employees competent to perform the services required, when overtime is required, and employees shall be given as much advance notice as possible. Except where required by law, time spent in travel shall not be considered overtime.

Compensatory time, if any, as earned hereunder, shall be scheduled at the convenience of the agency after consideration of the employee's preference, but within the fiscal year during which such time was earned. If such compensatory time is *not* liquidated within the fiscal year during which earned, it shall be liquidated in cash at the end of the fiscal year."

A thorough reading of Rule 3-320 shows that the rule grants cash compensation for overtime only to such employees who hold positions designated on lists maintained by the director. According to the evidence in this case (Respondent's Group Exhibit No. 1), the position of special agent was never listed among the position titles eligible for cash payment for overtime. Actually, there is no authorization in Rule 3-320 for compensatory time for overtime hours, and therefore, compensatory time was granted without official sanction of the Department of Personnel and, in fact, was against the rules and regulations of the Department of Personnel.

Rule 3-340 in both of its versions is similar to Rule 3-320 *except* that it mandates cash liquidation of overtime for all positions except those on lists maintained by the director. Thus, in Rule 3-320, the director must maintain lists of those positions which are *eligible* for cash overtime and Rule 3-340 in both of its versions

requires that the director maintain lists of those positions which are *ineligible* for cash overtime.

The lists maintained by the director were lists of those job titles eligible for cash overtime but also contained the words "all other job titles are not eligible for overtime."

Claimant's job title is not on the list of those eligible. It is therefore the Court's belief that Claimant was ineligible for collection of compensatory time-off wages. To hold otherwise would completely void the above wording because it is the Court's opinion that it is an inescapable conclusion that any job title not listed as eligible would be ineligible.

Claimant argues that since the Illinois Bureau of Investigation approved special agents as one category which accrued compensatory time, this means that it was designated and approved as one which accrued overtime and which, therefore, caused Rules 3-340 and 3-320 to mandate cash liquidation of the overtime. This argument, however, is without merit in that the designation of the eligible job positions was to have been made, according to the rules, by the director of the Department of Personnel. The director of the Illinois Bureau of Investigation had no authority to designate positions for overtime. As has been previously stated, the granting of compensatory time to special agents was without official sanction of the Department of Personnel and against the rules and regulations of the Department of Personnel.

It is the opinion of the Court that under the rules of the Department of Personnel Claimant is not entitled to a cash liquidation of uncompensated overtime work.

Claimant cites the case of *McDougall v. State* (1975), 30 Ill. Ct. C1.629. In that case, Claimants were employees

of the Department of Law Enforcement as crime scene technicians and were seeking payment for overtime. Rule 3—340, which was in effect at that time, was to the effect that Claimants were entitled to cash liquidation of uncompensated overtime work; however, the Court points out that the Rule 3—340 in effect at the time of the *McDougall* case is not the same Rule 3—340 in effect at the time of Claimant's employment. In the *McDougall* case, there was no reference to lists of eligible or ineligible persons to obtain cash for overtime. By the time this Claimant was employed, the rules had been changed to require that the director set out specifically which job titles were eligible for cash and which job titles were not eligible for cash and, as has been previously noted, the job title of special agent was never listed as eligible. Claimant has not proved any contractual agreement requiring cash liquidation of overtime hours not otherwise compensated for and, in fact, evidence introduced is to the contrary. The necessity for overtime was made a condition for employment and the fact that compensatory time would be limited to only four days per month was also made known to Claimant. Claimant admitted he was told that overtime work would not be paid for in cash. Claimant further admitted he had no expectation of any cash payment for overtime. The IBI also had a written policy denying overtime pay, which written policy was encompassed by an IBI general order which stated:

"Personnel will forfeit regular days off and compensatory time not taken before the date of separation."

It is the opinion of this Court that Claimant is not entitled to receive payment for the hours of overtime worked by him. Claim denied.

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(No. 78-CC-0739—Claim denied.)

DAVID BRINSON, Claimant, *v.* THE STATE OF ILLINOIS,  
Respondent.

*Opinion filed May 17, 1984.*

FRANK M. BONIFACIC, for Claimant.

NEIL F. HARTIGAN, Attorney General (HANS G. FLADUNG, Assistant Attorney General, of counsel), for Respondent.

*HOSPITALS AND INSTITUTIONS—no false imprisonment if detention legal.*

*SAME—false imprisonment—claim denied.* Where Claimant was arrested, then legally detained for psychiatric hospitalization, and then recommended for release from psychiatric treatment, but held at the hospital over a weekend until he could be picked up by the county sheriff to post bond or otherwise present himself on the criminal charges, no claim for false imprisonment would lie, as the hospital would have violated its responsibilities by releasing Claimant unilaterally, while he was still under a criminal charge, without court order or posting bond.

ROE, C.J.

This is a claim for false imprisonment alleged to have been inflicted upon Claimant by the Tinley Park Medical Center (Center).

After a hearing before a commissioner, Claimant failed to file a brief and the matter was, by order, taken up upon the evidence and Respondent's brief only.

Claimant was arrested on the morning of April 15, 1976, at the CTA barn at Archer and Pershing, Chicago. Claimant had boarded the bus at the barn waiting for the bus to commence its run westbound in the direction of Claimant's home. While waiting in the bus, at the barn, Claimant, who had been drinking, fell asleep. He was awakened by a CTA guard who ordered him off the bus. Upon leaving the bus an altercation occurred with the CTA guard, and the Claimant was arrested by the

Chicago police upon a complaint filed by the CTA guard charging trespass and battery.

The same morning, Claimant appeared before a judge of the Circuit Court of Cook County. The examination was completed that morning as a result of which Dr. Gerson Kaplan signed a petition for hospitalization. A certificate of need for hospitalization was signed and the police thereupon transported Claimant to the Center. The petition stated that Claimant was paranoid, suicidal and dangerous to himself and to others. At the Center, the Claimant was placed on homicidal and suicidal precaution.

On the following day, April 16, 1976, at 2:30 p.m. at the Center, which day was Good Friday, Claimant was examined by a psychiatrist within the 24-hour time limit required by section 7-5 of the Mental Health Code of 1967 (Ill. Rev. Stat. 1973, ch. 91½, par. 7-5). The psychiatrist noted that "the patient shows no evidence of any reason for need of psychiatric hospitalization and should be discharged as soon as possible". Claimant was not released until the following Monday, April 19, 1976. It is for this period of confinement that Claimant seeks damages for false imprisonment.

Respondent's evidence, through their witness, Alfred Schwarz, the coordinator of forensic services for the Center, indicated that where a patient is received by way of a Circuit Court mittimus, as was the Claimant, a patient cannot be released directly by the Center but must be returned to the sheriff of Cook County. In the case of Claimant, a bond had been set on the criminal charges. The Center has no authority to accept bonds, nor is there any procedure at the Center for posting of bonds. When the patient is discharged, the sheriff's

police are notified and they pick up the patient from the hospital to return him to the House of Correction. The Center is not permitted to transport the patient between the hospital and the House of Correction.

The normal procedure is that the sheriff's police pick up the patient the day after they are called to do so, except in cases of calls made on Friday. Calls made on Friday are followed up by the sheriff's police by picking up the patient on the following Monday. The procedure is invariable and although the Center has attempted to obtain cooperation of the sheriff's office to change this situation, they have been unsuccessful in so doing.

Although Schwarz was unable to testify that, in the case of Claimant, a call to the sheriff had actually been made on Friday, April 16, **1976**, he was certain that such a call must have been made on Friday, April **16, 1976**, because the sheriff's police picked up Claimant on Monday, April **19, 1976**.

Generally, an action for false imprisonment does not lie for a detention made by virtue of legal process duly issued by a court. *Hendricks v. State* (1949), 19 Ill. Ct. Cl. **68**; *Gee v. State* (1954), 21 Ill. Ct. Cl. **573**; *Olsen v. Karwoski* (1979), 68 Ill. App. 3d **1031,386 N.E.2d 444**.

In the instant case, it is clear that Claimant was detained by reason of legal process in accordance with the statute. Thus, the initial detention cannot be the basis of any valid claim. In view of the fact **that** there were no further legal documents which changed Claimant's status as being lawfully detained, in the opinion of this Court the continued detention cannot be the basis of any valid claim.

Moreover, by reason of section 3—8—5(e) of the Unified Code of Corrections (Ill. Rev. Stat. **1983**, ch. **38**,

par. 1003—8—5(e)), a prisoner transferred to an institution of the Department of Mental Health and Developmental Disabilities is not discharged from the Department of Corrections but remains under the control of that Department.

In the case at bar, the Center, once having determined that Claimant was not in need of hospitalization, was under a duty not to discharge him unconditionally but to discharge him to the custody of the sheriff of Cook County. If the sheriff does not move quickly to obtain custody, such omission is not the responsibility of the Center. This Court finds from the evidence that the Center did notify the sheriff to pick up the Claimant on Friday, April 16, 1976, but the sheriff did not do so until April 19, 1976. The un rebutted evidence was that further telephone calls or requests to the sheriff on Saturday or Sunday would have been futile. Thus, we find that the Center did all that it was legally required to do and was not in any way negligent. Indeed, the Center would have violated its responsibilities had they unilaterally released a person who was under a criminal charge without the posting of bond and without a court order.

Therefore, it is hereby ordered that the Claimant's claim be, and hereby is, denied.

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(No. 78-CC-1029—Claimant awarded \$5,000.00.)

KATHERINE SCHUETT, **Claimant**, *v.* THE STATE OF ILLINOIS,  
**Respondent.**

*Opinion filed April 12, 1984.*

WILLIAM S. KECK, for Claimant.

NEIL F. HARTIGAN, Attorney General (FRANCIS M.

**DONOVAN**, Assistant Attorney General, of counsel), for Respondent.

**HIGHWAYS—state's duty to maintain.** State is not insurer of condition of all roadways under its control or the safety and well being of travelers thereon, and the State's only duty is to maintain the roads in a reasonably safe condition for the purpose for which they are intended.

**NEGLIGENCE—Claimant's burden** of proof. Party filing negligence claim must prove by preponderance of evidence that respondent was negligent and that Claimant was free of contributory negligence.

**CONTRIBUTORY NEGLIGENCE—duty of traveler facing known dangerous condition.** Persons about to cross a dangerous place have a duty to approach the place with the care commensurate with the known danger, and one on a public highway who fails to use ordinary precaution will be deemed guilty of contributory negligence.

**HIGHWAYS—snow piled in median—accident—claim allowed.** Evidence established that Claimant used as much caution as possible while attempting to make turn in intersection where her vision of oncoming traffic was obstructed by snow which State employees had plowed into the median of the highway, and Claimant was granted an award for the injuries she sustained when her vehicle was struck by an oncoming car.

**DAMAGES—automobile collision—award granted.** Claimant was granted an award for the personal injuries she sustained when an oncoming car struck her vehicle while she was attempting to turn in an intersection where her vision was obstructed by snow piled in the median.

**ROE, C.J**

The Claimant, Katherine Schuett, seeks recovery for injuries sustained in an automobile accident that occurred on March 4, 1978, at the intersection of Illinois State Route 72 (Higgins Road) and Bartlett Road in northwest Cook County, Illinois.

Claimant contends in essence that the State of Illinois was negligent in the manner in which its employees plowed snow onto the median strip between the eastbound and westbound traffic lanes of Illinois State Route 72 at the intersection of Bartlett Road, and that the snow, as plowed onto the median, created a hazardous condition. The Respondent maintains that the Claimant has failed to show that she was free from contributory negligence as well as denying that the State was negligent.

This matter was heard by a commissioner on July 25 and September 29, 1979, and according to Respondent's brief, both sides are in agreement as to the material facts. On March 4, 1978, Claimant was travelling in a westerly direction on Route 72 with the intention of turning left (south) on Bartlett Road. Upon arriving at the intersection, Claimant was in the left turn lane where she stopped for a red light. While waiting for the light to change, she noticed snow piled up to eight feet high, equally wide, and perhaps 100 feet long, extending from the west edge of Bartlett Road and running down the median between the east and west lanes of Route 72. According to Claimant, the mound of snow blocked her entire view of all oncoming eastbound traffic. As the light turned green, Claimant proceeded to slowly move her car into the intersection, apparently stopping every few feet, in order to turn left. Claimant testified, "I kind of crept up a little forward, you know, sort of inch by inch. I was looking to my left for eastbound traffic". Suddenly, without any warning, Claimant's vehicle was struck by an eastbound auto wherein she sustained injuries requiring four days hospitalization, she was unable to return to work for six and one-half months, and her car was totally demolished.

The State first contends that it is not an insurer of the condition of its roadways. This Court has set forth the applicable standard or duty of care that is imposed on the State in maintaining its highways in many cases. In *Turkin v. State* (1957), 30 Ill. Ct. Cl. 417, the Court stated: "Respondent is not an insurer of either the condition of all roadways within its jurisdiction and control, or the safety and well being of all persons traveling thereon. Rather, Respondent is chargeable only with maintaining its roads in a reasonably safe condition for the purpose for which they are intended." 30 Ill. Ct. Cl. 417, 419.

Certainly, the reasonableness standard set forth in *Turkin, supra*, applies to medians.

There are two essential elements that Plaintiff must prove: One, before Claimant may recover, she must prove by a preponderance of the evidence that the Respondent was negligent. In *Illinois Ruan Transport v. State* (1973), 28 Ill. Ct. Cl. 323, the Court set forth the elements and burden of proof for a claimant in proving a negligence action as follows:

“Before Claimant may recover, it must prove by a *preponderance of evidence* that . . . (2) . . . Respondent was negligent ” 28 Ill Ct Cl. 323, 327. (Emphasis added.)

Here, Claimant is contending that the Respondent’s negligence involved the plowing of the snow from Route 72 onto the center median strip rather than to the sides of the highway, thereby creating a hazard to the travelling public. The State argues that its primary duty was to maintain the roadway proper by removal of the snow and that it was in the reasonable performance of its duty that the State plowed the snow onto the median as well as the shoulders. Its contention in essence is that having performed its primary duty of clearing snow from the roads, we may not impose the additional burden of clearing the shoulders and medians.

While that is true, it is also an obligation of the State, however, to exercise reasonable care in the performance of its duties, and here it seems to us that the State’s own plowing operations created the dangerous condition and the fact that the mound of snow was plowed onto the median is of no consequence if the plowing in the first instance is done in a hazardous manner.

Two days after the accident, Mr. Fred Bartuch, a State employee responsible for the snow plowing on Route 72, the intersection where the accident occurred, and his crew used equipment to cut down the snow over two feet, “for better visibility,” as he explained.

Secondly, before the Claimant may recover, she must prove by a preponderance of the evidence that she was free from contributory negligence. In *Illinois Ruan Transport Corp. v. State, supra*, the Court held:

“Before Claimant may recover, it must prove by a *preponderance* of the *evidence* that Claimant was free from contributory negligence . . .” 28 Ill. Ct. Cl. 323, 327. (Emphasis added.)

Here, the State cites cases that when facing a known danger on a public highway, the Claimant is under a duty to exercise that degree of care commensurate with the known danger. In *Mounce v. State (1951)*, 20 Ill. Ct. Cl. 268, the Claimant was travelling on a State road when his car hit a patch of ice, skidded and struck a bridge. The evidence indicated that he had prior knowledge of the existence of the ice patch, having travelled over the area twice within 11 hours of the accident. The Court, citing *Dee v. City of Peru (1931)*, 343 Ill. 36, set forth the following standard:

“It has long been the rule in this State that it is the duty of persons about to cross a dangerous place to approach it with care commensurate with the known danger, and when one on a public highway fails to use ordinary precaution while driving over a dangerous ‘place, such conduct is by the general knowledge and experience of mankind condemned as negligence.” 20 Ill. Ct. Cl. 268, 270.

*Witt v. State (1969)*, 26 Ill. Ct. Cl. 318, involved a claim for property damages sustained in an accident caused by a patch of thick smoke obscuring the vision of motorists on a State route. Claimant drove into the smoke proceeding at a speed of 25 to 30 miles per hour and struck the rear of a truck which had stopped on the highway amidst the smoke. The Court, citing *Ames v. Terminal R.R. Association (1947)*, 332 Ill. App. 187, noted as follows:

“Persons approaching a place of danger have a duty to do so cautiously and with a proper degree of care for their own safety, the degree of care required being determined by the danger to which they are knowingly exposed. A person has no right to knowingly expose himself to danger, and then recover

for an injury, which he might have avoided by the use of care for his own safety.” 26 Ill.Ct. Cl. 318, 322.

Finally, the Court stated:

“It does not appear that Claimant acted with due care and caution in driving into dense smoke, which was clearly visible from a distance, and then proceeding at 25-30 miles per hour without being able to see what was in front of him.

Where the highway is of such condition that one can see nothing ahead, it is not reasonable to proceed at 25-30 miles per hour, if at all.” (26Ill. Ct. Cl.318, 323.)

But those cases are not dispositive here. We agree with the cases cited in Respondent’s brief, but we believe that they more forcefully suggest that the Claimant did indeed approach a dangerous condition that the State through its negligent act created.

As to whether or not the Claimant was indeed free of contributory negligence in her attempt to navigate a left-hand turn, we must review our recent decision of *Aetna Insurance Co. v. State* (1981), 34 Ill. Ct. Cl. 167, which was, we think, an almost precisely parallel fact situation. There, Claimant intended to make a left-hand turn onto Case Road from Route 12 in Lake County, Illinois, and found his vision obstructed by snow plowed six feet deep onto the median. He pulled slowly into the intersection and upon finally seeing an oncoming car, attempted to accelerate through the intersection where he was struck. We stated there:

“It is possible that the State was negligent in not widening the intersection cross-over prior to the accident. The intersection was blind both for drivers on Route 12 and for the driver of any vehicle in the cross-over. The fact that the cross-over was so narrow that it could be used by only one vehicle was in itself a hazardous condition.

However, the proximate cause of the collision in the case was not the negligence of the State but the negligence of Allen in rolling out into the intersection when he did not know if there was any oncoming southbound traffic on Route 12. He had every opportunity to stop his vehicle in the inner southbound lane and let Miss Mueller pass. He did not ‘inch out’ into the intersection as Miss Mueller had observed other cars do, but rolled on out into the intersection without stopping at any point.” (34Ill. Ct. Cl. 167, 170.)

In the instant case, we feel the Claimant, Katherine Schuett, in moving "inch by inch through the intersection" used as much caution as was possible. In fact, we can think of no other more cautious way that she may have attempted to navigate the dangerous intersection created by the State's plowing techniques.

Based on the foregoing, we find that the Claimant is entitled to recover for damages sustained in the automobile accident that occurred on March 4, 1978. As to the amount the Claimant is entitled to recover, the record shows that she was knocked unconscious, sustained a fracture of the right clavicle, suffered cuts on her nose and face, and had glass enter her right ear. These injuries caused her to spend four days in the hospital. The Claimant's description of any permanent injuries is highly questionable, as is her claim for over six months loss of work. It is difficult for the Court to comprehend that the injuries sustained necessitated this long a period for recovery and there was no medical testimony to substantiate it. The Claimant's car damage was recovered by her insurance company. She did, however, have to replace eyeglasses that were broken in the accident. We find that the Claimant has proven damages in the amount of \$5,000.00.

It is hereby ordered that the Claimant be, and hereby is, awarded the sum of \$5,000.00.

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(No. 78-CC-1087—Claimant awarded \$363,807.83.)

**COUNTY OF COOK, Claimant, v. THE STATE OF ILLINOIS,  
Respondent.**

Opinion filed July 7, 1983.

Order filed September 6, 1983.

RICHARD M. DALEY, State's Attorney (PAUL P. BIEBEL, JR., and MARK V. CHESTER, Assistant State's Attorneys, of counsel), for Claimant.

NEIL F. HARTIGAN, Attorney General (FRANCIS M. DONOVAN, Assistant Attorney General, of counsel), for Respondent.

*AGENCY—principal's* duty to agent. Where principal directs agent to perform act on principal's behalf, law implies promise or indemnity by principal for damages or losses resulting to agent proximately from execution of the act.

*OFFICERS AND PUBLIC EMPLOYEES—county* public aid department did work of State Department of Public Aid—reimbursement allowed. Where county public aid department expended monies administering homemakers program subject to being reimbursed by State Department of Public Aid, county was entitled to reimbursement for additional payments county department had to make in compliance with circuit court order which found county employees had not been adequately compensated.

*PUBLIC AID CODE—county* did not breach agreement with State Department of Public Aid. Evidence was insufficient to establish that agreement existed between county and State Department of Public Aid to effect that if county did not appeal circuit court finding that county public aid department employees were entitled to additional compensation, State Department of Public Aid would make the ordered payments, therefore, State's contention it could not be required to indemnify county for such payments because county breached agreement was without merit.

ROE, C.J.

Claimant, County of **Cook**, brings this action against the State of Illinois, Department of Public Aid, seeking \$363,807.83 alleged to be due under sections 12—5 and 12—8.4 of the Illinois Public Aid Code (Ill. Rev. Stat. 1971, ch. 23, pars. 12—5, 12—18.4). A hearing on the matter was held November 19, 1980.

The case is an offspring of the litigation in *Bess v. Daniel* (1976), 42 Ill. App. 3d 401,355 N.E.2d 556, where Judge Stamos held the County liable for overtime wages due certain employees of the Cook County Department of Public Aid in connection with its "Homemakers" program. Accordingly, the County has satisfied the judgment order of June 22,1977, in the amount of \$363,807.83. The County now contends that the Illinois Department of Public Aid is obligated to indemnify the County for all monies expended in satisfying the judgment. For reasons to be stated, we hold that because the Cook County Department of Public Aid employed the homemakers while acting as administrative agents of the Illinois Department of Public Aid, the State is owing to the County in the amount prayed for.

The Cook County Department of Public Aid employed homemakers to care for disabled welfare recipients. If necessary, during their assignments, these individuals were required to perform their duties at the welfare recipients' homes around the clock, and for periods of up to two weeks straight. In *Bess v. Daniel, supra*, the plaintiff homemakers alleged that the eight-hour-per-day wage (**\$25.00**) was unjustifiably low compensation for their work. The trial court agreed and awarded an additional four-hours-per-day pay for the period in question. The appellate court affirmed the lower court's determination of liability but modified the damage award. Relying on testimony of the director of the County Department of Public Aid that the plaintiffs averaged not eight, but 16, hours of work per day, Judge Stamos awarded four hours pay in addition to the four awarded by the trial judge. The question before this Court is who is ultimately responsible for the final judgment awarding the additional eight hours pay.

The reasons for which the issue of liability between the County and the State has as yet remained unadjudicated are essentially procedural and do not go to the merits of the case. In the trial court, Judge Epstein was aware of the issue's presence and has the following remarks:

"Whether the County, if I should make an allowance of the overtime pay, is allowed a reimbursement of the State, is a matter that is not before me, and may have to be adjudicated in the Court of Claims. But that's between the County and the State."

Thus, while finding that the homemakers were employees of the County, Judge Epstein saw his task only as determining who, if anyone, was liable to the plaintiffs. In other words, the plaintiffs were solely concerned with finding either the County or the State liable. Whether the County would have recourse to the State if ultimately found to be the employer **was** to them irrelevant. **Since** the plaintiffs never raised the issue, it was rightfully left open.

On appeal, the County raised the question whether the State, rather than itself, was ultimately liable for the damages awarded by the trial court. Their first argument was that contrary to the trial court's conclusion, prior to January 1, 1974, the County Department of Public Aid was merely an agent for the State of Illinois and therefore homemakers were employees of the State rather than the County. While the litigation in *Bess v. Daniels, supra*, was in progress, however, the Supreme Court decided *Merrill v. Drazek* (1975), 62 Ill. 2d 1, 338 N.E.2d 164, where it was held:

"Although prior to January 1, 1974, the County Department served as agent of the Illinois Department in the administration of the programs . . . the clearly expressed legislative intent was that its employees be employees of Cook County."

This holding disposed of the County's theory concerning who employed the homemakers. Alternatively,

the County contended that the State still must ultimately bear the financial burden under sections **12-5** and **12-8.4** of the Public Aid Code. (Ill. Rev. Stat. **1971**, ch. **23**, pars. **12-5**, **12-8.4**.) The County argued that these statutes require the State to reimburse the County for all administrative expenses of the County Department of Public Aid. Judge Stamos declined to rule on this argument for the following reason:

"This is an issue that is exclusively a matter for resolution between the County and the State and is of no concern to the plaintiffs. Our decision does not, in any way, foreclose the County from later pursuing any cause of action it may have against the State. We hold only that because the issue was not decided by the trial judge, it is not properly before the court."

Now that this question has been raised before the proper forum, we can begin by looking to the relevant statutes. Did the legislature intend that the County or the State be financially responsible for the additional wage payments made in connection with the homemakers program? Two statutes must be considered, the first of which reads:

"The Illinois Department of Public Aid shall order for payment by warrant grants for public aid under articles II, IV, and V . . . and all costs of administration of the Illinois Department and the County department relating thereto." Ill. Rev. Stat. **1971**, ch. **23**, par. **12-5**.)

and the second:

"The County Board shall appropriate funds for the actual and necessary administrative expenses of the County Department incurred in the discharge of its duties in administering the funds prescribed by sec. **12-2**. . ." Ill. Rev. Stat. **1971**, ch. **23**, par. **12-18.4**.

Read in conjunction, these statutes clearly indicate that the legislature intended that the County be reimbursed for monies expended in administering the homemakers program. In fact, while the program was in effect, the Illinois Department consistently reimbursed the County Department for such wage payments. Now that additional payments for the work performed have been compelled by a court order, it is strange for the

Illinois Department to argue as an affirmative defense that the County's satisfaction of the judgment was extraordinary, and not a necessary administrative expense. The Illinois Department acquiesced in payments for the work all along. Compliance with a court order to pay wages in addition to those already authorized by a principal of his agent is manifestly a necessary administrative expense. Furthermore, a basic rule in the relationship between principal and agent is that the principal is bound to indemnify the agent against the consequences of all lawful acts done pursuant to authority conferred. Where a principal directs an agent to act on his behalf, the law implies a promise or indemnity by the principal for damages or losses resulting to the agent proximately from the execution of the agent. (*Messick v. Rardin* (1934), 6 F.Supp. 200, 201.) Thus, the statutory scheme and traditional common law dictate that as agent of the Illinois Department, the County Department is entitled to reimbursement and the Court so holds.

We must note that this conclusion is in no way inconsistent with the Supreme Court's decision in *Merrill v. Drazek, supra*. There, as noted above, it was held that employees of the County Department of Public Aid were indeed to be deemed employees of the County Department. Involved there, however, was only a declaratory judgment as to who the proper party was for plaintiffs to proceed against. The opinion contains no language that nullifies the ultimate responsibility of the Illinois Department arising from its agency with the County Department. *Merrill v. Drazek, supra*, only decided that primary responsibility should rest with the County.

Finally, the State raises as an affirmative defense that because the County breached an agreement with the

Illinois Department regarding payment of the damages in *Bess v. Daniel, supra*, the County is foreclosed from any reimbursement. The State contends that an oral agreement was reached whereby if the County did not appeal the trial court's decision, the State would satisfy the judgment order. Thus, maintains the State, when the County appealed, it breached the agreement and forfeited its right to indemnification. Evidence adduced in the hearing before Commissioner Walsh, however, indicates that no such agreement was ever reached. George Grumley, an attorney for the State closely involved in communications between the Illinois Department and the County Department, testified as follows:

"I can't really say that we ever, between the two of us reached an agreement *per se*."

This testimony is in accord with that of Sheldon Gardner, who during the pendency of the *Bess v. Daniel, supra*, litigation was the Chief of the Civil Division of the Cook County State's Attorney's Office. He maintained that no agreement was reached, or even could have been reached without the approval of the Cook County Board. This approval was never gotten. The State offers, as evidence of the agreement, a letter purportedly drafted at the request of Gardner containing the terms of an agreement between the County and the State. Yet, there is nowhere evidence of the County's assent to it. It is merely a one-sided communication between representatives of the State.

In fact, the County's position was that it had at all times acted as the agent of the State and that the State should be held liable. The Court finds this position is sound. It is hereby ordered that the State of Illinois Department of Public Aid reimburse the County of Cook in the sum of **\$363,807.83**, the amount expended by

the County in satisfying the Circuit Court's judgment order, as modified in *Bess v. Daniel, supra*.

ORDER

ROE, C.J.

This cause comes on to be heard on the Court's own motion for the purpose of clarifying our opinion rendered July 7, 1983.

In the final paragraph of said opinion we rendered judgment for the Claimant in the amount of **\$363,807.83**. In so doing it was not our intention that the language therein be construed as an order that or direction to the Department of Public Aid (the Respondent's agency being sued) to pay this sum. Rather, it was our intention that the judgment be treated as any other award made by this Court and paid according to the usual and customary procedures for paying such awards.

It is hereby ordered that said opinion be, and hereby is, modified so as to reflect our intention stated herein.

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(No. 78-CC-1211—Claimant awarded \$2,500.00.)

**DELORES ROBERTS, Claimant, v. THE STATE OF ILLINOIS and THE ILLINOIS DEPARTMENT OF CORRECTIONS, a/k/a ILLINOIS YOUTH CENTER, ST. CHARLES, ILLINOIS, Respondents.**

*Opinion filed March 13, 1984.*

LANE & MUNDAY (MARTIN E. KLEIN, of counsel), for Claimant.

NEIL F. HARTIGAN, Attorney General (ROBERT J. SKLAMBERG, Assistant Attorney General, of counsel), for Respondents.

NEGLIGENCE—*visitor at youth center—fall from broken chair—stipulation—claim allowed.* Based on a stipulation entered into by the parties, a claim was allowed for injuries sustained by Claimant when a chair she sat on while visiting a youth center collapsed from beneath her, as the same chair had been broken earlier but was allowed to remain in use by an employee at the youth center.

POCH, J.

This cause coming on to be heard on the joint stipulation of the parties hereto, the Court being fully advised in the premises, finds:

That this is a personal injury action brought pursuant to section 8(d) of the Court of Claims Act (Ill. Rev. Stat. 1981, ch. 37, par. 439.8(d)).

This suit arose from injuries sustained by Claimant on June 8, 1977, while she was a visitor lawfully in the main guardhouse at the Illinois Youth Center in St. Charles, Illinois. Claimant was there to pick up her friend, an employee of the Department of Corrections at the St. Charles Youth Center, who was just getting off from work.

While Claimant was waiting she sat upon a swivel-type stool chair which was designated for such use by visitors of the Youth Center. The chair collapsed from beneath Claimant, causing her to fall to the floor and sustain the injuries giving rise to this claim.

The same chair had been broken earlier in that same day when it was used by an employee at the Youth Center who was assigned to the main guardhouse. However, instead of having the chair removed from the guardhouse, this employee simply pieced it back together and let it remain such that it posed a danger to anyone who might unknowingly use it.

It is therefore ordered that the Claimant, Delores Roberts, be and hereby is awarded the sum of two

thousand five hundred dollars and no cents (\$2,500.00), in full satisfaction of this claim. .

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(No. 78-CC-1237—Claim dismissed.)

**KIMBERLY GRAVES**, Individually and as Special Administratrix of the Estate of **Dennis Graves, Deceased, Claimant, v. THE STATE OF ILLINOIS and THE ILLINOIS DEPARTMENT OF TRANSPORTATION, Respondents.**

*Opinion filed October 24, 1983.*

*Order on denial of rehearing filed February 3, 1984.*

**ANESI, OZMON, LEWIN & ASSOCIATES**, for Claimant.

**NEIL F. HARTIGAN**, Attorney General (**HANS G. FLADUNG**, Assistant Attorney General, of counsel), for Respondents.

**HIGHWAYS—state's duty to maintain highways.** State is not insurer against accidents that may occur because of condition of highways, but State does have duty to exercise reasonable care in maintaining highways so that dangerous conditions likely to injure persons lawfully there shall not exist, and the mere existence of a defective condition is insufficient to establish negligence on part of State.

**SAME—rut in highway—contributory negligence—claim denied.** Claim based on death of motorcyclist which occurred when cycle struck rut in highway, went out of control and struck utility pole was denied, as evidence established that decedent could have avoided rut in pavement if he had been operating motorcycle with reasonable degree of care, and that proximate cause of death was decedent's own negligence.

**HOLDERMAN, J.**

The accident on which this claim is based occurred at approximately 6:30 p.m. on July 17, 1977.

Dennis Craves, decedent, was killed as a result of injuries he sustained on that date and this suit was brought by his widow, individually and as special administratrix of his estate. The decedent was proceeding

north on Cicero Avenue near 149th Street riding his 350 c.c. Honda motorcycle. He was riding with two friends who were also on motorcycles at the time the accident occurred. The pavement was dry, it was daylight, and traffic was light.

The exact position of the decedent while driving on Cicero Avenue in relation to the position of the alleged dangerous road conditions is at issue. Both companion motorcyclists testified that decedent was leading and was motoring furthest from the curbside. This evidence is conflicting because one of Claimant's witnesses has given two different accounts of the incident. In one instance, he stated decedent was the first of the three cyclists, and in another instance, he stated he was driving in front of decedent.

Decedent had purchased the motorcycle on which he was riding a few days before the accident and it was unlike the one he had been accustomed to riding.

It is Claimant's position that the State of Illinois was negligent in maintaining its highway, that there was a rut in said pavement, that when decedent's motorcycle struck the rut, it caused decedent to lose control and he was thrown against a utility pole, causing his death.

There are two questions before the Court: (1) whether the State exercised reasonable care and was not guilty of negligence in maintaining the northbound lanes at the site of the accident; and (2) whether decedent himself was negligent and was not in the exercise of due care and caution for his own safety.

This occurrence took place before the contributory negligence rule was adopted by the courts of Illinois, and consequently, it is of no importance to the present case.

Claimant introduced several pictures of the scene of

the accident which allegedly showed that the expansion joint of the highway was so wide that the front wheel of decedent's motorcycle entered into said rut and caused the accident. This evidence was directly refuted by one of Respondent's witnesses, and the pictures themselves indicate that the rut in question was merely the expansion joint found in practically all highways. It does not appear to be sufficiently wide enough to allow even a narrow tire of the type on the motorcycle decedent was riding to enter into said rut.

The Court's attention is called to the fact that the previous motorcycle driven by decedent was a slower motorcycle, or dirt bike, as opposed to the 350 c.c. Honda he was driving on the day of the accident. The Honda motorcycle had smaller tires than his old one, although there is one witness who testified that the groove was wide enough to cause a motorcycle accident such as the one in the present case.

This Court has repeatedly held that the State is not an insurer against accidents that may occur by reason of the condition of a State highway. (*Bloom v. State* (1957), 22 Ill. Ct. Cl. 582.) The Claimant must prove that the State was negligent, that such negligence was the proximate cause of the injury, and that Claimant decedent was in the exercise of due care and caution for his own safety. *McNary v. State* (1956), 22 Ill. Ct. Cl. 328.

It is clearly the law in this State that the State has a duty to exercise reasonable care in the maintenance of its highways so that dangerous conditions likely to injure persons lawfully there shall not exist. (*Dellorto v. State* (1979), 32 Ill. Ct. Cl. 435.) However, "the mere fact that a defective condition existed if, in fact, it did exist, is not in and by itself sufficient to constitute an act of negligence

on the part of the Respondent.” (*Palmer v. Northern Illinois University* (1964), 25 Ill. Ct. Cl. 1.) Claimant must show that Respondent had either actual or constructive knowledge of such defect, and it is the Court’s opinion that such knowledge was not shown in the present case.

The Court calls attention to the case in *Wing v. State* (1977), 31 Ill. Ct. Cl. 473, 476, which also involved a motorcycle accident, wherein the Court stated “. . . the State is charged only with using reasonable diligence in maintaining the roadways under its control. To recover on his claim, Claimant thus bears the burden of establishing by a preponderance of the evidence that the State breached its duty to use reasonable care in maintaining the highway at the accident site. . .”

The evidence shows that the pavement was dry and there were no obstructions to decedent’s vision. Assuming, *arguendo*, that there actually was a defect in the road, this Court recognizes that the motorist himself must exercise due care for his own safety. In *McAbee v. State* (1963), 24 Ill. Ct. C1.374, this Court denied a claim filed by a bicyclist who had struck a hole in the pavement and was tossed to the roadway; the Court stated the contributory negligence of the Claimant “in not seeing a defect in the highway” bars recovery. In *Schnell v. State* (1962), 24 Ill. Ct. Cl. 257, a motorcyclist was denied recovery, the Court stating:

“Where evidence showed that Claimant could have avoided the hole in the pavement had she been watching, freedom from contributory negligence was not proven.”

The Court notes that both occurrence witnesses stated they saw the rut as they approached it, that the road was dry, and the weather was good.

This Court has held on many occasions that for a

claimant to recover damages arising from defects in the roadway, the claimant must prove the State was negligent and that such negligence was the proximate cause of the injury. In this case, the proximate cause of the accident was the negligence of decedent himself.

The Court is of the opinion that based upon the evidence presented in this case and upon the applicable law in Illinois, Claimant cannot recover because she has failed to prove by a preponderance of the evidence that Respondent was negligent, that decedent's death was caused by any negligence on the part of the State, and that decedent was free of any negligence on his part. It is clear that Respondent is not liable for the regrettable death of decedent.

Award denied.

#### ORDER ON DENIAL OF REHEARING

HOLDERMAN, J.

This matter comes before the Court upon Claimant's petition for rehearing and for new trial and Respondent's reply to said petition.

The Court finds that Claimant has failed to allege grounds sufficient for this Court to vacate its denial of award entered October **24, 1983**.

It is hereby ordered that Claimant's petition for rehearing and for new trial be, and the same is, denied, and this claim remains dismissed.

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(No 78-CC-1612—Claimant awarded \$3,000.00)

B. P. CONSTRUCTION, Claimant, v. THE STATE OF ILLINOIS,  
Respondent.

*Opinion filed August 24, 1983*

FRIEDMAN & KOVEN, for Claimant.

NEIL F. HARTIGAN, Attorney General (GLEN P. LARNER, Assistant Attorney General, of counsel), for Respondent.

*STIPULATIONS—construction contract—claim allowed.* The parties entered into a joint stipulation with regard to claim arising from construction contract in full settlement of dispute, and award was granted based on stipulation, since agreement appeared to be just and reasonable and was entered into with full knowledge of facts and law.

POCH, J.

This claim comes before the Court on the joint stipulation of the parties agreeing to and praying for an award of \$3,000.00. The joint stipulation states as follows:

1) That the claim arises from a construction contract enter'ed into on June 24, 1970, between, Claimant and Respondent.

2) That after consideration of the time and expense already spent on this claim and the time and expense that will have to be further spent to continue the dispute, the parties have agreed to settle the claim for \$3,000.00.

3) That both sides have entered into this agreement with knowledge of the facts and law applicable to the case.

4) That both parties agree that an award of \$3,000.00 would be both fair and reasonable.

5) That Claimant agrees to accept said award as full and final satisfaction for the instant claim and any other

claims against Respondent arising under the same circumstances and events which gave rise to the instant claim.

6) That both parties waive trial, the submission of evidence, and the filing of briefs.

While the Court is not bound by an agreement such as this, it is also not desirous of creating or prolonging a controversy between parties who wish to settle and end their dispute. Where, as in the instant claim, the agreement appears to have been entered into with full knowledge of the facts and law, and is for a just and reasonable amount, we have no reason to question or deny the suggested award.

It is hereby ordered that the Claimant be awarded \$3,000.00 (three thousand dollars) as full and final satisfaction of the claim.

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(No. 78-CC-1644—Claim denied.)

**RICHARD ERNAT and JAMES ERNAT, Claimants, v. THE STATE OF ILLINOIS, Respondent.**

Opinion filed January 6, 1984.

**PETER F. FERRACUTI & ASSOCIATES, P.C. (MARK CYR, of counsel), for Claimants.**

**NEIL F. HARTIGAN, Attorney General (FRANCIS M. DONOVAN, Assistant Attorney General, of counsel), for Respondent.**

*AGENCY*—when agent's acts bind principal. Agent's acts may bind principal where agent has actual authority, where agent has apparent authority, when agent has inherent power independent of actual or apparent authority, and when actions of agent are ratified by principal.

*SAME*—when apparent authority arises. Apparent authority arises when principal induces third party to believe that claimed authority of agent exists.

*SAME—state not bound by agent's apparent authority*

*STATE PARKS AND RECREATION AREAS—sale of land—lease-back not established—claim denied.* The Claimant's allegations that Department of Conservation breached agreement to lease back certain farmland to Claimants for agricultural uses after Claimants sold property to Department were without merit, as evidence failed to establish that agent dealing with Claimants had apparent or inherent authority to bind State to lease-back provisions of agreement and the lease-back provisions were never ratified by State.

ROE, C.J.

This is a claim brought by Richard Ernat and James Ernat against the State of Illinois. In their complaint the Ernats allege that in the spring of **1970**, they, along with Ignatius Ernat, Anne Ernat, Janice Ernat, and Marlene Ernat, entered into negotiations concerning the sale of **221.42** acres of land located in La Salle County with the State and Department of Conservation. The Ernats negotiated with Truman Esmond whom they claim was an agent for the State. Attached to the complaint is an agreement for warranty deed signed by Ignatius Ernat and Anne Ernat and by Truman Esmond, purportedly as an agent for the State of Illinois. The agreement contained, among other things, provisions allowing the Ernats to plant and harvest the **1970** crops and obligating the State to lease back the land to the Ernats so long as it was leased for agricultural purposes.

The negotiations finally culminated in a closing in June of **1970**. A warranty deed transferring title to the State was recorded on June **15, 1970**.

Although the deed reserved the Ernats' right to plant and harvest the **1970** crops, it made no reference to the lease-back provision contained in the agreement for warranty deed. For the next three years the State did lease most, if not all, of the land to the Ernats, during which time the land was farmed by the Ernat family. In **1973** the Ernats were given a notice to quit. After taking bids, the State leased the land to William Lucas and Jack Mills.

In 1974 these two planted grass along with an oat crop and were allowed to harvest the oats, as well as the straw. The Claimants contend, therefore, that the State breached its contract, the agreement for warranty deed, by leasing the land for agricultural purposes to ones other than the Ernats. They seek damages in the amount of sixty-three thousand (\$63,000.00) dollars, the profits they claim would have been realized if they were allowed to lease and farm the land during 1974.

A hearing was conducted before Commissioner Bruno P. Bernabei, who heard testimony, and received evidence and the briefs and arguments of counsel. The commissioner has duly filed his report, together with the transcripts, exhibits, and briefs now before us.

The facts and circumstances of this transaction between Claimants and the State are complicated. They raise many issues and sub-issues. The resolution of this matter, however, centers on two basic questions. The first issue is whether there did, in fact, exist an enforceable contract between the Ernats and the State, which includes the disputed lease-back provision. The second issue, and really a sub-issue to the first, is whether Truman Esmond was an agent for the State, specifically regarding the lease-back provision. The resolution of these two questions requires a close examination of the facts presented through the evidence at the hearing.

The Claimants' evidence, particularly the testimony of Ignatius Ernat, showed that sometime in March of 1970, Ignatius Ernat and his son, James Ernat, were visited by Truman Esmond. Other than a telephone call from Mr. Esmond setting up the meeting, the Ernats had never spoken to or known Truman Esmond. At the meeting held at the Ernat home, Truman Esmond represented himself to be a representative of the Department

of Conservation and the State, and said that he was interested in purchasing the land in question for the State. There was some discussion between Ignatius Ernat and Esmond concerning price and it was finally agreed that they would meet at a later date.

Approximately one month later, Ernat and Esmond met again. They drove around the land in question as Ernat pointed out to Esmond the various parcels he wanted to sell. Ernat testified that he told Esmond that if he were to sell, he would insist on reserving the right to lease and farm the land so long as it was used for agricultural purposes. Esmond responded that it was all right with him and that he was almost sure that it was all right with the State. Ernat insisted further that the reservation be included in the deed and Esmond agreed.

On April 6, 1970, a document titled agreement for warranty deed was executed by Ignatius Ernat and his wife, Anne Ernat, and by Truman Esmond, purportedly on behalf of the State. The agreement 'contained the lease-back provision. There were two additional agreements for warranty deed executed as well, also dated April 6, 1970. One was signed by Ignatius, Anne, Richard, and Janice Ernat, and Esmond, purportedly on behalf of the State. The other was signed by Ignatius and Anne Ernat only. The matter ultimately proceeded to a closing on June 15, 1970, where both sides were represented by counsel and on that day the deed was recorded. As indicated, the deed did not contain the lease-back provision. The Ernats were paid in full and did, in fact, enter into leases for each of the next three years.

Ignatius Ernat testified that he dealt only with Esmond regarding the negotiations and ultimate sale of the land. Subsequent to the sale he did have several conversations with Ron Fitzgerald, presumably a Depart-

ment of Conservation official. Concerning the yearly leases, Ernat told him that he felt that he was entitled to farm the land since he was good enough to sell it to the State in the first place, and therefore, he felt that the State should give him the first chance to farm it. Ernat also spoke with Robert Corrigan, chief of the land acquisition department for the Department of Conservation, approximately six months following the closing. Ernat told him that he should have first preference to rent the land and Corrigan agreed. When the State requested bids for the 1974 lease, Ernat submitted a bid, but lost to Lucas and Mills.

Truman Esmond testified that he had worked many years for the State as an appraiser and as a negotiator for the purchase of land on behalf of the Department of Conservation, as well as other State agencies. He stated that his authority to negotiate a purchase and sign agreements was absolute. He stated that procedurally he would draw up an option on a form that he used. In this particular case he was obviously referring to the agreement for warranty deed. He testified that the agreement for warranty deed forms were secured from his personal office and that he did not use the forms provided by the State because they contained too much fine print. The options would be sent by him to the office of the Director of Conservation and he stated further that the agreements reached by him as set out in the option were always honored. In this case, as was customary, Esmond paid one thousand (\$1,000.00) dollars of his own funds to the Ernats upon signing of the agreement. This was the amount of the stated consideration in the agreement. He would customarily be reimbursed by the State following the closing of the transaction he had negotiated. Although he claims his authority was absolute, Esmond testified that he had no authority to obligate the State of Illinois

beyond the money that he had personally paid, which in this case was \$1,000.00.

Esmond testified that he sent all three agreements for warranty deeds to the Department of Conservation, Springfield office, including the two agreements that he had signed as agent for the State. However, the State introduced a letter from Esmond to Mr. Corrigan dated April 11, 1970, which read in full, "Enclosed is the duly executed Agreement for Warranty Deed on the Ignatius Ernat and Anne Ernat [*sic*] in Deer Park Township, LaSalle County, Illinois". Attached thereto and introduced into evidence was the agreement signed only by Ignatius and Anne **Ernat**. There **was** no evidence that any State official received the other agreements signed by Esmond, or that they were even aware of their existence. When confronted with the letter and asked when he sent the other agreements to Springfield, he stated that he could not say, but that he would have thought it would have been at the same time. It is noteworthy that the complaint alleged a breach of contract arising from the agreement for warranty deed made a part of the complaint as an exhibit, and which was one of the two agreements signed by Esmond and never provided to a State official.

The Department of Conservation land acquisition chief, Robert Corrigan, testified for the State. He stated that land would be procured by the Department by first getting approval from the Governor and legislature with respect to appropriations. Negotiations with potential sellers would then be instituted by Department employees. Corrigan knew Esmond in 1970 and during that time Mr. Esmond was providing contractual services as an appraiser and also provided other related services which presumably included those of a negotiator. When **Esmond** did work out proposed agreements with a land-

owner; they would be sent to the Department of Conservation for either approval or disapproval.

Corrigan testified that he did indeed receive the agreement signed by Ignatius and Anne Ernat attached to Esmond's letter of April 1970. He never saw the other two agreements signed by Esmond until after this lawsuit was initiated. To Corrigan's knowledge at all relevant times, Esmond had never signed his name to any agreement as agent for the State. In this case, Esmond obviously did sign two agreements and advanced \$1,000.00 which he was ultimately reimbursed for by the State. Corrigan stated that he believed Esmond was advancing money as a gamble of his own to later see if the State would be interested in acquiring the property in question. As indicated previously, Esmond himself stated that he could not obligate the State beyond the \$1,000.00 that he had advanced.

Corrigan testified that prior to closing any transaction the proposed agreements and deeds had to first be approved by the Attorney General. In this case, Corrigan submitted several documents to the Attorney General, including the agreement for warranty deed received by Corrigan, as well as a proposed deed. The Attorney General's report and opinion to Mr. Corrigan was received into evidence, and among other things, it specifically disapproved and rejected the lease-back provision contained in the agreement, although it did approve the provision granting the Ernats the right to plant and harvest the 1970 crops.

Corrigan testified that in light of the Attorney General's opinion he did not agree to the lease-back provision. He conveyed all of this to Mr. Esmond, as well as Assistant Attorney General Anderson, who represented the State at the closing on June 15, 1970. The deed recorded

following the closing complied with the Attorney General's opinion in all respects.

Corrigan also testified to a conversation he had with Ignatius Ernat in December of 1970, several months after the closing, at which time Ernat told him that he had farming rights through 1971. He was apparently referring to the first year lease. Ernat asked Corrigan for consideration beyond 1971 if the land was going to continue to be farmed. Corrigan told Ernat he would do what he could and, as indicated, leases were given to Ernat for the years 1972 and 1973.

While the foregoing recitation of the facts is lengthy, it is all relevant to the resolution of this case. As earlier stated, the two crucial issues in this case are interrelated. They concern Truman Esmond's status and the existence of a binding contract containing the lease-back provision. We find that both issues must be resolved in favor of the State. The Claimants have not demonstrated that Truman Esmond was an agent of the State such that he had the authority to unilaterally bind the State to the lease-back provision.

The Claimants correctly state the three situations wherein a principal-agent relationship is established, and wherein the acts of an agent bind the principal. First, the agent may have actual authority from the principal. Second, the agent may have apparent authority, and third, the agent may have inherent power independent of actual or apparent authority. (*Roscoe Company v. Lewis University College of Law* (1979), 79 Ill. App. 3d 1098, 398 N.E.2d 1083.) In addition, the Claimants correctly stated the law of ratification, the doctrine that binds the principal where he confirms the actions of one originally unauthorized and the principal retains the benefits of the transaction. (*Schoenburger v. Chicago*

*Transit Authority* (1980), 84 Ill. App. 3d 1132,405N.E.2d 1976.) The evidence does not show the existence of any of these agency relationships sufficient to bind the State to the lease-back provision.

Esmond's only actual authority given to him by the State was to negotiate for the State and to submit the negotiated terms to the Department of Conservation and, ultimately, the Attorney General for approval or disapproval. He had no actual authority to bind the State unilaterally to the terms he negotiated and he admitted as much during his testimony. From his testimony it is clear that he received no such implied authority from the Department of Conservation. This is clear also from Robert Corrigan's testimony.

Apparent authority arises when the principal, by his conduct towards the third party, induces the third party to reasonably believe that the claimed authority of the agent exists. In short, a principal is bound by the authority that by his own acts he appears to give. *Lynch v. Board of Education* (1980), 82 Ill. 2d 415, 412 N.E.2d 447.

When dealing with the subject of apparent authority, this Court has noted that the ability of a person with apparent authority to contract is a point of serious consequence when dealing with State entities. The State cannot be bound by agents with apparent authority rather than actual authority in most situations because such a policy could be disastrous to the State's budget. *Agles v. State*, No. 81-CC-1130, at 9-10, filed October 19, 1983.

Even if this was a situation where the State could be bound by apparent authority, the Claimants have failed to show its existence in this case. Neither the State nor Department of Conservation officials acted in a manner towards the Ernats which would cause them to believe

that Esmond had the *carte blanche* authority that he claimed. In fact, the Ernats never knew Truman Esmond prior to the time he first contacted them. Furthermore, the Ernats never spoke to any State official about the transaction until after the closing was completed. The State did nothing to cause the Ernats to reasonably believe that Esmond had the power to unilaterally bind the State to the lease-back provision. The Department of Conservation's failure to personally advise the Ernats of the Attorney General's rejection of the lease-back provision contained in the agreement provided to Corrigan does not constitute conduct giving rise to apparent authority. There would be no reason for the Department to advise the Ernats since the agreement was not signed by Esmond and, therefore, there was no reason to suspect that Esmond had attempted to bind the State. The simple fact is that Truman Esmond alone claimed authority. By the Ernats' own conduct it is difficult to understand that the Ernats believed that Esmond had his claimed authority. The Ernats executed a deed that did not contain a lease-back provision although Ignatius Ernat testified that his agreement with Esmond was that the deed contain such a provision. In discussions subsequent to the closing, Ernat felt that he was entitled to the three one-year leases not because of any contract provisions apparently, but because he felt he was entitled to rent the land since he was good enough to sell it to the State in the first place. In addition, the Ernats tendered a bid for the 1974 lease instead of relying on their alleged contract rights.

For the same reasons above mentioned, there is no rational basis to find that Esmond had any inherent authority to bind the State.

The doctrine of ratification is equally non-applicable

in this case. The evidence simply showed that Corrigan received a proposed agreement containing the lease-back provision. He submitted it to the Attorney General who disapproved it. Corrigan communicated this to Esmond, as well as closing attorney Anderson. The closing then took place with no reference to the lease-back. There was no ratification.

The Court agrees with the arguments advanced by the State in its brief, concerning the basic law of contracts and offer and acceptance. The agreement submitted by Esmond to Corrigan and then to the Attorney General was an offer by the Ernats that was rejected. The terms contained in the deed ultimately executed represented the full agreed-upon terms by the parties.

An additional issue that this case raises is the question of whether or not the land was in fact leased to Lucas and Mills in **1974** for agricultural purposes. It may very well be that it was not. If it was not, there would, of course, be no breach of contract even **if** one existed containing the lease-back provision, and even assuming legal authority on the part of Truman Esmond. This issue unfortunately was not adequately addressed at trial nor in the briefs other than by fleeting reference.

Based on the foregoing, it is hereby ordered that this claim be, and the same is, hereby denied.

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(No. 78-CC-1863—Claimant awarded \$32,500.00.)

GUST K. NEWBERG CONSTRUCTION Co., an Illinois corporation, and DEL CONSTRUCTION Co., an Illinois corporation, a joint venture, Claimant, v. THE STATE OF ILLINOIS, Respondent.

*Opinion filed January 5, 1984.*

CAREY, FILTER & WHITE (EDWARD M. WHITE, of counsel), for Claimant.

NEIL F. HARTIGAN, Attorney General (FRANCIS M. DONOVAN, Assistant Attorney General, of counsel), for Respondent.

**CONTRACTS—*construction contract—owner's implied warranty.*** In a construction situation, the owner necessarily impliedly warrants that the plans and specifications are possible to perform, are adequate for performance and are free from defects.

***SAME—owner breached implied warranty of possibility of performance—exfras—claim allowed.*** Evidence established that Claimant performed construction work according to original plans provided by owner, but leaks developed in roof, and therefore claim was allowed for extra work performed pursuant to change in roof design, as owner breached implied warranty that original plans were free of defects

ROE, C.J.

This cause comes before the Court on the stipulation filed by the parties hereto. The stipulation and complaint indicate that this is a claim for breach of a construction contract between Newberg Construction Co. and Del Construction Co., a joint venture (Claimant), and the State of Illinois, by the Illinois Building Authority (Respondent).

The contract in question was executed on May 20, 1970, for the construction of Phase IA of the Illinois Central College in East Peoria, Illinois (project). The Claimant was to perform services as a general contractor on the project.

Part of Claimant's responsibilities under the contract was the installation of a roof on the project pursuant to

the plans and specifications therefor as issued by the project architect. After completion of the roof, leaks developed.

The Respondent and the project architect directed Claimant to repair, restore and replace the roof to the extent necessary to produce a weatherproof and water-tight roof. Claimant did so at a cost of \$187,637.86.

Before considering the merits of the claim herein, the Court on its own motion shall consider the question of jurisdiction. As indicated, this matter began in the circuit court. The question remains whether the Court of Claims has jurisdiction to decide a case involving the Illinois Building Authority.

**The** claim herein was filed in the Court of Claims following the entry of an order by Judge Gilberto in the Circuit Court of Cook County on October 17, 1978, dismissing that part of the circuit court lawsuit involving the Illinois Building Authority. In doing so, the judge relied on the First District Appellate Court's ruling in *Talandis Construction Corp. v. Illinois Building Authority* (1978), 60 Ill. App. 3d 715,377 N.E.2d 237.

In *Talandis*, a suit had been filed against the Illinois Building Authority (IBA) arising out of an alleged breach of a construction contract for the construction of a small animal clinic complex for the Champaign-Urbana campus of the University of Illinois. After a bench trial in circuit court, a judgment for Talandis was entered in the amount of \$437,841.81.

Both sides filed an appeal. During the pendency of the appeal but after oral arguments, the IBA filed with the appellate court additional authority relating to the lack of jurisdiction in the circuit court to consider a case involving the IBA. It was the IBA's position that it was a

State agency and, as such, could only be sued in the Illinois Court of Claims. The appellate court agreed.

Citing the Capital Development Board Act (Ill. Rev. Stat. **1983**, ch. **127**, par. **771 et seq.**), the court noted that that legislation specifically defined the term “State agency” to include the IBA (Ill. Rev. Stat. **1983**, ch. **127**, par. **773**).

The court went on to hold that “the (Capital Development Board) Act’s declaration that IBA is a State agency implied that actions against IBA founded in contract had to be pursued in the Court of Claims”. **60 Ill. App. 3d 715,717,377 N.E.2d 237, 241.**

There can be no dispute that this Court has jurisdiction over this claim. Furthermore, there can be no misunderstanding that the IBA is, in fact and law, a State agency.

In its complaint, Claimant alleged that the work which it was directed to perform by Respondent constituted a change in the work and, therefore, an extra under the provisions of the contract. It has been stipulated by the parties that the new roof which Claimant was directed to install was of a different design than originally specified by the project architect. .

However, the parties have stipulated that there is no evidence to indicate that the Claimant did not adhere to the plans and specifications issued by the project architect for the installation of the original roof. Taken conversely, the Court interprets this stipulation as meaning that the original roof was installed pursuant to the plans and specifications but that leaks developed anyway. The Court deems this to be a significant admission on the part of the Respondent.

It is hornbook law that an owner, in this case the

IBA, in a construction situation necessarily impliedly warrants that the plans and specifications are possible to perform, are adequate for performance and are free from defects. *United States v. Spearen* (1918), 248 U.S. 132.

Here the Claimant installed a roof according to the plans and specifications, for which it had no responsibility in terms of preparation, only to be ordered to install a second roof when the first one failed. By awarding the work to Claimant, the IBA had warranted that the roof, if built as designed, would be adequate. That is, such a roof would be weatherproof and watertight. Clearly, it was not.

We, therefore, find that the IBA breached its contract with the Claimant insofar as the implied warranty of the design of the roof is concerned. While the IBA had every right to insist that the roof be weatherproof and watertight, the Claimant had a right to rely on the IBA's plans and specifications to produce such a roof.

By directing the Claimant to install a second roof which was substantially different in design than the first roof, the IBA became obligated to pay Claimant for this work which was not contemplated by the Claimant at the time it submitted its bid on this project.

Any other conclusion would result in the contractor being an insurer of plans and specifications for construction for which it had no responsibility in the first place. The field of contract law does not include such a result.

We, therefore, concur with the parties hereto that an award should be entered in Claimant's favor.

It is hereby ordered that Claimant be awarded the sum of \$32,500.00 (thirty two thousand five hundred

dollars and no cents) in full and complete satisfaction of any and all claims embodied in the complaint herein.

Award granted.

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(No. 78-CC-1948—Claimant awarded \$9,000.00)

PEPPER **DAKOTA CROSBY**, Administratrix of the Estate of Charity  
**T. Crosby**, Deceased, Claimant, *v.* **THE STATE OF ILLINOIS**,

Respondent.

*Opinion filed July 1, 1983.*

ANTHONY B. EBEN, for Claimant.

NEIL F. HARTIGAN, Attorney General (GLEN P. LARNER, Assistant Attorney General, of counsel), for Respondent.

*NEGLIGENCE—wrongful death—child—custody of DCFS—stipulation—award granted.* Based on the stipulation of the parties, an award was granted for the wrongful death of Claimant's daughter while she was under the care of Department of Children and Family Services foster parent, as the stipulation was freely and validly entered into by all the parties, with full knowledge of the facts and law.

POCH, J.

This claim comes before the Court on the joint stipulation of the parties, which states as follows:

1. The instant claim seeks recovery in wrongful death.

2. Claimant's deceased daughter died while she was under the care of a Department of Children and Family Services (DCFS) foster parent.

3. The Respondent concedes to liability for said death to the extent of \$9,000.00 in damages.

4. The Claimant finds the amount of \$9,000.00 to be a fair and reasonable assessment of damages.

5. The Claimant would accept said amount as full and final satisfaction of the instant claim.

6. After careful consideration, investigation and research, Respondent feels that an award in said amount would be a proper and satisfactory resolution to the instant claim.

7. Both parties hereby waive hearing, the submission of evidence and the filing of briefs.

It is the prerogative of the Court to adjudicate for itself the issues of negligence, proximate cause and damages, and in so doing, it is not bound by facts and conclusions agreed upon by the parties. At the same time, however, the Court is not mandated to reject stipulations and agreed amounts of damages; nor is the Court desirous of interposing a controversy where none appears to exist.

Where, as in the instant claim, the Court is not called upon to decide between two contrary sets of facts and legal conclusions, the decision must rest upon the propriety and validity of the stipulation submitted by the parties. The joint stipulation in this case appears to have been freely and validly entered into by all parties concerned, with full knowledge of all the facts and law involved. We therefore approve and accept the stipulation before us.

Claimant, Pepper Dakota Crosby, is hereby awarded \$9,000.00 as full and final satisfaction of her claim.

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(Nos. 78-CC-2043, 78-CC-1272, 78-CC-1643 cons. — Claimants awarded \$57,343.43.)

**BEAT R. KELLER, Administrator of the Estate of Robert R. Keller, Deceased, STEPHEN BESHEL, and JAMES S. CESAR, Claimants, u. THE STATE OF ILLINOIS, Respondent.**

Order filed December 6, 1982.

Order filed January 6, 1984.

JOSEPH N. BONNER, for Claimant Beat R. Keller, Administrator.

DAVID A. DECKER AND ASSOCIATES, LTD., for Claimant Stephen Beshel.

LEO BLETMAN, for Claimant James S. Cesar.

TYRONE C. FAHNER, Attorney General (FRANCIS DONOVAN, Assistant Attorney General, of counsel), for Respondent.

**HIGHWAYS—roadside hazards—State's duty.** Possessor of land, who creates or permits excavation or other artificial condition to remain so near existing highway that he realizes or should realize that it involves an unreasonable risk to others accidentally brought into contact with such condition while traveling with reasonable care upon highway, is subject to liability for physical harm caused to persons who are traveling on highway or foreseeably deviate from it in the ordinary course of travel.

**NEGLIGENCE—reasonable foreseeability is prerequisite to liability.** No liability can attach where under given circumstances injury was not reasonably foreseeable, as creation of legal duty requires more than mere possibility of occurrence.

**SAME—leaving highway while rounding curve—foreseeable deviation from normal travel.** It is a reasonably foreseeable deviation from normal travel for a vehicle to go off highway while rounding a curve at night at a speed of 50 to 55 miles per hour.

**SAME—passenger's duty to control driver.** Passenger has no duty to keep lookout or control driver unless passenger knows or should know that such action was essential to his own safety.

**HIGHWAYS—unsafe guardrail—accident—drunk driver—claim denied.** Driver of automobile was denied recovery for injuries sustained when vehicle left highway and collided with guardrail that had previously been damaged but not completely repaired by State, as driver was intoxicated at time of collision and failed to establish that he was free of contributory negligence when rounding curve at high rate of speed.

**SAME—unsafe guardrail—drunk driver—accident—passengers' claims allowed.** Negligence of intoxicated operator of automobile would not be

imputed to passengers who were injured when car left highway and struck negligently maintained guardrail, as evidence failed to establish that driver's drinking made him operate vehicle in manner that reasonable persons would not have accompanied him.

*DAMAGES—claimant must prove compensation from insurance.*

HOLDERMAN, J.

These three cases are tort claims arising out of a one-car accident at Route **173** and Price Road in McHenry County, Illinois. The accident happened September **3, 1977**, at about 1:45 a.m. The three cases were consolidated for purposes of trial.

On September **2, 1977**, James Cesar, Stephen Beshel, and decedent Robert R. Keller met at Beshel's home in Gurnee, Illinois, between 7:30 and 7:45 p.m. From there they went in Cesar's car to Beshel's aunt and uncle in Gurnee, Illinois, where they remained from about 8:00 or 8:30 p.m. until some time after 10:30 p.m., possibly until 12:30 a.m. Cesar was driving the car eastbound on Route **173** towards Hebron, Illinois, at a speed he said was between 50 and 55 miles per hour. In the front seat was Keller, and Beshel sat in the rear seat behind Meller.

Route **173** curves to the northeast where it intersects Price Street near Hebron, Illinois. As Cesar started to negotiate the curve he lost control of his car, resulting in a slide sideways along the shoulder and striking an unfinished exposed end of the guardrail to the southeast of the highway.

The exact cause of Cesar's car leaving the highway was not established by the evidence. According to Cesar, his rear tires "must have hit gravel, I lost control of the car." The car slid until it hit the guardrail. In the collision Robert Keller was killed. Cesar and Beshel were injured. The guardrail, as a result of the collision, protruded thru

the rear wheel well on the left side after entering just in front of the right front door.

There was evidence that Cesar's vehicle left Route 173 and slid 228 feet to the point of impact with the guardrail and another 54 feet after impact. The point of impact was 10 feet from the travelled portion of Route 173.

The testimony of the presence of gravel on the highway was disputed. No one, however, testified to seeing gravel as far back from Price Street as the point where Cesar's car first left the highway.

Cesar was ticketed for driving while intoxicated. A blood test was taken with his permission, and it showed .15 percent alcohol.

As to the guardrail, it appeared from the evidence that it had been damaged the previous May by a car colliding with it. The guardrail was to protect against going into a ditch by a vehicle leaving the highway. The maintenance crew removed the damaged curved portion of the guardrail at that time and, since they had no replacement curved rail in stock, the crew put up four reflectorized barricades in the area where the guardrail was removed. The barricades were 2 x 8's with a reflectorized panel approximately six feet long supported by 2 x 4's. One barricade was placed at the end of the guardrail on Route 173 and the other three covered the area where the guardrail had been removed. A stub six inches long protruded past the post on which the damaged rail had been attached.

Claimants all claim the State was negligent in permitting a dangerous condition to exist for over three months after having actual notice that it existed. Soon

after the present accident, the State made repairs to the guardrail by bending a straight section and installing it. No reason was given why this wasn't done back in May when the first collision occurred.

The Respondent's principal argument, here quoted verbatim, is taken from its brief, the pertinent portion of which is hereby incorporated in this opinion. The quoted argument is as follows:

"The general rules with regard to the responsibility of the State in maintaining its roadways are succinctly set forth in *Kolski v. State* (1976), 31 Ill. Ct. Cl. 307, where this Court stated at p. 312:

'This Court has held on numerous occasions that the State of Illinois is not an insurer of every accident which occurs upon its public highways. The State of Illinois is charged only with maintaining its highways in a reasonably safe condition and with using reasonable diligence in doing so. We have also held that the State's duty of due and reasonable care extends to maintenance of the shoulders of roadways for the uses for which they are reasonably intended.'

In terms of roadside hazards, the applicable rule is set forth in *Kubala v. Dudlow* (1958), 17 Ill. App. 2d 463, 150 N.E.2d 643, where the court held that the Restatement (Second) of Torts applies to questions of this nature. The Restatement in section 368 provides as follows:

'A possessor of land who creates or permits to remain thereon an excavation or other artificial condition so near an existing highway that he realizes or should realize that it involves an unreasonable risk to others accidentally brought into contact with such condition while traveling with reasonable care upon the highway, is subject to liability for physical harm thereby caused to persons who

- (a) are traveling on the highway, or
- (b) *foreseeably deviate from it in the ordinary course of travel.*'

That the State owned and maintained Route 173, including the guardrail, is undisputed. That the State was responsible for the condition of the guardrail as it existed on September 3, 1977 is also undisputed. The dispute concerns whether a duty had been breached to the claimants because of this ownership.

A duty, under the rule, has been breached when the possessor responsible for a roadside object or condition knew, or should have known, that it posed an unreasonable risk. This duty, however, is not framed so as to make the possessor an insurer of the safety of persons using the roadway. The risk in question must be such that a person using ordinary care is injured in the course of a foreseeable deviation in the ordinary course of his journey.

A further reading of the comments to section 368 of the Restatement expands upon the zone of risk imposed by the roadside object or condition.

. . . (The rule) applies also to those who reasonably and expectably deviate from the highway and enter upon the abutting land in *the ordinary course of travel*. The possessor is required to anticipate the possibility of such deviations and to realize, where a reasonable man would do so, that the traveler so deviating may encounter danger. The public right to use the highway carries with it the right to protection by reasonable care against harm suffered in the course of deviations which may be regarded as the *normal incidents of travel*. . . . Comment (e).

In determining whether the condition is one which creates an unreasonable risk of harm to persons lawfully travelling on the highway and deviating from it, the essential question is whether it is so placed that travelers may be expected to come in contact with it in the course of a deviation reasonably to be anticipated in the ordinary course of travel. *Distance from the highway is frequently decisive, since those who deviate in any normal manner in the ordinary course of travel cannot reasonably be expected to stray very far*. . . . Comment (h).'

Thus the risk imposed by the roadside object or condition must be such that a traveler exercising ordinary care deviates from the highway and comes into contact with the object or condition. Liability for the injury therefrom will be imposed only where the traveler's deviation is foreseeable and where the deviation can be deemed a normal incident of travel.

No liability can attach where under a given set of circumstances the injury was not reasonably foreseeable. The creation of a legal duty requires more than mere possibility of occurrence. *Cunis v. Brennan* (1974), 56 Ill. 2d 372, 308 N.E.2d 617.

In *Cunis*, the supreme court was considering whether a village owed a duty to an automobile passenger who, because of collision, had been thrown from his automobile approximately 30 feet onto the village-maintained parkway where one of his legs was impaled upon an object protruding from the ground. The court stated at p. 619:

'In judging whether harm was legally foreseeable we consider what was apparent to the defendant at the time of his now complained of conduct, not what may appear through exercise of hindsight. We will not look back, as it was felicitously put by Justice Cardozo, "at the mishap with the wisdom born of the event" . . .

From the evidence before the Court in the present case, we find that the State was negligent in allowing a dangerous hazard to exist for over three months after actual notice.

We further hold that Claimant Cesar failed to meet his burden of proof that he was free from contributory

negligence. However, his passengers had no such burden to prove Cesar free of negligence, merely that each of them was not contributorily negligent; Cesar's negligence, if any, would not be imputed to them..

To answer Respondent's argument, we hold that a vehicle going off the highway while *rounding a curve* at night at a speed of 50 to 55 miles per hour is a deviation from normal travel which was reasonably foreseeable.

This Court finds support for its holding the State negligent in the case of *Kolski v. State* (1976), 31 Ill. Ct. Cl. 307. In that case, a motorcycle left the highway and struck a jagged section of guardrail which had been damaged several months before and which the State had failed to repair. The Court held the State liable for negligence in failing to repair the hazardous guardrail.

That a passenger has no duty to keep a lookout or control the driver unless he knows or should know that such action was essential to his own safety has been established by case law. *Bauer v. Johnson* (1980), 79 Ill. 2d 324, 403 N.E.2d 237; *Smith v. Bishop* (1965), 32 Ill. 2d 380, 205 N.E.2d 461; *Dertz v. Pasquina* (1974), 59 Ill. 2d 68, 319 N.E.2d 12.

The fact that the driver Cesar may have been drinking does not in and of itself make the passengers negligent in riding with him without evidence that such drinking had made him operate his vehicle in such a manner that reasonable persons would not have accompanied him. There is a lack of evidence that such was the case here. See *Kitch v. Adkins* (1952), 346 Ill. App. 342, 105 N.E.2d 527.

While we hold the State was negligent in failing to make the guardrail safe to the traveling public, it does not follow that a negligent driver may recover. However,

the case of the two passengers is different. They were injured by the combined negligence of the driver (if he was negligent) and the State's negligence. Since any negligence of the driver is not imputable to the passengers, it is axiomatic that they would have separate recourse against the driver and against the State. While an errant driver may not himself recover, yet innocent third parties may very well recover.

Both Beshel and Keller sued the driver Cesar in the Circuit Court of McHenry County. In settlement for a covenant not to sue, the Keller estate received \$9,000, and Beshel \$9,800.

The deceased was 20 years old, an auto mechanic and apparently generous to his parents. The law presumes substantial damage.

Claimant Beshel received injuries necessitating medical expenses of **\$8,487.42** and loss of income in the amount of **\$2,286**. Some or all of his medical expenses were compensated by insurance, according to the testimony. He did not, however, produce any evidence of how much insurance was received. The Court holds that it was his burden to prove how much. The State has no way of knowing this and cannot be expected to carry the burden of proof on such a fact. Therefore, we cannot allow his medical expenses since the amount allowable would be speculation on our part, lacking proof of what he was compensated by insurance. He failed to testify to this amount. It could have been in full of the amount. We do not know.

This Court awards Claimant Beshel the total sum of \$35,000, less \$9,800 received in settlement and less **\$8,487.42** medical expenses, for a net award of **\$16,712.58**.

This Court awards Beat R. Keller, administrator, the

sum of **\$45,000** for the death of Robert R. Keller, from which \$9,000 should be deducted making a net award of **\$36,000**.

### ORDER

ROE, C.J.

This matter comes before the Court after having heard oral argument in said cause.

The original order of the Court is hereby affirmed, and it is ordered that the award received by Claimant Beshel be increased by **\$4,630.85**, for a net award of **\$21,343.43**.

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(No. 78-CC-2139—Claimant awarded \$484.39.)

ROLLA AMBROSE, Claimant, *v.* THE STATE OF ILLINOIS,  
Respondent.

*Order filed March 1, 1982.*

*Order on motion to reinstate filed March 13, 1984.*

ROLLA AMBROSE, *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (HANS G. FLADUNG, Assistant Attorney General, of counsel), for Respondent.

*STATE EMPLOYEES' BACK SALARY CLAIMS—reclassification—claim allowed—associated claims denied—summary judgment.* Claimant was granted award based on decision of Civil Service Commission which reclassified her pursuant to reconsideration request, but Claimant failed to fulfill requirements for award of “incentive pay”, and her claims based on change in credible service date and for “present case value of the claim” were denied upon State’s motion for summary judgment.

POCH, J.

This matter coming on to be heard upon the motion of Respondent for summary judgment, and, it appearing

to the Court that Claimant has received due notice, and, the Court being fully advised in the premises;

Finds that Claimant was reclassified based upon the Civil Service Commission decision and was entitled to **\$484.39** based upon the receipt of her reconsideration request on September **30, 1977**, by the director of personnel pursuant to Rule **1—30** of the Department of Personnel Rules; the Court further finds that Claimant did not fulfil the necessary required prior approval of the director of personnel to be eligible for “incentive pay” from April **16, 1977**, through September **29, 1977**, and therefore her claim for incentive pay during that period should be denied; the Court also finds that Claimant’s allegation of changing the credible service date to September **1** in four succeeding years would amount to a thirteenth month of pay in each of the years in question, and therefore, this claim will be denied; the Court finally finds that “present cash value” is not a proper additional element of damage in a contract claim, and therefore the claim for “present cash value of the claim” will be denied.

It is hereby ordered that the motion of Respondent be and the same is hereby granted, and Claimant will be awarded **\$484.39** as a complete settlement of this complaint.

#### ORDER ON MOTION TO REINSTATE

Poch, J.

This matter coming to be heard on Respondent’s motion to reinstate this Court’s order of March **1, 1982**, due notice having been given, and the Court being fully advised in the premises finds as follows:

**1.** That on March **1, 1982**, this Court granted Respondent’s

motion for summary judgment in favor of Respondent with an award of **\$484.39** in favor of the Claimant.

**2.** That on November 8, **1983**, this Court filed an order granting Claimant leave to file her response to Respondent's motion for summary judgment and such response be filed within **14** days of this order.

**3.** That Claimant has failed to file her response to Respondent's motion for summary judgment and on February **1,1984**, Respondent verified that Claimant had not complied with the order granting Claimant leave to file said response.

**4.** That Claimant has been given ample time to comply with the order of November 8, **1983**.

**5.** That this Court in its order dated November 8, **1983**, vacated the order of March **1, 1982**, granting summary judgment in favor of the Respondent pending resolution of the issues raised by Claimant.

**6.** That Claimant has failed to file her reply and the order of this Court of March **1, 1982**, is reinstated.

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(No. 78-CC-2280—Claimant awarded \$28,363.21.)

**DORIS SHARPE**, Claimant, *v.* **THE STATE OF ILLINOIS**,  
Respondent.

*Opinion filed February 2, 1984.*

**JEROME F. LOPINOT**, for Claimant.

**NEIL F. HARTIGAN**, Attorney General (**SUE MUELLER**,  
Assistant Attorney General, of counsel), for Respondent.

*DRAINAGE—changes in highway drainage—damage to Claimant's residence—award granted.* Claimant was awarded substantial damages, where evidence established that State made changes in highway adjacent to

Claimant's residence and the result was increased water flow onto Claimant's property causing erosion of her yard, silt deposits, and structural and interior damage to her house.

POCH, J.

This is a claim for damages due to the basic changes made by the Respondent, the Illinois Department of Transportation, to Highway 161 in the vicinity of the Claimant's residence in 1977.

A hearing was conducted before Commissioner Richard H. Parsons, who heard testimony of witnesses, and received evidence and the briefs and arguments of counsel. The commissioner has duly filed his report, together with the transcript, exhibits and briefs now before us.

This is a drainage case. There is no dispute between the parties concerning the basic characteristics of Claimant's house or its location with reference to Highway 161.

The house faces North Avenue and is a two-story brick structure.

The address of Claimant's property is 72 Highview Lane, Belleville, Illinois; and Highview Lane is on the north side of the property and runs east and west, coming to a dead end at the western edge of Highway 161's right-of-way.

Claimant's driveway, running north and south, is along the eastern edge of said property and immediately adjacent to the western edge of Highway 161, which runs in a northerly and southerly direction.

The surface of the highway is on a higher level than Claimant's property, and at this point there is a long gradual slope, sloping downward to the north.

Approximately 1,000 feet north of the Claimant's property, Ogal Creek runs under Highway 161 and extends in an easterly and westerly direction.

Prior to the year 1977, Highway 161 was a two-lane highway. Running parallel to the highway on the west side and between the highway and Claimant's property was what was described as a gutter.

James Easterly, a registered civil engineer employed as a supervisor for the Department of Transportation construction office in Fairview Heights, Illinois, testified that the gutter existed prior to the year 1977 and that it flowed to the north.

The Department of Transportation in 1977 made improvements on Highway 161 which included the addition of two lanes east of the existing old lanes, the resurfacing of the existing lanes and three other changes, the first change being the addition of a shoulder to the highway on its west edge which, according to the testimony, covered the gutter, and no provisions were made to replace the gutter. The second change was that the two culverts under the highway which had emptied into the gutter were extended by 40 to 50 feet, bringing the end of the culvert 40 to 50 feet closer to Claimant's property and no longer emptying water in its former path to Ogal Creek. The third change was that several hundred thousand cubic yards of dirt was rearranged on the east side of the highway, causing additional waters to flow through to the culvert.

Pursuant to testimony, the water flow was increased by seven percent through the culverts. The State offered no rebuttal to the fact that Claimant stated there had never been any flooding or water problems at her location prior to the changes made by the Respondent.

Respondent's witnesses admitted that these conditions existed when they were called to the location in 1977 after the changes to Highway 161 were completed. They further admitted that the contractor attempted to provide a rock baffle for water coming through the culverts and also that the Claimant was compensated for mud in her house and that rock was hauled to her driveway because of mud and silt left by the flooding waters.

Claimant testified that on every occasion since 1977 when it rained, water poured through the culverts and would overflow her driveway and into her house and later through the east wall and cause erosion throughout her yard with silt deposits up to eight inches, and that a rock retaining wall collapsed because of the flooding waters, her septic tanks are constantly full, and foundation structural damage and interior damage to the low level of her house has resulted.

Claimant having proved damages in the amount of twenty eight thousand three hundred sixty three and 21/100 (\$28,363.21) dollars arising from the State's negligent maintenance of its drainage facilities.

Claimant is hereby awarded damages in the sum of twenty eight thousand three hundred sixty three and 21/100 (\$28,363.21) dollars.

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(No. 78-CC-2305—Claim denied.)

WALTER F. SASS, Claimant, v. THE STATE OF ILLINOIS,  
Respondent.

*Opinion filed February 27, 1984.*

RICHARD L. COOPER, for Claimant.

NEIL F. HARTIGAN, Attorney General (GLEN P. LARNER, Assistant Attorney General, of counsel), for Respondent.

**JURISDICTION**—*Court of Claims not constitutional court.* Court of Claims has no jurisdiction to pass upon constitutionality of legislative enactment for whatever reason, as Court of Claims is a commission of the legislature, rather than a component of the judicial department.

**EASEMENTS**—*what necessary to establish abandonment.* Abandonment, for purposes of extinguishing a written easement, implies an intentional relinquishment of ownership, possession, or control of property without regard to future possession based on an intent and an external act.

**SAME**—*nonuse insufficient to establish abandonment.*

**SAME**—*highway easement—abandonment not established—claim to quiet title denied.* Claimant's action to quiet title to certain property which was subject of easement for highway purposes was denied, notwithstanding nonuse and fact that legislature had passed bill providing for release of easement upon payment of fair appraised value, as mere nonuse is insufficient to establish abandonment, and Claimant refused to pay fair appraised value.

POCH, J:

Claimant has filed a two-count complaint against the State of Illinois to quiet title and for a writ of possession to land over which the State had purchased an easement for highway purposes in 1932.

The history of the case is as follows:

In 1976 Claimant filed a complaint in the Circuit Court for the 16th Judicial Circuit, Kane County, Illinois, against Langhorn Bond, then Secretary of the Department of Transportation of the State of Illinois. The action purported to be against Langhorn Bond personally and asked for the same relief as is asked for in the case now pending in this Court, *viz.*:

### **Count I**

"Wherefore, Plaintiff prays as follows:

1. That Plaintiff's title to the real estate hereinbefore described may be quieted, established and confirmed by Decree of this Court.
2. That the above-named Defendant, his successors and assigns, and all persons claiming or hereafter claiming any interest in said premises, by,

through or under him or his successors and assigns, be barred and forever precluded from asserting or claiming any interest, right to title in or to said premises, or any part thereof, adverse to the Plaintiff or his title hereto.

3. That the Plaintiff may have such other or further relief or different relief as the Court may deem just, and
4. For his costs.”

### ***Count II***

“Wherefore, Plaintiff prays judgment for the possession of said premises.”

The language of paragraphs 4 through 12 of Count I of the instant complaint is identical to the language of paragraphs 1 through 9, Count I, of the circuit court complaint, and the language of paragraphs 1 through 3 of Count II of the instant complaint is identical with the language of paragraphs 1 through 3, Count II, of the circuit court complaint.

In the circuit court proceedings the Attorney General argued that the suit was in fact a suit against the State of Illinois, and that the circuit court had no jurisdiction to hear it.

The circuit court ruled in favor of Claimant with respect to the legal and factual issues, and the Attorney General appealed to the supreme court of Illinois.

The supreme court in *Sass v. Kramer* (1978), 72 Ill. 2d 485, 381 N.E.2d 975, held that the action, although nominally against an officer of the State of Illinois personally, was in fact an action against the State, that the circuit court had no jurisdiction to hear it, and that the proper forum was the Court of Claims of the State of Illinois. Justice Moran wrote a dissenting opinion.

The parties have stipulated that no hearing of this case need be held before a commissioner of this Court, that the trial record of the trial in the Kane County Circuit Court shall serve as the trial record in this case, and that the briefs filed by the parties in the supreme court of Illinois shall serve as the briefs in this cause.

### The facts are as follows:

On August 10, 1932, Michael Hays and Thomas E. Katon executed a dedication of right of way for public road purposes over approximately 12.195 acres situated in Kane and McHenry Counties, Illinois, in favor of "The People of the State of Illinois". The dedication recited that the land was dedicated to the people of the State of Illinois "for the purpose of a public highway". The State of Illinois paid Hayes and Katon \$6,500.00 cash and other valuable consideration for the easement. Pursuant to this dedication, the State constructed a highway bypass connecting U.S. Route 20 and Illinois Route 47 in Kane County, Illinois, over a portion of the dedicated property. The property upon which the bypass was constructed, 1.307 acres, is the subject property of this appeal.

In 1957, Claimant, Walter F. Sass, purchased certain real estate in Kane County, Illinois, including the fee simple title to the property upon which the bypass was constructed pursuant to the dedication by Hayes and Katon. At the time of Sass' purchase, he was aware that the property in question was burdened by an easement in favor of the people of the State of Illinois for public highway purposes, having been so advised by Chicago Title and Trust Company.

Subsequent to Sass' purchase of the property, the Department of Transportation (successor to the Department of Public Works and Buildings, hereinafter Department), the department of State government charged with construction and supervision of State highways, determined it to be in the public interest to realign the intersection of Routes 47 and 20 in Kane County. As a result of the realignment, the bypass constructed on the easement in question was no longer presently necessary.

In approximately 1974, Sass indicated to the Department his desire to acquire the State's easement interest in the property. When a negotiated settlement could not be reached, Sass approached an Illinois State representative and had a bill introduced into and enacted by the legislature (P.A. 79-1020) providing for release of the State's easement upon payment of the fair appraised value for the State's interest. In accordance with the terms of the Act, passage of which was initiated by Sass, the Department had the property appraised and wrote Sass informing him of the fair appraised value of the easement and requesting payment. Sass refused to pay the appraised value. As a result of Sass' refusal to pay the fair appraised value, the condition precedent to vacation of the State's easement contained in P.A. 79-1020 has not been fulfilled.

In September, 1976, Sass filed suit in the Circuit Court of Kane County seeking to quiet title to the property burdened by the easement and for a writ of possession. The only defendant was Langhorn Bond, then Secretary of the Department. (Prior to trial, John Kramer, Bonds successor, was substituted as the sole defendant). No relief was sought against the defendant individually. The attorney representing Bond filed a motion to dismiss, alleging that the Circuit Court of Kane County was without jurisdiction to hear the case by virtue of the Sovereign Immunity Act (Ill. Rev. Stat. 1975, ch. 127, par. 801).

Defendant's motion was denied. Defendant then filed an answer and affirmative defense again raising the issue of sovereign immunity.

John Cullian, employed by the Department as right-of-way engineer, was called by Sass pursuant to section 60 of the Civil Practice Act. (Ill. Rev. Stat. 1979, ch. 110, par. 60; now Ill. Rev. Stat. 1983, ch. 110, par. 2—1102.) Cullian testified that the bypass road was not currently being used for a highway, but that the Department had not foreclosed its future use for highway purposes.

Evidence was introduced on Kramer's behalf that the fair appraised value of the property, pursuant to P.A. 79-1020, was \$4,575.00. There was no dispute that Sass has not paid the sum required by P.A. 79-1020 in order to vacate the easement.

On September 7, 1977, the trial judge, ruling in favor of Sass, issued an order quieting title in Sass, extinguishing the rights of the people of the State of Illinois in the easement, holding P.A. 79-1020 unconstitutional, and issuing a writ of possession in favor of Sass for the property, the writ being stayed pending appeal to the Illinois Supreme Court.

As summarized by Claimant in his brief filed in the supreme court, the trial court's order found that:

- "1. Fee simple title to the property in question is in the Plaintiff and for many years was subject to an easement for highway purposes and so used."
2. The easement was physically abandoned in recent years and that the House Bill above-mentioned confirmed the abandonment.
3. The property is in a rural area.
4. The Defendant Secretary has refused to deliver possession of the property to the Plaintiff until he pays a sum of money to the State, declared by its appraiser to be the value of the property.
5. The said House Bill is unconstitutional and void in that it deprives the Plaintiff of his property without due process of law, and, further, that the Bill is special legislation with respect to a subject covered by a general statute of the State."

Brief of Plaintiff-  
Appellee 2, 3.

Findings Nos. 1, 3, and 4 above are not disputed by the parties, and since the parties have adopted the trial record in the circuit court as the trial record before this Court it would appear that there remain two issues before this Court:

I. Whether House Bill 2376 (P.A. 79-1020) is a constitutional enactment of the General Assembly.

II. Whether the easement for highway purposes was in fact at some time physically abandoned by the State of Illinois.

## DISCUSSION

### I. Is P.A. **79-1020** unconstitutional?

Unfortunately for Claimant, this Court has no power whatsoever to pass upon the constitutionality or legality of an act of the State legislature. Regardless of how crucial the issue may be to Claimant's case this Court has no power to decide it.

In *Gossar v. State* (1961), 24 Ill. Ct. Cl. 183, this Court came to grips with the question of whether it had the power to pass upon the constitutionality of acts of the legislature, and in an opinion, the logic of which cannot be questioned, came to the conclusion that it had no such power. In *Gossar*, a majority of the Court first wrote an opinion upholding the constitutionality of sections 22—1 and 22—2 of the Court of Claims Act (Ill. Rev. Stat., ch. 37, pars. 439.22—1, 439.22—2), these two sections having been enacted by House Bill No. 552 of the 70th General Assembly of the State of Illinois. Justice Wham wrote a minority opinion finding House Bill No. 552 unconstitutional. On rehearing, the entire Court expunged both opinions from the record and wrote a final opinion in which it held that this Court cannot pass upon such a question.

While considered in its most narrow aspect the question before the Court was whether it could pass upon the constitutionality of any of the provisions of the Court of Claims Act as enacted by the legislature, the Court in its opinion addressed the question of its power to pass upon acts of the legislature generally.

“The petition for rehearing has reopened this case for the consideration by the Court, and, although the petition limits the inquiry to the matters therein contained, the Court, on its own motion and before turning to the petition, believes that it must resolve the question of its *jurisdiction to approve or strike down an act of the Legislature.*” *Gossar v. State* (1961), 24 Ill. Ct. Cl. 183, 193. (Emphasis added.)

The Court outlines the history of claims against the sovereign in Illinois commencing with the first act making possible such relief passed by the legislature in 1819 and bringing the discussion up through 1961, concluding that the present Court of Claims, although called a court, is not a constitutional court.

“If then it be admitted that the Court of Claims is in fact a commission or fact finding body for the convenience of the Legislature in sifting out and reporting back to the Legislature meritorious claims, so that, in turn, the Legislature may make the necessary appropriations, then it is crystal clear that any opinion of this Court purporting to find **House Hill No. 522** either constitutional or unconstitutional would be in complete violation of Article III and Article VI, Section 1, of the Constitution.” *Gossar v. State* (1961), 24 Ill. Ct. Cl. 183, 196.

The portions of the 1870 Constitution referred to in the quotation above are now article II and article V, section 1, respectively, of the Constitution of 1970.

Continuing, the Court states:

“When the Court of Claims hears and determines the merits of a claim, and thereafter files its report with the Legislature, it is clearly exercising a quasi-judicial function.

When it is called upon to pass on the constitutionality of an act of the Legislature, it is manifestly clear that it is attempting to perform a judicial function of the highest order, and, being a commission of the Legislature, rather than a component part of the judicial department, it would violate Article VI, Section 1 of the Constitution.” *Gossar v. State* (1961), 24 Ill. Ct. Cl. 183, 197.

We are thus forced to the conclusion that since this Court cannot pass upon the constitutionality of **P.A. 79-1020**, and since the supreme court has held that under the circumstances of the case then before it, it could not do so either, **P.A. 79-1020** remains a valid enactment of the

General Assembly and Claimant is subject to its provisions.

II. Was the easement abandoned by the State prior to enactment of **P.A. 79-1020**?

A puzzling facet' of the case still remains unsolved. Judge Puklin of the Kane County Circuit Court found that the State had in fact abandoned the easement prior to the enactment of **P.A. 79-1020**. If such is true could it be argued that — apart from questions of constitutionality — the Act at the time of its enactment was moot and of no effect, a nullity? In other words, **if** the State no longer had any interest in the real estate, there would be no foundation for a statute providing that the State would surrender the real estate upon payment for the same, **and** the **statute**, therefore, would be of no effect. To ask this Court to make such a finding is again to ask it to pass upon the validity of an act of the General Assembly. It would seem that for this Court to determine that an act of the General Assembly is invalid for whatever reason is beyond its powers.

Finally, while the evidence in the trial court record establishes nonuse of the easement by the preponderance of the evidence, in the opinion of the undersigned the record does not necessarily establish by the preponderance of the evidence the required abandonment.

As put by Respondent in its brief in the supreme court:

"Abandonment, which may also serve to extinguish a written easement, implies an intentional relinquishment of ownership, possession, or control of property without regard to future possession, 1 C.J.S. Abandonment, Section 1. Thus, there are two requisites to a finding of abandonment: an intent and an external act. Mere nonuse of the property is not in itself sufficient to prove abandonment.

**The question of abandonment is one of intent to be determined from the evidence and there is no abandonment unless the premises**

are left with an intention of not again resuming possession.’ *Burns v. Curran*, 275 Ill. 448, 453 (1916).

The record clearly indicates that the State of Illinois had no intention to abandon its rights and had not abandoned or released its rights to this easement. Thus, one necessary prerequisite to abandonment was lacking.

John Cullian, the right-of-way engineer for the Department, testified as follows:

‘The Department claims that they have a right by way of dedication which was entered into evidence here, for the use of this property for highway purposes. They shall retain that right until they release it. . . . It’s not being used. It’s possible at some future date they will change the intersection again and use it.’

He further testified:

‘Q. The Department’s position is until the appraised value is paid it is still the State’s highway?’

A. That is correct. . . .’

‘Q. Is that your position?’

A. Yes.’”

Brief for Defendant-  
Appellant 20, 21.

For the reasons stated above, ‘it is our decision that this claim must be, and hereby is, denied.

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(No. 79-CC-0516—Claimants awarded \$54,824.00.)

**AKIBA SOUTH SIDE JEWISH DAY SCHOOL and OPEN KITCHENS, INC., Claimants, v. THE STATE OF ILLINOIS, Respondent.**

Opinion filed November 9, 1983.

**JOHN DUFFY**, for Claimant.

**NEIL F. HARTICAN**, Attorney General (**MARY A. MULHERN**, Assistant Attorney General, of counsel), for Respondent.

*CONTRACTS—lunches* for children—affirmative defense of payment not proven. State failed to sustain its burden on affirmative defense that payment had been made on contract with Claimant for providing lunches, and

therefore claim was allowed for that portion of alleged balance due for which State failed to establish payment.

**EXPERTS—disagreement of experts does not invalidate statistical sample.**

**EVIDENCE—statistical sample—audit report held admissible.** In action by Claimant to recover for sums due based on contract under which Innches were provided to children, audit of number of lunches eligible for compensation resulting from statistical sampling was held admissible and probative evidence, as Claimant was unable to show samples were substantially incorrect.

**CONTRACTS—statistical sampling audit—authorized claim-adjusting tool.** Claimant's contention that it was never advised that a statistical sampling audit would be used as a tool to adjust claims arising from contract to provide lunches held to be without merit.

**SAME—Claimant had rights against its vendors for losses.**

**SAME—termination of contract not only remedy for breach.** Claimant's argument, that State's only remedy for Claimant's failure to perform under contract to provide required lunches was termination of Claimant as sponsor of lunches, held to be without merit, as remedies for breach are set by general law and need not be spelled out in contract.

**SAME—lunch program—adjustment based on statistical audit—award granted.** Where statistical audit was used by State to make adjustment as to amount due on contract to provide lunches, award was made after further adjustment of results in Claimant's favor to account for State's culpability with regard to meals which were ineligible for payment.

## ROE, C.J.

Claimant seeks reimbursement for sums it claims it expended in performing a contract with the Illinois Office of Education (IOE) to provide meals to school children pursuant to the National School Lunch Act. 42 U.S.C. sec. 1751 *et seq.*

Claimant was a service organization or sponsor during the summer of 1977 under that Act. Claimant claims that it is entitled to reimbursement for meals provided in the amount of \$541,530.00 but was paid only \$360,491.00, leaving a balance due of \$181,039.00.

The program is administered by the United States Department of Agriculture (USDA). Under this program the USDA grants money to the states to contract with service organizations or sponsors, such as Claimant, to

provide free food services to children in poverty areas during the summer months. Claimant was allowed to and did contract with a food service management company, Open Kitchens, Inc., to actually prepare and deliver the meals to the sites. Federal regulations pertaining to the program are found in 7 C.F.R. sec. 225. The State of Illinois did not contribute any funds toward this program.

In 1977 the IOE agreed with the USDA to participate in the program. The IOE sent applications, handbooks and site handbooks to potential sponsors. The handbooks set forth the rules and regulations regarding the program (but did not set forth that statistical sampling would be used to audit payments under the program).

On May 10 or May 11, 1977, a training workshop was held at which time the program and the regulations were explained. On June 9, 1977, Claimant filed an application for sponsorship in the summer food program. Project sites such as schools, churches and community centers with summer children's programs were selected and approved by the IOE. The children were to be served meals at the site. The Claimant had 167 sites. On June 24, 1977, Claimant signed a contract with the IOE (Claimant's exhibit No. 1) which provided that Claimant would be a sponsor under the program and would receive reimbursement for meals served, and on June 27, 1977, Claimant commenced delivery of breakfast, lunch and supplement meals to the children at the sites. As of July 31, 1977, because a sampling monitoring program indicated a large number of ineligible meals were being claimed, the IOE cancelled the breakfast portion of the program and Claimant voluntarily cancelled the supplement meal portion of the program. The lunch program continued through August 27, 1977.

Claimant presented a claim for reimbursement total-

ling \$541,530.00. According to Claimant's certified public accountant, Sanford Aronin, of the C.P.A. firm of Checker, Simon and Rosner, the claim for reimbursement was done in accordance with the standards for audit issued by the Comptroller General of the United States and the United States Department of Agriculture audit guide No. 8270.6, dated March 1977. He further testified that Claimant had received the sum of \$360,491.00 leaving a balance due of \$181,039.00.

Respondent's defense is that, based on an audit done on the program by the USDA, which audit was done on the basis of statistical sampling, the total amount reimbursable to Claimant was only \$399,079.00, and that in addition to the \$360,491.00 paid, there was paid, after the audit report, the sum of \$38,588.00, thus leaving the amount at issue at \$160,711.00.

On the question of the amount paid by Respondent to Claimant, the record is sparse. Claimant's C.P.A. stated the amount paid was \$360,491.00. The order of the U.S. Court of Claims, case No. 369-78, wherein the Claimant sued the United States directly and which case was denied on motion for summary judgment, indicated that only \$360,419.00 was paid. The only evidence of payment of the disputed \$38,588.00 was the testimony of Russell J. Hild, a witness for Respondent who was a supervisory auditor in the United States Office of Audit who testified as follows:

- "Q. Do you have knowledge as to what actual amount has been in fact paid to Akiba for the 1977 summer lunch program?
- A. It was up to what we had cited in the report, **\$399,079.00**. And that wasn't paid — I think at that time it was \$360,000.00. But since then its been paid up to the maximum figure we had cited.
- Q. So the total amount of the report, to your knowledge, has in fact been paid to Akiba pursuant to the figure of the audit report, is that correct?
- A. Right."

No date of payment was described. No cancelled checks, receipts or other documentary proof was offered as proof of payment. Claimant's witness was an employee of the United States government and not of the State of Illinois and the source of his knowledge of payment was not brought out. Since payment is an affirmative defense, it is this Court's opinion that Respondent has not sustained this burden as to the \$38,588.00 and that there is therefore owed by Respondent to Claimant the sum of **\$38,588.00**, regardless of the validity of the balance of the claim and of the Respondent's defense thereto.

The bulk of Respondent's defense is based on the USDA audit report which was done by statistical sampling and projections therefrom. The undisputed portion of the audit report gave 100% credit to Claimant for meals claimed in sites not included in the sampling. The issue revolves around the audit report giving credit for eligible meals based on a statistical sampling of sites. Meals that were deemed ineligible were deemed so for various reasons among which were that the meals were short on delivery, in excess of needs, eaten off the feeding site, had spoiled ingredients, had missing components, and were not served within the required time frame.

An understanding of the operation of the audit and of the summer lunch program is therefore necessary.

Meals under the program are delivered to the sites. The supervisors of the sites are employees of the church or organization which runs the youth program at that site. They are not Claimant's employees. Meals are, according to the testimony of Andrew Lee of Open Kitchens, Inc., not delivered or served in a controlled environment. The sites are located in ghetto areas and are sometimes physically chaotic. The children are young

and often undisciplined. The sites ranged from a minimum of 30 children per site to 400 per site. The sponsors were not required to have an employee present at each site on each day.

By far, the most meals deemed ineligible were meals claimed at sites in excess of the number of children in attendance. Since attendance of the children at a site is voluntary, a sponsor cannot predict with any accuracy how many children will attend on any particular day. Whether every meal is eaten at the site is also sometimes difficult for the sponsor to control or even observe at times.

The USDA had monitors who made observations on some days on some sites. Their observations were recorded and the results imparted to Claimant via "fast reports", thereby giving Claimant some opportunity to make adjustments in the number of meals ordered for each site and to improve its performance in the other ways necessary to rectify errors. There is evidence in the record that Claimant did, in fact, in some cases rectify errors and adjust meals ordered, but in other cases, Claimant failed to make appropriate adjustments.

The monitors were college students on summer jobs. They were given some minimal training as to what to observe and how to record their observations. However, counting large numbers of meals to children who are not stationary could be difficult. All parties, including a monitor, Steve Lerner, agreed that some of the counting was a matter of judgment.

Normally, there were two monitors to a site although at times there was only one. Any differences in count as between the two monitors were resolved in favor of Claimant. The site supervisor, who was not a direct employee of Claimant, signed the monitors' forms.

Larry Harton was the auditor in charge and he reviewed the monitors' forms. He testified that where there was a problem based on judgment he would resolve it in favor of Claimant. However, the most significant problem he noted was that Claimant continually made claims for leftover meals — meals delivered in excess of children receiving. However, cross-examination of Harton and Lerner brought out several unexplained inconsistencies and potential errors.

According to the audit, approximately **48%** of the total meals reported for the audited sites were counted as ineligible for reimbursement.

The monitors observed a total of 117 site-days (1 day's operation at a feeding site) out of a total universe of **3,995** site days and projected the results at a 95% confidence level.

Dr. Herbert Arken testified for Respondent as an expert in the field of statistical sampling for audit purposes. He is an author of statistical auditing texts and numerous articles on the subject. He developed the statistical sampling plan which was ultimately used by the U.S. office of audit for the summer food program in 1977 and has been receiving \$20,000.00 per year from the United States government for his expertise for many years.

Dr. Arken testified that probability sampling is widely used as an audit technique and is approved by the American Institute of Certified Public Accounts which sets the standards for the field of auditing and is used frequently by the Federal government and the Internal Revenue Service. There are a variety of sample plans available. The choice of a plan has a substantial effect on the magnitude of the sampling error. Simply stated, the

more you sample, the less potential error there is in the result. If the sample is 100% there would, of course, be no error. In the case of this Claimant, the size of the sample and the plan used resulted in a 95% upper confidence level. This means that the audit is 95% certain that had the monitors examined every site on every day the value obtained would have been between the limits established from the sampling. In this case, the probability that the projection was incorrect was one in 20 or 5%. In the sampling plan, sampling error was taken into consideration so that, if the result were a mere projection of the samples, the amount found to be eligible would have been \$44,000.00 less than that which finally resulted. To state it another way, allowance was made to Claimant for sampling error, in the amount of \$44,000.00 because of the size of the sample even though it is 95% certain that the sampling error is something less than \$44,000.00.

Dr. Arken testified that the audit calculations were correct and were done in accordance with generally accepted accounting practice and that an upper confidence level of 95% was the most commonly used figure in auditing.

On cross-examination, Dr. Arken admitted that errors in counting would alter the final result and that the effectiveness of his formula was dependent on the accuracy of the data which was gathered by the monitors.

Claimant called Dr. Haskell Benishay in rebuttal. Dr. Benishay is a professor at Northwestern University where he teaches economics, management, and statistics. Dr. Benishay testified that the statistical sampling audit did not take into consideration errors in measurement and errors in posting and if they were taken into account there would be more money due Claimant. Further, that a higher confidence level should have been used — 97.5%.

He also said that the number of sites fluctuated from time to time and that this was a potential source of error in the audit. He was unable, however, to translate these potential errors into dollar figures.

On cross-examination, Dr. Benishay admitted his experience was basically in market research and econometrics and not auditing. He agreed that errors in counting might include an equal number of undercounting and overcounting.

Dr. Arken, called by Respondent on surrebuttal, testified that statistical techniques used in econometrics and marketing **opinion polls** are different than those used in auditing and that in auditing they do not exceed the upper confidence level of **95%** and are usually between **90** to **95%** upper confidence level. However, if a **97.51%** upper confidence level were used, Claimant would have **\$8,118.00** additional monies due. As to errors in measurement, the same was not a problem in statistical sampling audits because the errors in measurement have been built into the formula and are accounted for. He said, "If the errors are random errors and do not reflect a deliberate bias, and there is no evidence of that in this case, it is obvious that the average of those errors would be equal to zero or something close to it". Stated another way, without deliberate bias, it is just as likely that a monitor would overcount as undercount. Dr. Arken maintained that the criticisms of Dr. Benishay were invalid and proceeded to explain at length his reasons for this statement.

Claimant argues that the state of the art of statistical sampling is not well enough developed to be used as a claims adjustment tool. In support, Claimant cites testimony by Dr. Arken that there was a one chance in 20 that the figures developed were wrong and that this average

is insufficient to deny Claimant's claim. We disagree. No court requires evidence that is 100% certain of truth. To adopt a standard suggested by Claimant would deprive the courts of most evidence. Most courts would be well satisfied with evidence that does not approach a 19 out of 20 certainty of truth.

Claimant notes the disagreement of the experts called in this case and argues that such disagreements illustrate confusion in the statistical community. We disagree. Mere disagreement of experts does not invalidate a mathematical formula application. We find that the testimony of Dr. Arken was clearly more logical and credible than that of Dr. Benishay.

Claimant argues that the monitors witnessed only **\$5,326.00** worth of meals they considered ineligible and that statistical sampling is not accurate enough to allow the withholding of \$181,039.00 based on that small sample. Again we disagree. The most credible testimony was that there was a 95% probability that the withholding of money for ineligible meals was accurate based on that sampling. Any inaccurate counting or posting was built into the mathematical formula and accounted for. Errors in judgment in the sample were resolved in favor of Claimant. The conclusions of the audit report were founded on generally accepted accounting procedures.

This Court is further guided by the case of *State of Georgia v. Califano* (N.D. Georgia, 1977), **446** Fed. Supp. **404**. This case involved a suit by the State of Georgia for reimbursement of monies paid by the State to doctors who had provided services to Georgia Medicaid recipients. It was defended on the basis that an audit conducted by the use of random statistical samples was invalid. The court said:

“The court concludes that the use of statistical samples was not improper. Projection of the nature of a large population through review of a relatively small number of its components has been recognized as a valid audit technique and approved by courts in cases arising under Title IV of the Social Security Act. (Cites omitted.) Moreover, mathematical and statistical methods are well recognized as reliable and acceptable evidence in determining adjudicative facts. (Cites omitted.) However, to find that statistics may be admitted as evidence of a proposition is not to say that the statistical model will always be conclusive. The weight which must be given to such statistical evidence is not necessarily one which must be considered by the fact finder in light of the practical difficulties in ‘obtaining a claim by claim review. In the instant case, ‘statistical sampling was the only feasible method of audit available to HEW . . . Audit on an individual claim by claim basis of the many thousands of claims submitted each month by each state would be a practical impossibility as well as unnecessary . . .”

Although the *Georgia* case differed in several important respects from the instant case, the logic of the reasoning as above quoted is compelling and could be transferred to the instant case.

So also is the decision in *Illinois Physicians Union v. Miller* (7th Circuit, 1982), 675 Fed.2d 151, in a claim challenging the procedures of the Illinois Department of Public Aid in auditing physicians who are reimbursed for medical expenses under Medicaid. The court held that the use of a statistical sampling and extrapolation auditing procedure is, not arbitrary, capricious or discriminatory where there is an opportunity to rebut the initial determination.’.

In the instant case, it is the opinion of the Court that the audit report, while not conclusive, is admissible and valuable probative evidence. Claimant, although able to show a few instances of mistake, was unable to demonstrate that the samples taken were substantially incorrect. The few errors shown by Claimant were adequately covered by the formula used.

This commissioner further disagrees with Claimant’s contention that Claimant was never advised that a statis-

tical sampling audit would be used as a claims adjusting tool and that had they been informed they would not have assumed the risk of joining the program. It is agreed that neither the contract nor the handbook authorized or informed the reader of such type of audit. The evidence was conflicting as to whether the matter was fully explained at the training session. Rabbi Jerry Miller, later a representative of Claimant, attended the session as did his brother, Glenn Miller, both of whom later administered the program for the Claimant. Rabbi Miller denied being told that statistical sampling would be used for the purpose of ascertaining reimbursement. He was supported by Claimant's witness, George Hanlon, a deputy commissioner of the Department of Human Services of the City of Chicago, who also attended the training session. Hanlon could not recall that the participants in the session were told that statistical sampling would be used as a claims adjustment tool.

However, Respondent's witness, as to this training session, was Larry Harton, an auditor from the U.S. office of audit, who testified that he conducted a two-hour session at which, among other matters, he explained that his office would be conducting statistical sampling of the program including the amount of eligible meals served. He explained that for the first two weeks of the program the statistical sampling would not be used for the purpose of projection, but for the purpose of giving sponsors the opportunity to work out any bugs in their program with regard to the amount of meals ordered, accuracy of data, record keeping and required components of meals. He testified that Rabbi Miller voiced unconcern over the statistical sampling audit method, having had experience the previous year with this method while he administered a similar program for a different sponsor.

It is this Court's opinion that Rabbi Miller must have known that neither the USDA nor the OEA had monitors on duty every day at every site. What other practical way would there have been for the **USDA** to protect itself from inaccurate or inflated claims? Moreover, the audit report is merely evidence, not requiring advance notice to a claimant.

Equally unavailing is Claimant's argument that Claimant has no contractual right to pass on all of its losses to its vendor. Although the contract between Claimant and Open Kitchens, Inc., does not give Claimant the right to refuse payment to Open Kitchens, Inc., on the basis of statistical sample audits, Claimant would have the same right, in litigation between itself and Open Kitchens, Inc., to use as evidence the statistical sampling audit as does Respondent in this case.

Claimant argues that even if the audit was correct, Respondent's only remedy pursuant to the contract was to terminate Claimant as a sponsor. We disagree, in that the contract provided as follows in Paragraph C:

**"The Service Organization agrees to . . . 6. Claim reimbursement only for the type or types of meals specified on the Site Information Sheet served to children during the approved meal service period at sites and account separately for any meals served to program adults."**

and further that Paragraph **F** of the contract relating to termination of the sponsoring organization is permissive, using the word "may" and does not imply that such is the exclusive remedy. Claims for ineligible meals constitute a breach of the contract, the remedies for which are set by general law and need not be spelled out in the contract.

Claimant also argues that all witnesses agreed that Claimant's duty upon receiving information as to problems was to take corrective action and that where a sponsor does take corrective action it is doing all that it

can reasonably do and therefore should not be “punished” by the use of the statistical sampling audit. While the extent of Claimant’s corrective action is disputed, it is evident by the audit that substantial corrective action was not fully taken at every site. The use of the statistical sampling audit is not punishment. It is merely one method and perhaps the only practical one of ascertaining the eligibility of meals. While Claimant did have the duty of taking corrective action, this duty was not the only one it had under the contract. It had the further duty of refraining from claiming ineligible meals.

More vexing, however, are Claimant’s contentions that the inherent difficulties in the program and certain deficiencies in the activities of the IOE as outlined in the audit report require an assumption of the risk **by the Respondent**.

As earlier outlined, the largest discrepancy in the figures of each party are in the area of leftover meals. This reflects the difficulty **in** predicting in advance the amount of meals necessary at a site while at the same time being certain that no child attending the site **will be** deprived of a meal. The sites were approved by IOE and the initial determination of the number of meals for each site was approved by **IOE** (although the responsibility for ordering correct amounts was the responsibility assumed by Claimant).

The audit report stated that:

“Some of the deficiencies in this report could have been significantly mitigated if the SA (IOE) had distributed sponsor applications earlier in the year. This would have provided the SA (IOE) immediate access to potential sponsors. This, along with effective management and staffing would have . . . (c) enabled the SA (IOE) to timely monitor feeding site operations which probably would have reduced the ineligible meals . . . .”

Thus, the very audit report which constitutes the defense

of Respondent points a finger at Respondent as sharing in the cause of the nonperformance. Therefore, we feel that Respondent, being somewhat culpable, should share somewhat monetarily in the loss occasioned by the ineligible meals. While Claimant's theories of defense and evidence did not include a theory of sharing of risk, we feel that the audit report and the surrounding facts should be considered in a light most favorable to Claimant.

Accordingly, we think that the figures should be adjusted so that an upper confidence level of close to 100% be used. Using the figure of **\$8,118.00** testified to by Dr. Arken as being the additional money *to be due* Claimant at the confidence level of 97.5%, a doubling of that figure should be considered by the Court as approaching **100%** confidence level and as being owed by Respondent to Claimant to remove all doubt as to the reliability of the result. Thus, it is hereby ordered that Claimant be, and hereby **is**, awarded:

(a) **\$38,588.00** being the amount claimed by Respondent to have been paid but for which Respondent failed to sustain its burden and,

(b) **\$16,236.00** being the amount necessary to remove all potential doubts and errors; for a total award of **\$54,824.00**.

Claimant's claim for interest is denied.

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(No. 79-CC-0723—Claimant awarded \$6,000.00.)

ROBERT STEIN, Claimant, *v.* THE STATE OF ILLINOIS,  
Respondent.

*Opinion filed July 1, 1983.*

STEINBERG & BURTKER, LTD., for Claimant.

NEIL HARTIGAN, Attorney General (FRANCIS DONOVAN,  
Assistant Attorney General, of counsel), for Respondent.

*HIGHWAYS—water-filled holes in pavement—fall from bicycle—stipulation—award granted.* Based on the joint stipulation of the parties, an award was granted for the broken elbow sustained when Claimant's bicycle struck a series of water-filled holes in the broken pavement of a State highway, as record sustained finding that State had actual knowledge of defective pavement in question for at least six months prior to the accident.

HOLDERMAN, J.

This is an action to recover for personal injury sustained by Claimant, Robert Stein, on June 8, 1978, when the bicycle upon which he was riding struck an area of broken and defective pavement filled with water on the west side of Route 41 just south of West Park Avenue in Highland Park, Illinois. Claimant contended that the State was negligent in maintaining the area in question and had actual knowledge of the defect for a period of between six months to one year prior to June 8, 1978.

That since the initiation of this claim, the parties have engaged in extensive discovery and have entered into a joint stipulation.

This Court therefore finds that based upon the parties' joint stipulation, the Claimant was injured when the bicycle upon which he was riding fell into a water-filled series of holes in the broken pavement of Route 41 just south of West Park Avenue in Highland Park, Illinois. That as a result of the fall from his bicycle, Claimant sustained a comminuted and displaced fracture of the

olecranon process of his right elbow. His fracture required hospitalization and surgery at Highland Park Hospital, Highland Park, Illinois. The Court further finds that the Respondent had actual knowledge of the defective pavement in question for a period of at least six months and up to one year prior to June 8, 1978. (See *Thien v. City of Belleville*, 331 Ill. App. 337; *Di Orio v. State* (1950), 20 Ill. Ct. Cl. 53; *Kamin v. State* (1953), 21 Ill. Ct. Cl. 467.) The parties have further agreed that it is in their respective best interests to stipulate to these facts and to agree that the sum of six thousand (\$6,000.00) dollars be awarded the Claimant to fairly and reasonably compensate him for the injuries he sustained resulting from the occurrence in question.

It is hereby ordered that the Court finds the parties' joint stipulation to be fair and just and that the sum of six thousand (\$6,000.00) dollars be awarded to the Claimant, Robert Stein, in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause.

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(No. 79-CC-0764—Claimant awarded \$8,500.00.)

**BERNICE SZYDELKO, Administratrix of the Estate of William J. Szydelko, Deceased, Claimant, v. THE DEPARTMENT OF MENTAL HEALTH OF THE STATE OF ILLINOIS, Respondent.**

*Opinion filed February 10, 1984.*

*Order on denial of rehearing filed May 1, 1984.*

**JOEL H. GREENBURG**, for Claimant.

**NEIL F. HARTIGAN**, Attorney General (FRANCIS DONOVAN, EDWARD HURLEY, and HANS G. FLADUNG, Assistant Attorneys General, of counsel), for Respondent.

HOSPITALS AND INSTITUTIONS—*retarded* patient—negligent *drug* dosage—*death—award* granted. Administrator of deceased's estate was granted award for death which occurred when deceased, retarded patient of developmental center, negligently received increasing dosage of certain medication, developed difficulty in swallowing and then choked on piece of meat.

POCH, J.

This is a claim brought by Bernice Szydelko, as administratrix of the estate of William J. Szydelko, deceased, to recover damages for the alleged wrongful death of the Claimant's decedent on August **28**, 1978.

A hearing was conducted before Commissioner Joseph P. Griffin, who heard testimony of witnesses, received evidence and the briefs and arguments of counsel. The commissioner has duly filed his report, together with the transcript, exhibits and briefs now before us.

William J. Szydelko, decedent, age **32**, was a patient at the Shapiro Developmental Center, a facility of the State of Illinois. He was first institutionalized when he was 25 years of age having a history of epilepsy.

During his stay at the Center, he was given various medications. On the day of his death, he was receiving: (a) phenobarbital, 60 mg., **3** times per day; (b) valium, 5 mg., **3** times per day; (c) serentil, 75 mg., **3** times per day; and (d) mysoline, 50 mg., **4** times per day.

On August 17, 1978, decedent's dosage of serentil was increased from 50 mg., twice a day to 75 mg. three times a day, a 125% increase in dosage. It is Claimant's contention that an increase in this dosage had an effect on decedent's ability to swallow.

On August **28**, 1978, decedent's dinner consisted of braised beef and noodles. The pieces of beef were approximately 1/2 inch wide and 3/4 inch long. While

eating his dinner, the decedent stood up, coughed out his milk, reached for his throat and collapsed. Effort was made to revive the decedent. Decedent was taken to St. Mary's Hospital in Kankakee, Illinois, at 5:45 p.m. Decedent died at the hospital at 6:25 p.m. on August 28, 1978. Death was caused by meat mass inhalation asphyxia due to, or as a consequence of, associated mental retardation with chronic seizure disorder, and resuscitatorial.

Claimant claims that Respondent was negligent in rapidly increasing decedent's dosage of serentil which had an adverse effect on his swallowing, and that Respondent failed to provide decedent with a soft diet and failed to properly supervise him at mealtime by not providing him with a medical technician one to one.

Decedent had a history of mental retardation at an early age. He was never gainfully employed.

Claimant expended the sum of three thousand five hundred (\$3,500.00) dollars for the burial of her son.

Extensive medical testimony was submitted by both sides.

From the record, it is the opinion of the Court that the State was negligent in the care of the decedent which resulted in his death.

The Court therefore makes an award in the amount of eight thousand five hundred (\$8,500.00) dollars, to Bernice Szydelko, administratrix of the estate of William J. Szydelko, deceased.

#### ORDER ON DENIAL OF REHEARING

The cause comes before the Court on Claimant's petition for a rehearing of the decision of the Court of

February 10, 1984, and Respondent having filed its objections and all parties having received due notice of the pleadings and the Court being fully advised hereby:

Finds that the petition for rehearing does not state with any merit any alleged errors overlooked by the Court. Pursuant to Rule 22 of this Court there is no legal or factual reason to modify the opinion of February 10, 1984.

It is hereby ordered:

That the petition for rehearing by Claimant be, and the same is hereby denied.

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(No. 79-CC-0784—Claimant awarded \$34,200.00.)

CHILD DEVELOPMENT CENTERS, INC., an Illinois not-for-profit corporation, Claimant, v. THE STATE OF ILLINOIS, Respondent.

Opinion filed April 3, 1984.

ALLAN G. LEVINE, for Claimant.

NEIL F. HARTIGAN, Attorney General (FRANCIS M. DONOVAN, Assistant Attorney General, of counsel), for Respondent.

*CONTRACTS—language* not controlling. Language of contract is not controlling in determining parties' agreement, as other circumstances such as course of dealing, usage of trade or course of performance are also relevant in determining agreement.

*AGENCY—when* State is estopped from denying agent's authority. Where State vests person with apparent authority to order services, Claimant reasonably relies on person's apparent authority to bind State, and Claimant performs services, State cannot deny that person had actual authority to bind State.

*CONTRACTS—residential* cure—disabled children—retroactive increase in payments granted. Claimant was granted a retroactive increase in payments for residential care provided for disabled children, notwithstanding State's

contention the original contract price was binding, as evidence established that representatives of State who dealt with Claimant had apparent authority to make binding agreement for retroactive changes in payments after Claimant accumulated enough data to determine actual costs of operation.

HOLDERMAN, J.

Claimant in this cause, Child Development Centers, Inc., hereinafter referred to as CDC, is an Illinois not-for-profit corporation which operates a residential facility caring for developmentally disabled children. CDC is licensed by the Illinois Department of Children and Family Services as a child care institute. CDC, through its president and administrator, Noel Hill, began organizing its program plans in 1976, and by early 1977 Mr. Hill began communicating with various people from the Illinois Department of Mental Health and Developmental Disabilities (DMHDD) regarding the rate of payment for services to DMHDD-sponsored clients placed in the proposed CDC facility. CDC actually commenced operation as a group home in June of 1977;

A contract for services was signed on August 15, 1977, by and between DMHDD and CDC. The contract was to be effective from July 1, 1977, through June 30, 1978, and provided for a *per diem* rate of \$14.79 per child to be paid to CDC by DMHDD. The record is clear that even prior to signing this contract, CDC and various employees of DMHDD agreed that CDC should wait at least six months during its initial operation under the contract in order to determine its actual operational cost data. This was particularly important since CDC, as a new facility, had no prior cost history. The record is clear that the intention of both parties was that the initial rate of \$14.79 per child could and would be reviewed and modified upon receipt of the aforementioned cost data and that a revised rate would become retroactively effective.

Pursuant to this understanding, CDC submitted financial records and schedules to DMHDD in February of 1978. Respondent did not act on this summation and no explanation as to why Respondent failed to act is in the record. In June of 1978, CDC again prepared its financial schedules and resubmitted them to DMHDD. Once again, no action was taken by Respondent and there is no explanation on the failure to act in the record.

In March 1979, CDC received word from DMHDD that a new rate had been established in the amount of \$29.18 per day per child and that the new rate was made retroactive to July 1978. This meant that CDC was to operate its facility from July 1, 1977, through June 1978 at the original *per diem* rate of \$14.79 instead of making the new rate retroactive to the starting date of said institution.

The real question, therefore, is whether or not this is a case of lapsed appropriation or one of contract interpretation and oral representation which was made by the Respondent hereto as an explanation of the written contract.

Claimant is basing its claim upon the new rate, which it believes is the correct rate, for a payment of \$29.18 *per diem* retroactively to July 1, 1977, in an amount of \$34,200.00.

It is Respondent's position that the rate should not exceed the sum of \$14.79 *per diem* until July 1978. The record is clear that Claimant did furnish the services for which it billed Respondent and that the services were satisfactorily performed by Claimant.

It is Claimant's contention that the contract in question did not contain the complete understanding, agreement and undertaking of the two parties but that the

actual agreement is shown by the correspondence of the parties which supported the proposition that CDC was to receive retroactive payment based on actual cost data.

The record abundantly supports the theory of Claimant' that the actual cost of services rendered was not known by either party hereto, and that Claimant did keep records of the services rendered and the actual cost of the same and submitted this information to Respondent so retroactive payment could be made. The strongest evidence in this regard is that Respondent did offer in March of 1979 to retroactively pay for one year of service at the new rate which would have enabled Claimant to be paid for the period of July 1, 1978, to June 30, 1979, at \$29.18 *per diem*.

The testimony of Mr. Hill, which was largely uncontradicted, is borne out by the record itself. In a letter from the Department of Mental Health and Developmental Disabilities to Mr. Hill, it discloses at some length the rate review for the first six months of operation which is in direct support of the Claimant's position and is not disputed by Respondent. It is interesting to note this letter was written August 15, 1977. The letter further states "this per diem will be modified by any amounts of other financial support available to or on behalf of such clients, pursuant to Department rules."

Respondent takes the position that a written contract was entered into and it was binding upon the parties and cannot be modified by parol evidence of the parties to the contract. It relies strongly' on *Illinois Central R. R. Co. v. State* (1939), 10 Ill. Ct. Cl. 493, which is to the effect that a written contract cannot be changed by parol evidence of the parties.

The Court calls attention to *Personal Finance Co. v.*

*Meredith* (1976), 39 Ill. App. 3d 695,702, where the court uses the following language:

“Furthermore, the language of a contract is not controlling as to the parties’ ‘agreement.’ Other circumstances such as course of dealing, usage of trade or course of performance are also relevant to the inquiry of the parties’ bargain in fact. We believe the relevance of these considerations expresses a legislative policy in favor of courts’ determining the actual agreement of the parties and against enforcing printed contract terms in a mechanical fashion. Therefore we cannot state that the instant clauses can never be unenforceable on the basis of unconscionability.”

The Court calls attention to *Independent Mechanical Industries, Inc. v. State* (1981), 34 Ill. Ct. Cl. 116, where an award was made for extra performance in a mental health center where the services were performed at the request of Respondent.

In the present case, Claimant is asking for money to pay for services actually rendered to Respondent and its wards and there is no question raised whatsoever as to the value of said services. The Court also calls attention to *Grogan v. State* (1978), 32 Ill. Ct. Cl. 46, where the Claimant encountered unforeseen difficulties in the performance of a contract and agreed to perform additional work upon assurances of additional compensation. It is Claimant’s contention, which the Court believes is substantiated by the record, that in the present case additional services were performed for the benefit of Respondent and that it was clear from the very beginning that neither Respondent nor Claimant was in a position to tell what the actual cost of operating the institution would be until it had operated for at least six months.

The Court calls attention to *Wilson Electric Co. v. State* (1976), 31 Ill. Ct. Cl. 504, which states that where the State vests a person with apparent authority to order services, the Claimant reasonably relied upon his apparent authority to bind the State, and the Claimant

performed the services, the State cannot deny that the person had actual authority to bind the State.

The fact that the correspondence of Respondent and the testimony of Mr. Hill is not contradicted by any of the State's employees that Claimant had contact with bears out Claimant's contention. A careful reading of the record discloses the fact that Mr. Hill's testimony for Claimant gave specific dates of his contact with the individuals representing Respondent. It is further noted that he identified four particular individuals who worked for Respondent who indicated to him there would be a retroactive payment. Respondent, for some reason, did not see fit to call these individuals to the stand, so the testimony of Mr. Hill stands completely uncontradicted. A more significant fact supporting Claimant's contention is that the only witness the Respondent called testified to the fact that there was to be a retroactive payment. In this testimony, no limitation was placed upon the time involved. This is significant because it is in direct support of the contention of Claimant that the record states unequivocally that there was to be a retroactive payment.

In *Wilson Electric Co.*, *supra*, the Court used the following language on contracts and the apparent authority of the individuals representing the State. The Court, in its opinion, stated that Respondent had vested a certain individual "with apparent authority to order the non-warranty work on the sound system and that Claimant reasonably relied upon his apparent authority to bind the State in performing the work. Claimant's employees did only the work requested by Rogers, and in these circumstances the State cannot now complain that Rogers did not have actual authority to bind the State."

In the present case, we have at least four individuals

with apparent authority to make retroactive payment, or agreement to that effect, bulwarked by the only witness of Respondent that the retroactive payment was contemplated.

It is the Court's opinion, after a careful review of the evidence produced in this cause, that it was the intention of all parties from the very inception of the contract in question that retroactive changes would be made and that the Claimant would receive retroactive payments based upon the actual services requested by Respondent.

Award is hereby entered in favor of Claimant in the amount of \$34,200.00.

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(No 79-CC-0832—Claimant awarded \$14,537.49)

**DARRELL STARCHER, Claimant, v. THE STATE OF ILLINOIS,  
Respondent.**

*Opinion filed November 9, 1983*

**HEYL, ROYSTER, VOELKER & ALLEN (DAVID L. REQUA,**  
of counsel), for Claimant.

**NEIL F. HARTIGAN, Attorney General (SUE M. MUELLER,**  
Assistant Attorney General, of counsel), for Respondent.

*HIGHWAYS—warning signs—duty to erect.* State is under duty to give warning by erecting proper and adequate signs at a reasonable distance from a dangerous condition of which State had notice, and failure to erect such signs constitutes negligence.

*SAME—exit ramp—inappropriate speed limit sign—accident—claim allowed.* Claim was allowed for injuries sustained when semi-trailer overturned while attempting to negotiate curve on exit ramp off interstate highway, as State negligently posted speed limit on ramp at 50 m.p.h., while tests showed that maximum safe speed was 35 m.p.h.

ROE, C.J.

This case arises out of an accident which occurred on the Interstate **72** East exit ramp off of Interstate **55** near Springfield, Illinois. Claimant alleges that the State was negligent in failing to give the appropriate warnings for the hazards of the exit ramp, that the State was negligent in failing to post the appropriate speed limit for the exit ramp, and that the State's negligence was the proximate cause of the accident.

On April **15, 1977**, Jack A. Rhonemus, an employee of Claimant, was traveling northbound on Interstate **55** in a semi-truck pulling a chemical tanker. According to testimony by Rhonemus, the tanker was three-fourths full. As Rhonemus approached the exit ramp for Interstate **72** East, he noted that the exit ramp speed was posted as a right turn with a speed limit of **50** m.p.h. Rhonemus therefore slowed down to 40 m.p.h. to adjust for the vehicle he was driving. Rhonemus testified that in his **16** years of truck driving he had determined that an adjustment of between **10** and **15** m.p.h. below the posted maximum speed limit was a sufficient adjustment to maintain a safe handling of his trucks. The reduction in speed from 50 m.p.h. to 40 m.p.h. was not adequate in this particular instance. The exit ramp in question turned out to be an "S" configuration rather than one right turn, and, as Rhonemus tried to correct for the unexpected left turn, the swishing liquid in the tanker caused the rear end of the truck to slide off the road, and the truck turned over in a ditch on the side of the exit ramp.

Rhonemus further testified that, in his opinion, because of the nature of the turn, the truck would have been able to make the turn at **25** m.p.h. but that even **35** m.p.h. would probably have been too fast.

Tyre Rees, a State of Illinois highway engineer called as a witness by Claimant, testified that a ball bank indicator test performed on the exit ramp at the time it was constructed showed a maximum safe speed of 35 m.p.h. for the second curve. A ball bank indicator test performed by Rees two days after the accident showed substantially the same results. Rees further testified that the design geometrics on the second curve indicate that it did not meet the requisite design specifications for a 50 m.p.h. curve.

The State's sole defense seems to be that, according to testimony by Rees, it was the policy of the State at the time the exit ramp was constructed to indicate only the first curve of the exit ramp. This defense has no merit. According to the decisions of this Court "the State is **under a duty to give warning by erecting proper** and adequate signs at a reasonable distance from a dangerous condition of which it had notice, and failure to erect such signs constitutes negligence". *Hout v. State of Illinois* (1966), 25 Ill. Ct. Cl. **301**.

In this case the State certified to the drivers on its highways that under normal conditions they could exit on the Interstate 72 ramp at 50 m.p.h. They failed to warn the drivers that tests performed by their agents indicated that the second curve on the exit ramp was unsafe at speeds over 35 m.p.h. under normal conditions. Without this warning Rhonemus had no opportunity to adjust his driving speed to the dangerous condition. The State was therefore negligent in failing to warn drivers of the hazards of the exit ramp. This negligence was the proximate cause of the property damage suffered by the Claimant.

The damages were stipulated to by both parties. It is therefore ordered that Claimant, Darrell Starcher, be, and

hereby is, awarded \$1,000.00, and Harvester Corporation and Certain British Companies, Underwriters at Lloyds of London be, and hereby are, awarded **\$13,537.49**.

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(No. 80-CC-0185—Claimant awarded \$9,000.00.)

ROSE TORRES, Administratrix of the Estate of Benny Moy, Deceased, Claimant, v. THE STATE OF ILLINOIS—DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES, Respondent.

*Opinion filed July 22, 1983.*

STEINBERG & BURTKER, LTD., for Claimant.

NEIL F. HARTIGAN, Attorney General (JAMES KOCH, Assistant Attorney General, of counsel), for Respondent.

**HOSPITALS AND INSTITUTIONS—retarded patient froze to death—defective alarms an exit doors—stipulation—award granted.** The parties entered into a stipulation that the State was negligent in installing and maintaining the alarm system on the exit doors at a developmental center, and that decedent, a mentally retarded patient, froze to death when he exited the building where he resided without proper clothing and supervision, and an award was granted, as State knew that decedent was retarded and unable to properly care for himself, and the improper functioning of the alarm system permitted decedent to exit the building without alerting the authorities.

POCH, J.

This is an action to recover for the personal injuries and wrongful death of Claimant's decedent, Benny Moy, on January **13, 1979**. At the time of his death, Benny Moy was **22** years of age, mentally retarded and a resident assigned to Building No. **33** of the Respondent, Waukegan Developmental Center.

That since the initiation of this claim, the parties have engaged in extensive discovery and have entered into a joint stipulation.

This Court therefore finds that based upon the parties' joint stipulation, it determines that during the latter part of 1974, or early 1975, the Respondent installed an alarm system in Building No. 33 of the Waukegan Developmental Center to notify personnel of said facility of the opening of exit doors. The alarm was installed by Respondent's maintenance personnel who lacked professional training in the design and installation of such systems. That from the time of its installation, the alarm system did not function properly and was subject to repeated failures. Respondent's servants and agents knew of the failures, yet failed to take the necessary steps to revise or otherwise replace said system.

That prior to his death, the Respondent also had actual knowledge of the Claimant's decedent's mental retardation as well as his inability of caring for his own safety.

The Court further finds that on January 13, 1979, the alarm system to Building No. 33 was inoperable; that Respondent negligently and carelessly permitted the Claimant's decedent to exit the building without the benefit of any clothing and without supervision. That as a proximate result of the Respondent's negligence, the Claimant's decedent froze to death on the grounds of the Waukegan Developmental Center. See *Todd v. State* (1978), 32 Ill. Ct. Cl. 87; *Karluski v. Board of Trustees of the University of Illinois* (1966), 25 Ill. Ct. Cl. 295.

The parties have agreed that it is in their respective best interests to stipulate to the foregoing facts and to agree that the sum of nine thousand (\$9,000.00) dollars be awarded the administrator of Claimant's estate as fair and just compensation for his injuries and wrongful death resulting from the occurrence in question.

It is hereby ordered that the Court finds the parties' joint stipulation to be fair and just and that the sum of nine thousand (\$9,000.00)dollars be awarded the Claimant, Rose Torres, administrator of the estate of Benny Moy, deceased, in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause.

(No. 80-CC-0384—Claimant awarded \$400.00.)

**ILLINOIS BELL TELEPHONE, Claimant, v. THE STATE OF ILLINOIS, Respondent.**

*Opinion filed July 1, 1983.*

**BENJAMIN GHESS, for Claimant.**

**NEIL F. HARTIGAN, Attorney General (GLEN P. Larner, Assistant Attorney General, of counsel), for Respondent.**

**STIPULATIONS—*malfunctioning traffic signal—claim allowed.*** In an action arising from a collision between Claimant's truck and third-party's vehicle which was allegedly caused by a malfunctioning traffic signal, an award was granted based on a joint stipulation of the parties, as both parties agreed that a stipulated settlement would be the most economical way to satisfy the claim.

**ROE, C.J.**

This claim comes before the Court on the joint stipulation of the parties, which states as follows:

1. The instant claim seeks recovery of damages based upon a vehicular accident between a truck belonging to Claimant and a vehicle belonging to a third party which damaged Claimant's truck.

2. Said accident occurred on October 4, 1977, at the

intersection of U.S. Route 36 and Wykles Road, approximately 4 miles west of Decatur, Illinois.

3. The accident is alleged to have been proximately caused by a malfunctioning traffic signal at the intersection.

4. Both parties have agreed that it would be more economical in terms of both time and money to stipulate to the granting of an award of \$400.00.

5. Respondent therefore concedes to liability in the amount of \$400.00, and Claimant agrees to accept said amount as full and final satisfaction of its claim.

6. This agreement and stipulation has been made with full knowledge of the facts and applicable law.

7. The parties hereby waive hearing, the taking of evidence, and the submission of briefs.

It is the prerogative of the Court to adjudicate for itself the issues of negligence, proximate cause and damages, and in so doing, it is not bound by facts and conclusions agreed upon by the parties. At the same time, however, the Court is not mandated to reject stipulations and agreed amounts of damages; nor is the Court desirous of interposing a controversy where none appears to exist.

Where, as in the instant claim, the Court is not called upon to decide between two contrary sets of facts and legal conclusions, the decision must rest upon the propriety and validity of the stipulation submitted by the parties. The joint stipulation in this case appears to have been freely and validly entered into by all parties concerned, with full knowledge of all the facts and law involved. We therefore approve and accept the stipulation before us.

Claimant, Illinois Bell Telephone, is hereby awarded \$400.00.

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(No. 80-CC-0771—Claim dismissed.)

**CHRISTINE L. VERDA**, Claimant, *v.* **THE STATE OF ILLINOIS**,  
Respondent.

*Order filed August 1, 1983.*

**LOUIS E. OLIVERO**, for Claimant.

**NEIL F. HARTIGAN**, Attorney General (**SAUL WEXLER**,  
Special Assistant Attorney General, of counsel), for Re-  
spondent.

*NEGLIGENCE—respondeat superior claim—res judicata bar—claim dismissed.* The action filed by Claimant in the circuit court against State employee alleging similar acts of negligence resulted in judgment for employee, which prohibited imposition of liability on State by virtue of the doctrine of *res judicata* even though State was not a party to circuit court action, therefore summary judgment dismissing claim was entered for State.

**POCH, J.**

This cause coming to be heard upon the motion of the Respondent for summary judgment, due notice being given and the Claimant not having filed any response thereto and the Court being fully advised:

Finds that the cause of action filed by Claimant in the Circuit Court of Bureau County, Illinois, No. 80-L-70, against the Respondent's employee alleging similar acts of negligence, resulted in judgment in favor of the employee after trial by jury. The complaints in this Court and in the circuit court are nearly identical, with common issues of law and facts alleged. Therefore this cause is subject to disposition upon motion for summary judgment.

Any liability of the Respondent in this Court is based upon the doctrine of *respondeat superior*. There are no other independent grounds of liability claimed to impose liability upon the Respondent. The verdict in favor of the agent of the Respondent on identical issues raised herein prohibits imposition of liability on the principal, the State of Illinois. See *Hunt v. State* (1979), 32 Ill. Ct. Cl. 443, 444.

The claim in this Court is also barred by the operation of the doctrine of *res judicata*. The prior adjudication of the case in the circuit court bars the claim in this Court. (*Gall v. State* (1977), 32 Ill. Ct. Cl. 136, 137; *Consolidated Distilled Products v. Allphin* (1978), 73 Ill. 2d 19, 22, 382 N.E.2d 217, 218.) The application of that doctrine applies to claims against masters and servants. In *Towns v. Yellow Cab Co.* (1978), 73 Ill. 2d 113, 382 N.E.2d 1217, it was said:

“ . . . that a judgment for either the master or servant, arising out of an action predicated upon the alleged negligence of the servant, bars a subsequent suit against the other for the same claim of negligence where the agency relationship is not in question. This result obtains even though the defendant in the subsequent suit was not a party to the first action . . .” 73 Ill. 2d 113, 122-23, 382 N.E.2d 1217, 1221.

The verdict in favor of the State's employee is binding and conclusive in the claim against the State, even though the State was not a party defendant in the action in the circuit court. There are no disputed issues of fact for this Court to adjudicate. Therefore, as a matter of law, summary judgment is properly granted in favor of the Respondent.

It is hereby ordered:

That the motion of the Respondent for summary judgment be, and the same is hereby granted in favor of the Respondent and against the Claimant.

That the claim of the Claimant is therefore dismissed with prejudice.

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(No. 80-CC-1031—Claim denied.)

**NICK MAVRAGANIS and YPAPANTI MAVRAGANIS, Claimants, v.  
THE STATE OF ILLINOIS, Respondent.**

*Opinion filed May 9, 1984.*

CHARLES M. PALLARDY, LTD., for Claimants.

NEIL F. HARTIGAN, Attorney General (GLEN P. LARNER, Assistant Attorney General, of counsel), for Respondent.

**HIGHWAYS—snow and ice—State's duty to clear.** State is not held to standard which requires that, at all times, it must keep highways totally free of ice and snow, but merely that it use all reasonable means to do so.

**SAME—snow and ice—duty to close highways.** There is no authority to the effect that the State is required to close highway due to generally icy and snowy conditions.

**SAME—icy highway—accident—res ipsa loquitur not applicable.** *Res ipsa loquitur* was not applicable to claim for injuries sustained when Claimants' automobile hit icy patch of highway and crashed, as prime element of doctrine was missing due to fact State did not have management and charge of Claimants' automobile at time of accident.

**SAME—icy highway—accident—contributory negligence—claim denied.** During a very severe snowstorm, Claimants' automobile went out of control and crashed after crossing an icy patch of highway, but the claim for damages arising from the accident was denied, as State was doing all it was reasonably required to do to keep the highways clear, and Claimant failed to introduce any evidence that he was operating his vehicle safely at the time.

ROE, C.J.

This is an action by Claimants for injuries resulting from a one car accident which occurred on January 3, 1979, on the Stevenson Expressway (1-55) at approximately 2500 West in Chicago. Claimant, Nick Mavra-

ganis, was the driver of the vehicle and Claimant, Ypapanti Mavraganis, was a passenger.

It was testified at the hearing and it is commonly known that the 1978-1979 winter was among the most severe in Chicago's history. During the week prior to this accident some **14** or **15** inches of snow fell on the Chicago area. The snow was accompanied by many days of extremely cold temperature and high winds. For at least three to four days prior to the accident, State crews were plowing the highways **24** hours per day. The wind continually drifted snow back upon the roadways. Some of the members of the highway crews became disabled as a result of frostbite. The weather conditions were severe enough that the highway department had radio and television announcements warning people to stay home except for emergencies.

The section of the expressway involved is elevated about 60 feet above the ground. It consists of travel lanes, a shoulder, a 12-inch-high hub guard followed by a narrow walkway which is bordered by a three-foot-high crash wall or parapet. The snow plows do not remove snow. They push the snow to the side; in this case, onto the shoulder and against the crash wall. The snow formed a bank against the crash wall. The snow could not be removed except by picking it up and carrying it away but the State had no equipment for such an operation, and such equipment which, according to the State's safety engineer, was never needed in the last **23** years except for the unusual winters of 1966-1967 and 1978-1979.

On the date of the accident at about 4:00 a.m., Claimant, Nick Mavraganis, was driving his car from his home to his place of employment. **His** wife, Claimant Ypapanti Mavraganis, was riding in the front passenger

seat. He proceeded east on the Stevenson Expressway at about **25** m.p.h. He was familiar with this section of the expressway having travelled it for two years on his way to work. He had actually travelled it the day before under similar driving conditions as on the date of the accident. The general driving conditions were icy, although the middle lane was somewhat better than the other lanes. Snow was piled up on the shoulders up to the height of the crash wall. The temperature was below zero. As he passed California Avenue, going east, the roadway started a decline. He noticed ice "like a lake". He started applying his brakes but the car accelerated and he lost control of his car. The car skidded, and next thing Claimant knew he was "flying somewhere in the air" and his automobile landed on the ground **60** feet below.

As a result of the accident, Claimant Nick Mavraganis suffered a rupture of his diaphragm, a diaphragmatic hernia and tear, a fracture of his right shoulder, and other injuries. He underwent a left closed thoracostomy surgery. His hospital and doctor bills totalled **\$19,477.81**. His lost wages totalled **\$28,490.00**. In order to walk he was required to use a walker until August **1979** and he still uses a cane.

Claimant, Ypapanti Mavraganis, suffered a fractured left arm and contusions and abrasions over all of her body. Her hospital and doctor bills totalled **\$2,356.80** and she lost wages in the amount of **\$4,488.00**.

Claimants contend that, from the circumstances, it was apparent that Claimants' auto skidded into the crash wall, and because the snow was piled there, Claimants' auto was caused to be catapulted over the wall into the air. Claimants contend that the State was negligent in failing to close Stevenson Expressway to all traffic when

it became apparent that the State was unable to properly maintain the highway due to weather conditions or to post signs warning of the dangerous conditions of which it obviously had actual notice.

This Court does not agree with these contentions. The accident in question was not the proximate result of the piling of snow against the crash wall. On the contrary, it was the proximate result of generally icy weather conditions and the speed of Claimants' vehicle. The evidence showed that the State did everything possible to keep its highways free of snow and ice. The State is not held to a standard which requires that, at all times, it must keep its highways totally free from ice and snow, but merely that it use all reasonable means to do so: This Court is satisfied from the evidence that the State, working its plows and crews **24** hours a day for days on end did all that it was reasonably required to do.

According to the implications of the testimony, the speed at which Claimants were travelling, *i.e.*, **25** m.p.h., was too fast for the conditions then and there prevailing. Had the snow not been piled against the crash wall, there might very well have been a collision between Claimants' car and the crash wall itself resulting in possible injuries. Thus, while the piling of the snow against the crash wall might have accentuated the injuries, it did not cause them.

Nor is there any authority to the effect that the State is required to close a highway due to generally icy and snowy conditions. To require this would be to require the State to close all highways during such conditions. This Court should not place such a burden on the State.

To hold for the Claimants in this case would subject the State to liability for almost every accident caused at least partially by icy road conditions. This Court should

not do so. Claimants contend that the doctrine of *res ipsa loquitur* applies in this case, claiming that inasmuch as the highway was under the sole management and charge of the State and that an accident happened, which in the ordinary course of things does not happen if those who have management thereof use proper care, it affords reasonable evidence, in the absence of explanation by the Claimants, that the accident arose from want of proper care. The Court does not agree that the doctrine applies in this case. While the State did have sole management and charge of the highway, it did not have management and charge of the Claimants' automobile. Thus one of the prime elements of the doctrine is not present in this case.

In addition, the State contends that Claimant, Nick Mavraganis, was guilty of contributory negligence. Although 25 m.p.h. is generally slow in traversing a highway, it is obvious that Claimant was going at a speed at which he could not control his vehicle under the icy conditions prevailing. He also knew of the generally icy conditions having travelled the same highway the previous day. The burden of proving due care on the part of the Claimant is on the Claimant. Claimant did not introduce any evidence which met this burden.

Claimant contends that the doctrine of comparative negligence should apply. The doctrine of comparative negligence came into effect in Illinois as of June 1, 1981. Since the trial of this case commenced and proofs were closed on May 12, 1981, the doctrine of comparative negligence does not here apply.

For the above reasons, this claim is hereby denied.

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(No. 80-CC-1338—Claim denied.)

**DONNA FELDMAN, Claimant, v. THE STATE OF ILLINOIS,  
Respondent.**

*Opinion filed April 12, 1984.*

REIBMAN & HOFFMAN, LTD. (SHELDON N. REIBMAN,  
of counsel), for Claimant.

NEIL F. HARTIGAN, Attorney General (ANDREW R.  
JARETT, Assistant Attorney General, of counsel), for Re-  
spondent.

**HIGHWAYS—duty to maintain highways.** State of Illinois is not insurer of every accident which occurs on public highways, and State is charged only with maintaining highways and shoulders in reasonably safe condition.

**SAME—mere existence of defective condition not negligence.** Mere fact that defective condition exists is not in and by itself sufficient to constitute act of negligence on part of State.

**NEGLIGENCE — burden of proof on Claimant—dangerous condition—snow-covered median.** Claimant must prove that State had actual or constructive notice of dangerous condition on highway in order to recover on claim arising from accident allegedly caused by condition.

**SAME—when act is not proximate cause.** Where negligent act or omission which does nothing more than furnish condition making injury possible, and **such** condition, by subsequent act of third person, causes injury, the two acts are not concurrent and the existence of the condition is not the proximate cause of the injury.

**HIGHWAYS—snow-covered median—hit-and-run—accident—proximate cause not established—claim denied.** Claimant was denied award for injuries sustained when her vehicle was struck by a hit-and-run car, went over a snow-covered median and was **struck** by a third vehicle, as the hit-and-run driver was the proximate cause of Claimant's injuries, not the snow-covered condition of the median.

ROE, C.J.

The Claimant, Donna Feldman, seeks damages for personal injuries she sustained when her car went over a snowbank which covered an entire median divider and was struck by another automobile coming from the opposite direction.

Basically, the facts of the accident as adduced by

testimony are not in dispute. On February 18, 1979, at approximately 9:00 a.m., Claimant was driving north on the Edens Expressway and at about 5800 North, Claimant's car was sideswiped by a "hit and run" van causing Claimant's vehicle to swerve onto the median divider which was completely covered with snow. Claimant's car went over the median divider and was struck by another automobile travelling in the southbound lanes of the Edens Expressway. It is not contested that Claimant suffered severe injuries as a result of this accident.

Apparently, the snow had been plowed onto the median in such a way as to create what amounted to a ramp (as described by Claimant) **up** and over which her car was propelled causing her to land in the southbound lanes where she was struck.

Essentially, the Claimant contends that the State had a duty to maintain the highway in a safe manner and that by plowing snow onto the median in such a way as to create a ramp, the State breached its duty and in fact negligently created a dangerous condition on the expressway.

The Respondent's contentions, however, with which we must unfortunately agree are that: (1) the State exercised reasonable care under the circumstances, (2) this type of accident was not reasonably foreseeable, (3) the State had no prior knowledge of the alleged dangerous condition, and (4) the State's plowing technique creating the ramp was not the proximate cause of the injuries sustained.

This Court has held on numerous occasions that the State of Illinois is not an insurer of every accident which occurs upon its public highways. (*Linkv. State* (1969), 24 Ill. Ct. Cl. 69; *Palecki v. State* (1971), 27 Ill. Ct. Cl. 108.) The State of Illinois is charged only with maintaining its

highways in a reasonably safe condition and with using reasonable diligence in doing so. (*Garrett v. State* (1956), 22 Ill. Ct. Cl. 343.) We have also held that the State's duty of due and reasonable care extends to maintenance of the shoulders of roadways for the uses for which they are reasonably intended. *Welch v. State* (1966), 25 Ill. Ct. Cl. 270.

We are not unmindful of the fact that the winter during which this accident occurred was one of the worst winters in the history of Chicago. Respondent's witness, Joseph J. Kostur, Jr., who was in charge of the plowing operations for this sector for the Department of Transportation, testified that crews had been plowing the highways 24 hours each day for two or three days prior to the accident. In addition to the plowing, the road surfaces were also treated with salt. The nature of the plowing equipment used by the Department of Transportation is such that snow is plowed to the side of the roadway and deposited on both the shoulder and the median, thus clearing the roadway for the monitoring public, but creating mounds of snow on the shoulders and medians which cannot be removed unless they are actually shoveled onto a truck and carried away. Under the severe weather conditions as existed during this time in Chicago, we believe the State's first duty is to clear the major roadways for use by the public and we can ask of the State nothing more than to use all available equipment and manpower. In keeping Edens Expressway open for traffic, we believe the State met its duty.

In order for Claimant to recover, she must also prove that the State had actual or constructive notice of the dangerous condition that existed on the median strip. As we review the record, there was certainly no proof, in fact, no allegations of actual notice of the alleged dangerous condition. As to constructive notice of a dangerous

condition, each case must be decided on its own facts. (*Palecki v. State, supra.*) In the instant case, the Claimant has not proved that the State had knowledge or should have known of any dangerous condition. In fact, Mr. Kostur testified that there had never been any accidents involving snow plowing procedures which created a ramp effect. Even if the ramp could be considered dangerous, that alone does not constitute negligence on the part of the Respondent, as was set forth in *Palmer v. State* (1964), 25 Ill. Ct. Cl. 1: "The mere fact that a defective condition existed, if, in fact it did exist, is not in and by itself sufficient to constitute an act of negligence on the part of the Respondent". The Claimant has not established by any evidence that the State knew or should have known of the allegedly dangerous condition created by the plowing of the expressway. Therefore, there is no proof that the Respondent was negligent.

Even assuming the State negligently created a dangerous condition on the median divider, which we reject, such negligence merely created a condition and was not a concurrent or proximate cause of the accident. In *Storen v. City of Chicago* (1940), 373 Ill. 530, 27 N.E.2d 53, the court held that the maintenance of a depressed curb did not constitute a concurrent cause of plaintiff's injury when a third party struck a parked car which was propelled along the street curb until it reached an opening in the curb at which point it careened onto the parkway injuring plaintiff. The court stated that even if the maintenance of the depressed curb constituted negligence, such negligence was not an act concurrent with the negligence of the driver who struck the parked car. The court held that the depressed curb did nothing more than furnish a condition and that the proximate cause of the accident was the negligence of the driver who struck the parked car. The court stated:

“If, however, a negligent act or omission does nothing more than furnish a condition making an injury possible, and such condition, by the subsequent act of a third person, causes an injury, the two acts are not concurrent and the existence of the condition is not the proximate cause of the injury.” 373 Ill. 530, 533, 27 N.E.2d 53, 55

The record in this case is clear that Claimant was struck by a hit and run van causing her to lose control of her vehicle, which in turn caused her to careen into (in this case over) the median. We find, therefore, that the proximate cause of the accident was the negligence of the driver who struck Claimant’s vehicle. The Court regrets this unfortunate occurrence but is of the opinion that this claim must be denied.

It is hereby ordered that this claim be, and hereby is, denied.

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(No. 80-CC-1362—Claim denied.)

**CITY OF SPRINGFIELD, ILLINOIS**, a Municipal Corporation, Claimant, **u. ILLINOIS DEPARTMENT OF TRANSPORTATION**, Respondent.

*Order filed May 10, 1983.*

*Order on denial of rehearing filed August 13, 1983.*

**SORLING, NORTHRUP, HANNA, CULLEN & COCHRAN, LTD.**, for Claimant.

**NEIL F. HARTIGAN**, Attorney General (**W. J. SIMHAUSER**, Special Assistant Attorney General, of counsel), for Respondent.

*NEGLIGENCE—contribution denied—accident prior to rule change.* Claim for contribution based on personal injury action filed against city for defectively constructed traffic island properly denied, as accident occurred prior to date prospective change was made in contribution rule.

*SAME—indemnity—pre-tort relationship.* Claim of implied indemnity is governed by the parties’ pre-tort relationship as well as the qualitative distinction between the parties as to their respective degrees of fault.

*INDEMNITY—defective traffic island—city sought indemnity—claim denied.* City's action seeking indemnification from State for judgment obtained by injured party due to dangerous condition caused by traffic island was dismissed, as city was actively negligent, thereby precluding application for indemnification.

POCH, J.

This cause coming to be heard upon the motion of the Claimant for summary judgment, the motion of the Respondent for summary judgment and objections and briefs being filed by each party in opposition to the other's motions for summary judgment and upon the motion of the Respondent seeking reconsideration of the ruling of this Court in its order of April 16, 1982. Each party has had the opportunity to respond to all issues raised by the other and this cause has been orally argued before the Court. The Court has been fully advised on all matters before the Court and hereby finds:

1. The Claimant, City of Springfield, has filed a two-count complaint on February 20, 1980, against the Respondent, Illinois Department of Transportation. The complaint seeks indemnification in the sum of \$250,000.00 and Count II seeks contribution from the Respondent for its *pro rata* share of the judgment entered against the Claimant.

2. The undisputed facts are as follows: An action seeking damages for personal injuries was filed by Charles Janssen against the Claimant and Respondent in the Circuit Court for the Seventh Judicial Circuit Court on August 9, 1974, for injuries sustained by Janssen on August 26, 1973, in Springfield, Illinois. The State and its officers were dismissed upon motion from the action in the circuit court. The case was tried against the City of Springfield and the jury returned a general verdict against the city in favor of the plaintiff Janssen in the sum of \$250,000.00. The appellate court of Illinois reversed

that judgment. On leave to appeal being granted the supreme court of Illinois reversed the appellate court and affirmed the judgment of the circuit court (*Janssen v. City of Springfield* (1980), 79 Ill. 2d 435, 404 N.E.2d 213), including the amount of the judgment. That opinion details the relevant facts.

3. The judgment has been satisfied in full by the City of Springfield.

4. The supreme court in *Janssen* found that the City of Springfield was guilty of active negligence in failing to warn the plaintiff of the dangerous condition created by the traffic island in question.

The supreme court also held that the city had jurisdiction and control over the outer 28 feet of the road surface and thus had a statutory duty to warn those motorists including plaintiff. 79 Ill. 2d 435, 444.

5. The city did not tender the defense of the *Janssen* suit to the State in the circuit court.

6. The City of Springfield seeks summary judgment based upon the claim of active negligence in the construction and design of the traffic island.

The State seeks summary judgment on the ground that the Claimant's complaint states no basis in law or fact which allows indemnity or contribution.

## I.

### CONTRIBUTION

The rule of law allowing contribution among joint tortfeasors was judicially pronounced by the supreme court of Illinois in *Skinner v. Reed-Prentice Division* (1978), 70 Ill. 2d 1,374 N.E.2d 437. That decision, which was a complete change in existing Illinois law, was to be

applied prospectively to causes of action arising out of occurrences on or after March 1, 1978. (70 Ill. 2d 1, 16-17.) See also, *Stevens v. Silver Mfg. Co.* (1978), 70 Ill. 2d 41, 374 N.E.2d 455; *Robinson v. International Harvester Co.* (1978), 70 Ill. 2d 47, 374 N.E.2d 458.

The General Assembly of our State has also enacted legislation allowing contribution among tortfeasors. (Ill. Rev. Stat. 1979, ch. 70, par. 301 *et seq.*) This Act applies only to causes of action arising on or after March 1, 1978. Ill. Rev. Stat. 1979, ch. 70, par. 301.

This Court in *Manescalco v. State*, 35 Ill. Ct. Cl. 933, in a case similar to the instant case, held that there is no right of contribution among tortfeasors for occurrences arising on or before March 1, 1978. In *Manescalco* an auto accident occurred on March 11, 1976, on State property. An action was brought against the Claimant Manescalco in the circuit court and judgment was rendered against him. He then filed an action in this Court seeking contribution and indemnification from the State. That claim for contribution was dismissed. We held there, and so follow and hold here, that there is no right of contribution among the Claimant, City of Springfield and the Respondent due to the prospective-only application of the rule of contribution pronounced by both the supreme court of Illinois and by our legislature.

The Claimant seeks to overcome the prospective application of the contribution rule by claiming that no such issue arose until after the jury's verdict against the city after March 1, 1978. We find that the cause of action in this case arose when the occurrence in question occurred on August 26, 1973. (See *Balmes v. High-Foco, A.B.* (1982), 105 Ill. App. 3d 572, 434 N.E.2d 482; *Davis v. FMC Corporation* (S.D.Ill. 1982), 537 F. Supp. 466, 467.) It is the date of the occurrence that controls herein, not

the date the verdict is returned against the party seeking contribution that controls or the date the party pays more than its *pro rata* share of the damages. Therefore, there is no right of contribution from the Respondent to the Claimant.

## II.

### INDEMNITY

Whether or not there is any right to indemnity based upon the facts and circumstances has been vigorously contested and thoroughly briefed and argued by able counsel for both sides in this case.

There is no claim by the city for express indemnity based upon any agreement providing for indemnification between the parties.

Any claim of implied indemnity is governed by the pre-tort relationship between the parties as well as the qualitative distinction between the parties as to their respective degrees of fault. The Respondent must show to have some pre-tort relationship upon which a duty to indemnify may be established. (*Muhlbauer v. Kruzal* (1968), 39 Ill. 2d 226, 230, 234 N.E.2d 790, 793.) The reasoning in *Muhlbauer* has been followed consistently due to the persuasive rationale underlying the theory of indemnity. The cases relied on by the city are not persuasive in light of *Muhlbauer*. Since the decision of the supreme court in *Skinner v. Reed-Prentice Division, supra*, allowing contribution there is no reason to dilute the well-reasoned theory that there must be a pre-tort relationship between the parties giving rise to a duty to indemnify in order to permit implied indemnity between the parties. In *Van Jacobs v. Parikh* (1981), 97 Ill. App. 3d 610, 422 N.E.2d 979, the appellate court reaffirmed

the holding and underlying rationale of *Muhlbauer*. 97 Ill. App. 3d 610, 613.

This Court in *Manescalco v. State* (1982), 35 Ill. Ct. Cl. 933, has reached the same conclusion that has been reached in *Muhlbauer* and *Van Jacobs*, that requires some pre-tort relationship creating a duty to indemnify in order for implied indemnity to be applicable.

In order for Claimant to allege a cause of action under passive-active indemnity, it must allege a pre-tort relationship and allege a qualitative difference between its own negligence and the claimed negligence of the State. The complaint must allege sufficient facts to show a relationship exists or circumstances occurred which implied a duty to indemnify.

The Claimant argues that there is a pre-tort relationship between the parties. The city refers to the construction and maintenance agreements between the city and the State as made reference to in the opinion of the supreme court in *Janssen v. City of Springfield, supra*. The parties had agreed to jointly construct the pavement surface in question and subsequently agreed to have the State maintain the center 24 feet and the city would maintain the remainder. The city also had notice of the dangerous condition created by the traffic island in 1964 and requested that the State remedy it. (79 Ill. 2d 435, 441.) Apparently nothing was done to the traffic island before Janssen's injuries.

The complaint filed by the Claimant does not specifically allege a pre-tort relationship between the parties. There is nothing in the record before us to allow the conclusion that these construction and maintenance agreements between them gives rise to an express indemnity agreement.

The appellate court in *Van Jacobs v. Parikh* (1981), 97 Ill. App. 3d 610, 613, 422 N.E.2d 979, required, in order to state a cause of action for indemnity, that the complaint allege a “duty to indemnify, arising not from the relative fault of the parties, but from the pre-tort relationship of the parties.” The City of Springfield fails to state such a relationship and in the absence of such relationship is not entitled to indemnity from the State of Illinois.

In addition to the pre-tort relationship there must be a “qualitative distinction between the conduct of the parties” in order to state a cause of action for indemnity. *Van Jacobs v. Parikh, supra*, at 613; *Muhlbauer v. Kruzal* (1968), 39 Ill. 2d 226, 230, 234 N.E.2d 790, 793.

This “qualitative distinction” is often referred to as active v. passive negligence. In the instant case the jury found the city to be negligent and thus responsible for its own acts or omissions. The supreme court affirmed the judgment against the city because the city had the duty to warn motorists of hazards adjacent to the roadway even though the hazard was not within the control of the city itself. (79 Ill. 2d 435, 450-51.) The city was therefore found to be negligent and its negligence was a proximate cause of injury to Janssen.

The question of whether the city’s negligence is active rather than merely passive must be addressed. If it is active the city will be barred from indemnification by the State. (*Van Jacobs v. Parikh, supra*, at 613.) The decision of the appellate court in *Warzynski v. Village of Dolton* (1974), 23 Ill. App. 3d 50, 317 N.E.2d 694, *rev’d* on other grounds (1975), 61 Ill. 2d 475, 338 N.E.2d 25, is helpful in resolving this issue. In *Warzynski* the village sought indemnification from the driver of an auto that struck a raised sewer cover when the passenger sued the

village and recovered a judgment for her injuries. The appellate court went into detail in discussing active v. passive negligence and stated:

“The basis for allowance of indemnity is predicated upon a finding of a higher degree of culpability by one tort-feasor, so that placing the entire burden on him would be warranted . . . the verdict of the jury in favor of the plaintiff against the Village necessarily found the condition of 155th Place to be a proximate cause of her injuries. . . . We believe that the actions of the Village in proximately causing the injury to plaintiff were of such a nature that its conduct should be deemed active negligence. This would militate against any action for indemnity against Novak, regardless of whether his conduct might also be considered active negligence.” 23 Ill. App. 3d 50, 58, 317 N.E.2d 694,700.

In the instant case the negligence of the City of Springfield is a proximate cause of the injuries to Janssen. This negligence is at least equal to the negligence of the State in their respective duties to maintain the area in question. We find the following language in *Warzynski* to be persuasive.

“We believe the negligence to the Village in allowing the sewer on an unlighted street to be raised above the street level was at least equal to the negligence of Novak as he drove in darkness over said sewer, and can only be viewed as an active or affirmative participation in the wrong. . . we retain our belief there is no clear justification to permit the total shifting of responsibility from the Village to Novak.” 23 Ill. App. 3d 50, 68, 317 N.E.2d 694, 703.

The negligence of the city in failing to warn motorists of hazardous conditions affecting the street has been established by the verdict of the jury and the affirmance of the judgment by the supreme court of Illinois in *Janssen v. City of Springfield, supra*. In that appeal the position of the city was based upon “legal rather than factual questions.” (79 Ill. 2d 435, 452.) The failure to argue the factual questions concerning liability on appeal leaves only one conclusion: that the facts supported the verdict and that the city was negligent. We find that the negligence of the city was “active or affirmative participation in the wrong.” *Warzynski*, 23 Ill. App. 3d 50, 58, 317 N.E.2d 694.

Because the city's negligence is active there is no basis to shift the responsibility to the Respondent and the city is not entitled to indemnification from the State.

The issues raised are legal issues. There are no genuine issues of material fact and therefore disposition by means of summary judgment is appropriate. Due to the disposition of all issues by the ruling on the motions for summary judgment there is no necessity to consider or rule upon the Respondent's motion to reconsider the order of this Court of April 16, 1982.

The motion of the Claimant for summary judgment be, and the same is hereby denied.

The motion of the Respondent for summary judgment be and the same is hereby granted and judgment is entered in **favor** of the Respondent and against the Claimant and the Claimant's complaint is hereby dismissed with prejudice.

It is hereby ordered:

That the motion of the Claimant for summary judgment be, and the same is hereby denied.

That the motion of the Respondent for summary judgment be and the same is hereby granted and the complaint of the Claimant seeking indemnity is hereby dismissed.

#### ORDER ON DENIAL OF REHEARING

POCH, J.

This matter coming on before this Court on Claimant's petition for rehearing and Respondent having filed its objections and all parties having received due notice of the pleadings and the Court being fully advised in the premises;

It is hereby ordered that the petition for rehearing is hereby denied.

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(No. 80-CC-1811—Claimant awarded \$13,494.52.)

**PETERSBURG PLUMBING AND HEATING COMPANY, INC., Claimant,**  
**v. THE STATE OF ILLINOIS, Respondent.**

Opinion filed January 25, 1984.

**HECKENKAMP & SIMHAUSER, P.C., for Claimant.**

**NEIL F. HARTIGAN, Attorney General (WILLIAM E. WEBBER, Assistant Attorney General, of counsel), for Respondent.**

*CONTRACTS—remodeling contract—State failed to vacate premises—breach—claim allowed.* Contractor was granted award for damages suffered when State failed to timely vacate premises which were to be remodeled as part of rehabilitation of Illinois State Capitol Building, as negotiated settlement arrived at by parties was reasonable according to facts of case.

**ROE, C.J.**

The case at bar is yet another claim by a contractor seeking to recover damages arising out of the breach of a contract by the Secretary of State relating to the remodeling and rehabilitation of the Illinois State Capitol Building which began in the latter half of calendar year 1977. This Claimant had contracted to perform the heating and air conditioning work. As in the other claims, the Respondent breache'd the contract by failing to vacate certain areas of the Capitol which were undergoing renovation, the result being that the contractor was prevented from proceeding with the work from time to time, particularly when the legislature was in session.

Although at all relevant points in time this Claimant stood ready and willing to perform its end of the

contract, it was not until April of 1980 that the Claimant completed its work, nearly a year and one-half after the projected completion date. Claimant promptly filed this claim. The damages arose out of the lengthy suspensions and delays of the work. In calculating the dollar amount of its bid and in agreeing to the contract Claimant had relied on being able to complete the project within the time specified and agreed to. Other claims of a similar nature which arose out of the delays in this project have been awarded and paid. See *R. D. Lawrence Construction Company v. State* (1983), 35 111. Ct. Cl. 709.

In its complaint Claimant seeks the sum of \$26,537.00. However, the Claimant and the Respondent subsequently entered into a compromise and agreed that \$13,494.52 represented a fair and reasonable settlement of this claim. Said amount was arrived as itemized below:

Additional labor .....	\$ 3,599.43
. Insurance .....	1,461.09
Tool rental.. .....	700.00
Nonproductive labor. ....	4,750.00
Supervision (supervisor time actually spent at construction meetings). ...+	<u>1,224.00</u>
Sub total .....	\$11,734.52
Overhead and profit at 15%.....+	1,760.10
Total .....	<u><u>\$13,494.52</u></u>

We have reviewed the entire record in this matter including the evidence offered in support of the settlement, find that the settlement was arrived at fairly by arms length negotiation, and agree with the parties that it is fair and reasonable according to the facts of this case. Therefore, we hereby award the Claimant the sum of \$13,494.52.

(No. 80-CC-2148—Claimant awarded \$2,207.56.)

CHESTER NEUBAUER, Claimant, *v.* THE STATE OF ILLINOIS,  
Respondent.

*Opinion filed January 23, 1984.*

THEODORE E. DIAZ, for Claimant.

NEIL F. HARTIGAN, Attorney General (SUE MUELLER,  
Assistant Attorney General, of counsel), for Respondent.

NEGLIGENCE—*violation of statute—prima facie evidence of negligence.* Violation of a statute is not evidence of negligence *per se*, but only *prima facie* evidence which may be rebutted by showing that under facts and circumstances of case, the alleged violation did not constitute negligence, and party seeking to use statute to his benefit must show statute was designed to protect him.

SAME—*snowplow collision—improper trim—claim allowed.* Evidence established that State snowplow made improper left turn without proper signal and without first establishing that such turn was reasonably safe, and claim was granted for damages sustained when Claimant's vehicle was struck by plow, as negligence of plow operator was proximate cause of damages.

HOLDERMAN, J.

This claim is the result of an accident between the Claimant's automobile and a snowplow owned and operated by the State of Illinois. This accident occurred at about 10:00 a.m. on January 30, 1980, on Illinois Route 157 just north of the city limits of Edwardsville.

Udell Wehling, an employee for the Illinois Department of Transportation, was plowing the southbound lane of Route 157, which is a two-lane highway with traffic flow in both directions. On the day in question, there were several cars traveling south on Route 157 behind the plow. Claimant was the third car in this line. As Respondent's plow reached the Edwardsville city limits, the plow stopped on the right side of the southbound lane because the driver had reached the end of his route to plow and was preparing to turn around and plow the northbound lane. The line of traffic started to pass the

plow in the northbound lane. The first two vehicles passed safely. While Claimant's auto was passing, Respondent's plow turned left into claimant's auto and struck Claimant's auto along the right side of the auto with the left front of the blade of the plow. The cost of repair of damages to the Claimant's auto was \$2,207.56.

Wehling, the driver of the snowplow, testified he stopped to turn around in a service station on the east side of the highway. He testified he had activated his left turn signal about 120 feet before he stopped. He observed the first two vehicles pass him on the left and then he checked his outside rear view mirror to see if traffic was clear. He saw no other vehicles, including that of Claimant, and he then began his left turn. He then observed the blade on his truck strike the side of Claimant's auto.

Claimant testified he saw Respondent's truck stop in the southbound lane and the two vehicles directly in front of Claimant then proceeded to pass the plow in the northbound lane. Claimant further testified he saw no turn signal on the truck and started to pass when the truck made a left turn into his car.

Claimant's wife, a passenger in Claimant's car, verified Claimant's version of the accident.

Another witness, Frances Smithson, a passenger in the car directly behind Claimant, testified on Claimant's behalf and stated she observed no turn signals on Respondent's truck. She further testified she had been in the line of traffic following the plow, that the traffic moved slowly behind the plow for some distance prior to the accident, and that the vehicles behind the plow proceeded to pass the plow in an orderly manner, without quick acceleration, after the plow stopped.

Section 11—804(a) of the Illinois Vehicle Code provides that no driver may “turn a vehicle to enter a private road or driveway, or otherwise turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. No person may so turn any vehicle without giving an appropriate signal in the manner hereinafter provided.” Ill. Rev. Stat. 1978, ch. 95½, par. 11—804(a).

Three witnesses testified that Respondent’s driver failed to signal his left turn. Respondent’s driver admitted he observed the first two vehicles behind him pass his plow on the left. He stated he looked in his outside rear view mirror and saw no other vehicles attempting to pass him. This, however, does not correspond with the testimony of the other witnesses, who all testified that Claimant drove his auto in a smooth procession behind the first two vehicles around Respondent’s truck. Respondent’s driver admitted that he did not check for traffic behind or passing him by looking over his shoulder behind him other than what he could see in his outside rear view mirror.

It would appear from the evidence introduced that Respondent’s driver was negligent in making his left turn without a proper signal and without first establishing such a turn was reasonably safe, and this negligence was the proximate cause of the Claimant’s damages.

Respondent’s driver testified when he stopped his plow, he was within 100 feet of an intersection. Such passing is prohibited by statute. (Ill. Rev. Stat. 1978, ch. 95½, par. 11—706(a)2.) Violation of a statute is not evidence of negligence *per se* but is only *prima facie* evidence which may be rebutted by a showing that, under the facts and circumstances of the case, the alleged

violation did not constitute negligence. (*Johnson v. Pendergast* (1923), 308 Ill. 255, 139 N.E. 407.) Moreover, the party seeking to use the statute to his benefit must show the statute was designed to protect him. *Ney v. Yellow Cab Co.* (1954), 2 Ill. 2d 74, 117 N.E.2d 74.

It is the Court's opinion that the statute prohibiting passing within 100 feet of an intersection was clearly designed to protect persons within the intersection, such as a vehicle turning off or onto a roadway on which the passing occurred. It is the Court's further opinion that even if Claimant had violated the statute, such violation did not constitute negligence under the present circumstances since Claimant clearly performed his passing maneuver in a manner which was reasonable and safe and was therefore not guilty of contributory negligence.

It is the Court's further opinion that the negligence of Respondent was the proximate cause of the accident and Claimant should be awarded \$2,207.56. An award in that amount is hereby entered on behalf of Claimant.

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(No. 80-CC-2242—Claim denied.)

ROY CLARK CRILE, SR., as father and next friend of Roy Clark Crile, Jr., a minor, Claimant, v. THE STATE OF ILLINOIS, Respondent.

Opinion filed January 23, 1984.

LEE PHILLIP FORMAN, LTD., for Claimant.

NEIL F. HARTIGAN, Attorney General (GLEN LARNER, Assistant Attorney General, of counsel), for Respondent.

NEGLIGENCE—*landowner's duty* to children. Authorities have held that landowner is required to protect premises frequented by small children against dangerous or hazardous conditions which might in natural and probable sequence cause injury to child.

*SAME—notice of dangerous condition—prerequisite to liability.* State is not liable for injury caused by dangerous or hazardous condition on its property unless State has actual or constructive notice of condition.

*SAME—what necessary to establish constrictive notice.* Constructive notice is present where defective condition exists for such length of time that public authorities, by exercise of reasonable care and diligence, might have known of condition and had opportunity to remedy same.

*SAME—mere existence of defective condition not negligence.*

*SAME—open manhole—injured child—no notice—claim denied.* Minor Claimant was denied award for injuries sustained when he fell through open manhole, as evidence established that Claimant failed to show that State had actual or constructive knowledge that cover was missing.

POCH, J.

This claim arises from personal injuries sustained by Roy Clark Crile, Jr., when he fell into an open manhole while playing near an expressway on property maintained by the State of Illinois.

The Claimant, Roy Clark, Crile, Jr., was a minor aged fourteen years old on January 27, 1980. At that time, the Claimant intended to go sledding with his brother on a hill adjacent to the tollway right of way. The Claimant testified that he walked on a slant going north up a hill near the Dolton Avenue exit when he noticed a hole with a sign half way over it. The Claimant was curious and kneeled down and as he did he slipped into the hole which turned out to be a form of sewer.

As a result of this fall, the Claimant received a fractured right oscalcis. This injury was treated by closed reduction of the fracture using a Böhler clamp, application of a plaster cast and subsequent physical therapy.

Illinois authorities have held that a landowner is required to protect his premises, frequented by small children against dangerous or hazardous conditions which might in a natural and probable sequence cause injury to a child. (*Beechy v. Village of Oak Forest*, (1973), 16 Ill. App. 3d 240; *Driscoll v. Rasmussen* (1966), 35 Ill. 2d 74,

219 N.E.2d 483.) The State, therefore, has a duty to protect its premises against dangerous or hazardous conditions which may, cause injury to children.

Illinois law has also consistently held that the State is not liable unless it has actual or constructive notice of the defect that caused the injury. *Kriesal v. State* (1978), 32 Ill. Ct. Cl. 101; *Sewell v. Board of Trustees of Southern Illinois University* (1979), 32 Ill. Ct. Cl. 430.

In the instant case, there is no evidence that the State had actual knowledge or notice of the fact that the manhole cover was missing. Furthermore, there can be no finding that the State had constructive notice as to the condition of this particular manhole.

Constructive notice is present where a defective condition exists for such a length of time that public authorities, by the exercise of reasonable care and diligence, might have known of the condition and had the opportunity to remedy the same. (*Palermo v. City of Chicago Heights* (1971), 2 Ill. App. 3d 1004.) The unreasonable length of time the defect existed is thus the crucial element in constructive notice. In the instant case, the record reflects that Claimant presented no evidence as to the length of time that the manhole cover was missing. Therefore, any conclusion regarding the same would be speculative. "The mere fact that a defective condition existed, if, in fact it did exist is not in and of itself sufficient to constitute an act of negligence on the part of the Respondent". *Palmer v. State* (1964), 25 Ill. Ct. Cl. 1.

For the foregoing reasons the claim of Roy Clark Crile, Sr., as father and next friend of Roy Clark Crile, Jr., a minor, is denied.

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(No. 81-CC-0541—Claim denied.)

**RIDGEWAY HOSPITAL, Claimant, v. THE STATE OF ILLINOIS,  
Respondent.**

*Order filed April 19, 1984.*

JERRY GOLDBERG, for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

*LAPSED APPROPRIATIONS—psychiatric services—handicapped minor—appropriations exhausted—claim denied.* Claim for in-patient psychiatric care rendered to mentally handicapped minor who was adopted pursuant to subsidized adoption agreement with Department of Children and Family Services was denied, as line item appropriations out of which claim should have been paid was totally exhausted and the allowance for payment of the claim would violate the Finance Act, notwithstanding validity of claim.

ROE, C.J.

This cause comes on to be heard on the motion by the Respondent to dismiss and the response thereto filed by the Claimant, due notice having been given, and the Court being advised:

This is a claim for in-patient psychiatric hospitalization services rendered to one Laura Forbes, a mentally handicapped minor who was adopted by Mr. and Mrs. Forbes pursuant to a subsidized adoption agreement with the Department of Children and Family Services wherein said Department agreed to pay for the services which are the subject matter of this claim. The Claimant originally sought the sum of \$20,330.70 but later conceded that its recovery would be limited to the reduced amount of \$17,582.00 in accordance with the appropriate index established by the Department of Public Aid.

The record is clear that Laura Forbes was adopted on December **24; 1974**, at which time a subsidy agreement was executed between the Department and Laura's

adoptive parents which provided that the Department would pay **\$127.00** per month or as much as was needed for therapy for Laura and that the subsidy agreement was in effect during the period of Laura's hospitalization at the Claimant hospital. The Department acknowledges that the hospital was properly authorized, that the services rendered were satisfactory and that the sum of **\$17,582.00** is due and owing the Claimant. However, the line item appropriations out of which this claim should have been paid, fiscal years **1978** and **1979** Adoption Services **001-41817-4400-05-00**, were insufficient to cover the amounts being claimed and previous claims have totally exhausted the balances remaining. Although other funds were available for transfer, the Department was required to obtain authorization by the General Assembly to transfer those other funds but did not do *so*.

Despite the Department's concession that the instant claim is valid and should be paid, payment of this claim by either the Department or this Court would violate the express provisions of Section **30** of the Finance Act (Ill. Rev. Stat. **1983**, ch. **127**, par. **166**), which prohibits a State agency from contracting in an amount in excess of its appropriations. Our recent opinion in *Long v. State* (**1983**), **35** Ill. Ct. Cl. **748**, is dispositive of the issues here. Accordingly, we are constrained to deny this claim.

Claim denied.

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(No. 81-CC-0618—Claimant awarded \$7,000.00.)

**WILLIE SPIVEY**, Claimant, *v.* **THE STATE OF ILLINOIS**,  
Respondent.

*Opinion filed February 3, 1984.*

**DAVID S. Pochis, LTD.** (ALAN D. KATZ, of counsel),  
for Claimant.

**NEIL F. HARTIGAN**, Attorney General (**GLEN P. LARNER**, Assistant Attorney General, of counsel), for Respondent.

**HOSPITALS AND INSTITUTIONS—reaction to drug—stipulation—claim allowed.** Award was granted for claim arising from personal injuries suffered by patient in mental health center when allergic reaction followed administration of certain drug, as parties entered into joint stipulation, which was reasonable and fair settlement of claim.

**POCH, J.**

This cause comes before the Court, upon the joint stipulation of the parties to the instant claim. Said stipulation states as follows:

1. The instant claim sounds in tort and seeks recovery for personal injuries suffered as a result of an allergic reaction by Claimant to a certain drug administered to him on July 8, 1979, while he was a patient at Madden Mental Health Center.

2. The attorneys for the respective parties have conducted discovery, and, after evaluating the applicable facts and law and discussing the matter during several pretrial conferences with Commissioner Terrence Lyons, conclude that it would be in the best interests of the State and the Claimant to settle the claim without trial.

3. Both parties agree that an award of \$7,000.00 would be a fair, reasonable and appropriate amount of compensation.

4. Both parties agree that said award would constitute full and final satisfaction of this claim and any other claim arising from the same facts as gave rise to the instant claim.

5. Both parties hereby waive trial, the taking of evidence and the submission of briefs for the instant claim.

Although the Court is not bound by a stipulation such as this, it is also not desirous of interposing a controversy where none appears to exist. As long as the stipulation appears reasonable and fair, we see no reason to question its validity or to force the parties to take the time and expense of proving facts which they prefer not to dispute. The stipulation herein appears sufficient to sustain the granting of an award in the agreed amount.

Claimant is hereby awarded the sum of \$7,000.00 (seven thousand dollars and no cents) as full and final satisfaction of the instant claim.

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(No. 81-CC-0932—Claim denied.)

**MAURICE WOODFORK, Claimant, v. THE STATE OF ILLINOIS,**  
Respondent.

*Opinion filed September 6, 1983.*

MAURICE WOODFORK, *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (GLEN P. LARNER, Assistant Attorney General, of counsel), for Respondent.

**PRISONERS AND INMATES—*inmate attacked by cellmate—no negligence on part of State—claim denied.*** Inmate's claim for injuries suffered when he was attacked by his cellmate, because he would not join **gang** denied, as evidence established that Claimant had ample opportunity to seek protective custody prior to attack, and State was not shown to have breached duty to provide for safety of Claimant while he was resident of correctional facility.

ROE, C.J.

This is a claim brought by Claimant, Maurice Woodfork, a resident of Stateville Correctional Center, for personal injuries sustained by him when he was beaten by his cellmate during the early morning hours of July 1,

1980. Testimony was taken in this cause on December 10, 1982, and on March 3, 1983.

The facts are as follows:

Prior to the incident in question Claimant lived on 4-Gallery and worked in dining room B, where he was approached by Vice Lord gang members who told him he would have to join their gang. (Tr. 6). On or about June 24, 1980, Claimant wrote a letter to the appropriate prison officials explaining that he was having problems with certain residents on his work assignment. On or about June 27, 1980, Claimant had an interview with case work supervisor Ron Fleming, in which he told Fleming that he wanted a change of job assignment for his own safety. But he did not tell Fleming that the persons causing the trouble were Vice Lords. (Tr. 6).

“Resident approached me about problems associated with his work detail. Stating he was experiencing some difficulties with residents on that detail. At no time did he indicate who the people were or what organization they might belong to. However, it was mutually decided that it was serious enough to warrant a change of assignment. Further, it was mutually decided that the change of assignment would be from the Dining Room Detail to Park & Terrace.” (Departmental report.)

The above material (hearsay as set forth in the departmental report) was corroborated by Claimant:

“I never did state to him what organization or what people was involved. I didn’t know the people and I didn’t know that they were Vice Lords. Right at the time until I sought out information from other guys that I knew.” (Tr.7.)

Under administrative procedures in force in the institution, when Claimant’s work assignment was changed his living quarters were also changed. Upon being transferred from the dining room detail to park and terrace detail, Claimant was moved from 4-Gallery to cell house E. In cell house E there was a vacancy in cell 257, a two-man cell, and Claimant was assigned to that cell.

As ordered by the administration, on or about Friday or Saturday, June 27 or 28, 1980, Claimant moved himself and his property to his new cell. (Tr. 8-9). When Claimant moved into his new cell his cellmate was not there. But later in the day his cellmate returned to the cell, and Claimant discovered that he was someone whom Claimant had previously noticed associating with members of the Vice Lords in the dining room.

Claimant's new cellmate, one Preness Crusoe, told Claimant that he was not welcome in the cell because he was not a member of the Vice Lords.

"Well, we had discussion and we started talking about he really didn't want me in the cell without me being affiliated with no organizations." (Tr. 9.)

"Well, he just — I don't remember it word for word, but we exchanged words about me being in his cell and that he really didn't appreciate me standing there because I wasn't hooked in the Vice Lord organization or no organization for that fact." (Tr. 10.)

In a brief filed by Claimant, in response to a motion to dismiss filed by Respondent at an earlier stage of this case, Claimant detailed subsequent events as follows:

"On the morning of June 30th, 1980, between the time of approximately 2:30 a.m. to 4:00 a.m., Claimant, while using the toilet and without warning, was attacked by Resident Crusoe with clear intention to rape Claimant; the struggle ensued and the end result merited Claimant's personal injuries.

During the struggle, Claimant repeatedly screamed to the tower guard for help. None of the security guards in the unit **would** come to investigate the problem. Claimant at last managed to place Crusoe in a pin position and held him for what is estimated about a half hour, after which Crusoe convinced Claimant for his release and promised to give Claimant no more trouble. Both residents returned to bed, after which Lt. Jordan came to inquire about some noise.

Lt. Jordan inspected several cells before reaching Claimant's cell, asking if there was any problems, Claimant remained silent and resident Crusoe offered oral denials. Lt. Jordan left, Claimant went to sleep and Crusoe assaulted Claimant in his sleep with a wooden stool to start."

At the hearing of this case on March 3, 1983, Claimant verified that the account set forth above was correct. The date given by Claimant of Monday, June 30, 1980, is in error, however; prison reports and hospital

records show that the attack occurred in the early morning hours of Tuesday, July 1, 1980.

Claimant received severe facial injuries during the attack.

Claimant's theory of the case is that the State was negligent in,

(1) Assigning Claimant to a new cell without first screening his new cellmate:

"Resident sought relief from hostile gang members of the Vice Lords who were seeking to molest him on his work assignment in dining room. Formal notice was given to Case Work Supervisor Ron Fleming concerning the problem in which Mr. Fleming reassigned resident to another job which required change in his living quarters. This reassignment of living quarters placed resident in direct contact with the foes he sought to escape, making it convenient for a direct sexual attack by his new cellmate at 2:30 in the morning. Resisting this rape attempt resulted to Claimant's injuries in which damages are currently sought."

Notice of intention to commence action in the Court of Claims.

(2) Causing Claimant to be transferred to the new cell during the weekend, when case work supervisor, Ron Fleming, was not present in the institution.

With respect to (1), Supervisor Fleming testified that Claimant did not state that he was having trouble with the Vice Lords. He additionally testified that it was not the policy of the institution to screen cellmates:

"Q. Now, Mr. Fleming, does the institution make any background checks before they pick cell assignments?"

A. No

Q. None whatever?

A. No. The institution was set up on a unit management back in '78 or '79. At that point, the institution was broken up into three groups. There was a Group 1, a Group 2, and a Group 3.

Group 1 was considered inmates who are doing heavy time, had some violence associated with the offense that they were incarcerated for, and whose background-wise, disciplinary-wise [*sic*] were not a very good disciplinary record. Their disciplinary records were not very good.

Then Group 2 was the middle-of-the-road people who, although the records may not have been *so* good behaviorwise, their offenses were not as serious or their offense could not be serious, but their behavior was not too bad and this is our middle-of-the-road people. Group 3, who were generally the general population of people and that's the way it was split up.

Unit F and Unit E was Group 1, housing, meaning that all those people that were in those two units were people who were designated by the institution as Group 1, heavyweight.

Q. What **group** is Mr. Woodfork in?

A. He was in Group 1.

Q. In other words, the institution made some adverse judgment of him because his offense or behavior caused him to be placed in Group 1?

A. Group 1, yes.

Q. Both Mr. Caruso [*sic*] and Mr. Woodfork were classified as Group 1 people?

A. Yes.

Q. Even though Mr. Woodfork's term is much lighter than Mr. Caruso [*sic*]?

A. Yes.

Q. Other than dividing the residents into **Groups 1, 2 and 3**, the institution does not make any further check as to whether a given inmate had been known to be a troublemaker or dangerous?

A. Not when you are doing just cell assignments or job assignments. Only in the case of transfers, in restoration of grade, or security reduction in those three areas, but not in just a cell assignment or a job assignment."

With respect to (2), Claimant was not attacked until the early morning hours of Tuesday, July 1, 1982. He had ample opportunity between the time he met his new cellmate and the actual attack to ask to be put into protective custody or even to be walked to segregation.

Claimant did not feel that he was in danger:

"Claimant had no reason of alarm to think an emergency existed that could not wait until the following morning, as his cellmate Crusoe had again went out to work somewhere in the dietary department and no words had exchanged between them." (Reply brief, p. 4.)

Moreover, when the guards came to the cell after Crusoe's first attack on Claimant, Claimant instead of asking to be put into protective custody or to be taken out of the cell *remained silent*. This point was conclusively verified both by Claimant and by Lt. Jordan at the March 3, 1982, hearing.

While the State has a duty to provide for the safety of Claimant while he is a resident of an Illinois correctional institution, we find Claimant, has completely failed to prove that the State negligently breached its duty in any way.

Claim denied.

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(No. 81-CC-1002—Claim dismissed.)

ERNEST KELLY, Claimant, v. THE STATE OF ILLINOIS,  
Respondent.

*Opinion filed September 19, 1983.*

*Order dismissing cause filed May 23, 1984.*

RIPPLINGER & DIXON (GEORGE R. RIPPLINGER, JR., of counsel), for Claimant.

NEIL F. HARTIGAN, Attorney General (WILLIAM E. WEBBER, Assistant Attorney General, of counsel), for Respondent.

*FALSE IMPRISONMENT—pardon is prerequisite to recovery for unjust imprisonment.* A pardon from the Governor based on innocence is a condition precedent to recovering in the State of Illinois for time served in penitentiary unjustly.

*SAME—unjust imprisonment—no pardon from Governor—claim denied.* Complaint seeking recovery for wrongful imprisonment denied, as Claimant failed to prove he had received a pardon from the Governor of Illinois after he was released from correctional center based on an appellate court ruling that there was insufficient evidence to support a charge of probation violation, as a pardon is a condition precedent to recovery in such circumstances.

POCH, J.

This matter comes before this Court upon the Claimant's complaint for wrongful imprisonment. Claimant, Ernest Kelly, pleaded guilty to two counts of burglary and was sentenced to probation for those crimes. The

Claimant's prison term, for which he is claiming compensation, extends from an arrest for a violation of his probation. The Claimant has admitted that he was convicted of violating his probation by committing another burglary. Subsequent to his incarceration, an appellate court ruled that there was insufficient evidence to support the charge of probation violation, and the Claimant was released from Menard Correctional Center. Claimant has not received a pardon on the grounds of innocence from the Governor of the State of Illinois, and alleges he does not need one since he was innocent of the crime for which he was incarcerated.

It was well established in this Court that there was no duty existing at common law for the State of Illinois to **compensate individuals** wrongfully convicted and incarcerated. Section 8(c) of the Court of Claims Act (Ill. Rev. Stat., ch. 37, par. 439.8(c)) created a new obligation on the part of the State of Illinois to compensate individuals wrongfully convicted and incarcerated. (*Harpstreith v. State* (1975), 30 Ill. Ct. Cl. 546.) Section 8 (c) of this Act provides that the State will compensate people where:

**"All claims against the State for time unjustly served in prison of this State where the persons imprisoned shall receive a pardon from the Governor stating that such pardon was issued on the grounds of innocence of the crime for which they were imprisoned. . ."**

In the case of *Mostafa v. State* (1975), 30 Ill. Ct. Cl. 567, this Court made an award to a plaintiff where the appellate court of the State of Illinois reversed his conviction of murder without remanding for a new trial and the Claimant received a pardon from the Honorable Governor Daniel Walker, which pardon was provided to the Claimant on the grounds that he was innocent of the crime of murder. In the case of *Anderson v. State* (1978), 32 Ill. Ct. Cl. 643, this Court refused to provide an award for the Claimant who did not receive a pardon from the

Governor, stating that such pardon was issued on the grounds of innocence for the crime in which he had been imprisoned. This Court found that:

**“Such failure to prove the existence of a pardon results in failure of the Claimant’s complaint to state a cause of action.”**

Clearly it could not have been the intent of the legislature to compensate everyone who is released from prison by an appellate court. This is particularly true where the criminal was released on a technicality rather than on genuine innocence. A pardon from the Governor based on innocence is a condition precedent to recovering in the State of Illinois for time served in the penitentiary unjustly. Claimant, Ernest Kelly, has failed to plead and prove that he has received a pardon from the Governor of the State of Illinois; clearly his cause of action fails.

It is hereby ordered that this claim be, and the same is, dismissed with prejudice.

### ORDER DISMISSING CAUSE

This cause having come for consideration and the Court being duly advised in the premises:

Finds, that the Claimant was ordered to file his brief by October **30, 1983**, and has failed to do so.

It is hereby ordered, that this cause is dismissed with prejudice.

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(No. 81-CC-1089—Claimant awarded \$2,490.00.)

INEZ HART, Claimant, v. THE STATE OF ILLINOIS, Respondent.

*Opinion filed November 23, 1983.*

ROSEMAN & MORTON LAW CLINIC, for Claimant.

NEIL F. HARTIGAN, Attorney General (PAUL M. SENG-PIEHL, Assistant Attorney General, of counsel), for Respondent.

STATE EMPLOYEES' BACK SALARY CLAIMS—*illegally discharged employee must mitigate damages.* During period of illegal removal from office, Claimant must diligently seek employment, and do all in his power to mitigate damages.

*SAME—unreasonable termination—award granted.* Claimant was granted award for loss of wages due to unreasonable termination where Claimant', uncontradicted testimony established that she diligently sought employment from date of the termination until she was able to regain employment several months later.

HOLDERMAN, J.

Claimant in this cause seeks damages for unreasonable termination of her employment by the Illinois Fair Employment Practices Commission. It is Claimant's contention that she was unreasonably terminated on June 30, 1976, and did not regain employment until February 1, 1977.

Claimant's earnings were \$11,500.00 per year at the time of her discharge and the conciliation agreement called for the determination of damages to be paid to Claimant were not to exceed \$6,000.00.

It is Respondent's position that Claimant was paid unemployment compensation for the subject time period and that payment should be set off from any claim that she may have. Respondent also contends that Claimant did not actively seek re-employment, pursuant to the guidelines set up in *Chamness v. State* (1979), 33 Ill. Ct. Cl. 200.

The uncontradicted evidence is to the effect that the Claimant did, upon her dismissal, seek employment with the United States government through applications made at the Dirksen Office Building in Chicago, by filing applications for employment with the University of Chicago, by applying for positions at the Continental Bank, and by responding to various ads and solicitations she found in local newspapers and on employment bulletin boards.

Claimant's testimony as to the various attempts at these locations was not disputed by evidence submitted by the Respondent. The evidence reflecting Claimant's attempts to secure employment were all oral but they were undisputed.

The record, which was undisputed by Claimant, shows that Claimant received \$3,510.00 in unemployment benefits from the State of Illinois for the period from July 1, 1976, to February 1, 1977.

Respondent's position is based on the decision in the *Charnness* case wherein the Court, citing the opinion in the case of *Sullivan v. State* (1967), 26 Ill. Ct. Cl. 117, laid down the following rule:

"During a period of illegal removal from office, Claimant must diligently seek employment, and do all in his power to mitigate damages."

It is the Court's opinion that the present case does not fall within the rule laid down in the *Charnness* case. Even though the record reflects only Claimant's testimony as to the attempts she made to secure employment, none of her testimony was disputed by Respondent. Claimant testified that on at least 14 different occasions she sought employment at two different agencies and also made weekly attempts by filing resumes and applications in response to ads that appeared in local newspapers.

The Court finds that based on an annual salary of \$11,500.00 per year, Claimant's loss of earnings was \$6,708.00. A conciliation report calls for damages not to exceed \$6,000.00. With a set-off of \$3,510.00, it is the Court's opinion that Claimant is entitled to the amount of **\$2,490.00.**

An award is hereby entered in favor of Claimant in the amount of **\$2,490.00.**

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(No. 81-CC-1887—Claimant awarded \$2,378.20.)

**ARMBRUSTER MANUFACTURING COMPANY, Claimant, v.  
THE STATE OF ILLINOIS, Respondent.**

*Order filed January 23, 1984.*

**SORLING, NORTHRUP, HANNA, CULLEN & COCHRAN,  
LTD.,** for Claimant.

**NEIL F. HARTIGAN,** Attorney General (**SUE MUELLER,** Assistant Attorney General, of counsel), for Respondent.

*BAILMENT—prima facie case established—rented tents stolen—claim allowed.* Claimant was granted award for loss of tents which were leased to State for antique automobile show, as Claimant established that tents were delivered in good condition and never returned, and State's only response was that security was provided for tents until the automobile show ended, and then the tents were abandoned, notwithstanding fact that the lease term did not expire until two days later.

**HOLDERMAN, J.**

This is a claim for the value of two tents owned by Claimant and leased to the State of Illinois. The tents were stolen during the term of the lease and Claimant charges the loss was due to the negligence of Respondent. The value of the tents is stipulated to be **\$2,378.20.**

Claimant and Respondent entered into a written

lease agreement on July 24, 1980. The lease provided that Claimant deliver and erect the tents on Friday, September 5, 1980, for the Secretary of State's use at the antique auto show at a park near Springfield, Illinois. The lease also provided for Claimant to dismantle and remove the tents on Monday, September 8, 1980.

The purchase order issued by the Secretary of State's office for payment of the lease price provided for the same lease period. The tents were delivered by Claimant and erected on September 5, 1980. When Claimant returned to remove the tents on September 8, it was discovered they had been stolen by parties unknown sometime after the Secretary of State's office had ceased using them on the evening of Saturday, September 6. The facts are undisputed that Respondent provided no security or protection for the tents after the Secretary of State's personnel finished using them on Saturday evening, September 6.

By delivering the tents to Respondent under the written lease agreement, which provided the tents were to be returned to Claimant in the same condition, the lease agreement created a bailment. (*People v. Moses* (1940), 375 Ill. 336, 31 N.E.2d 585; *Nassar v. Smith* (1974), 21 Ill. App. 3d 462, 315 N.E.2d 692.) The rule upon bailment is that if Claimant proves the delivery of the tents in good condition and their non-return by Respondent, Claimant has made a *prima facie* case that Respondent has breached its duty as bailee to exercise reasonable care for the property. It then becomes incumbent upon Respondent to produce and present evidence that its agents exercised due care. If Respondent fails to do so, the *prima facie* case is sufficient to support an award for Claimant. *Watson v. Byerly Aviation* (1972), 7 Ill. App. 3d 662, 288 N.E.2d 233; *Allis-Chalmers Corp.*

*v. Pekin Foundry* (1975), 31 Ill. App. 3d 1005,335N.E.2d 97.

The only evidence adduced by Respondent was that it believed the lease term was only until the end of the auto show — that is, until Saturday evening. Therefore, Respondent provided security only until that time and then simply abandoned the tents. However, Respondent's own purchase order, as well as the signed lease agreement, clearly provide a term ending on Monday, September 8, 1980. Respondent presented no evidence of its due care for the safety of Claimant's property.

Award is hereby entered in favor of Claimant in the amount of the stipulated damages of \$2,378.20.

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(No. 81-CC-2065—Claim denied.)

**LORETTA F. NOLAN**, Claimant, *v.* **THE STATE OF ILLINOIS**,  
Respondent.

*Opinion filed August 3, 1983.*

*Order on denial of rehearing filed October 24, 1983.*

**STANLEY L. MORRIS**, for Claimant.

**NEIL F. HARTIGAN**, Attorney General (**SUE MUELLER**,  
Assistant Attorney General, of counsel), for Respondent.

*NEGLIGENCE—invitee and licensee distinguished.* The State has a duty to an invitee to use reasonable care and to warn of any defects not readily apparent, as contrasted to the duty to a licensee, a mere visitor to the premises, which is simply not to wilfully or wantonly injure the licensee.

*SAME—sidewalks—State's duty to maintain.* State is not insurer of accidents that may occur because of defective condition of sidewalk, but State has duty to maintain sidewalks with reasonable care so that dangerous conditions likely to injure persons lawfully there shall not exist.

*SAME—defective walkway—injury—Claimant's burden of proof.* In order to recover for damages arising from defects in a sidewalk, Claimant

must prove State was negligent and that such negligence was proximate cause of injury, and Claimant must prove State had actual or constructive notice of defect that caused injury.

*SAME—fall on handicapped ramp—dangerous condition not proven—claim denied.* Claimant was injured when she tripped over a handicapped ramp at a State building, but her claim for damages was denied, as she failed to prove that the ramp was a dangerous condition or that State had knowledge or should have known of dangerous condition.

**HOLDERMAN, J.**

This matter comes before the Court upon motion of Claimant for default judgment. 'Claimant's motion for default judgment relies upon Rule 18 of the Rules of the Court of Claims. Briefs have been submitted by both Claimant and Respondent.

Claimant's motion for default judgment sets forth that Claimant filed her brief in the instant cause on October 15, 1982, and under Rule 18 of the Rules of the Court of Claims, Respondent's brief was due no later than 60 days after Claimant's brief was filed, unless, an extension of time for filing such brief had been requested and granted, which was not a fact in the present case. Under Rule 18, the brief of Respondent was due on December 15, 1982, but was not filed until after Claimant's motion for default judgment on June 22, 1983. Respondent finally filed its brief on July 6, 1983.

Claimant is correct in its interpretation of the rules that Respondent was negligent in not responding in the time required by Rule 18. The Court is of the opinion, however, that the fact that Respondent did not file its brief within the time set forth in the rules does not create a situation where it is mandatory for the Court to enter a judgment in favor of Claimant. It is the position of the Court that all of those matters should be taken into consideration in entering its final order.

The facts in this case, briefly, are as follows. On

September 24, 1979, Loretta Nolan, Claimant, was attending a meeting in Springfield for her employer, which is a teachers union and not an agency or department of the State of Illinois. This union was apparently holding committee meetings and some of the meetings were in the Stratton Office Building, Springfield, Illinois.

Claimant testified at the hearing on September 16, 1982, that she did not have a meeting in the Stratton Office Building, but was walking her friend up to the dark building to make sure there was a way for her friend to get into the building. Claimant testified she first tried the door on the right hand side of the building and, when that door did not open, she and her friend walked across the patio, or porch, of the building to the door on the left. While approaching that door, she tripped over a handicapped ramp and injured her ankle. She further testified she had not been to Springfield before and was not familiar with the Stratton Office Building. She testified she was walking at her normal pace which was a pretty good pace and that she was not looking down at her feet at the time she fell. She stated the area in question was completely dark.

Mr. Joe Kohorst, division chief under the Secretary of State for the department of physical services, testified as to maintenance and construction of the area in which Claimant fell. He testified the building was lit by recessed lighting fixtures and that they were spaced with approximately 25 feet centers. There were two sets of lights immediately over the handicapped ramp, and each contained 150-watt light bulbs. Those lights had been installed in 1953 and were the same lights in place in September 1979. Mr. Kohorst testified that the west portico of the Stratton Office Building has two sets of double doors, one at the north end and one at the south end. Both of these doors were identical. Both had paraplegic ramps in 1979.

The ramps in question were described as being “made up of bituminous material, give or take a few inches, six foot wide, seven and one half feet long, and the highest point of five and a half inches to the door entrance was up with the lowest step and tapers down to zero inches.”

It is a requirement for State buildings to have these handicapped ramps, and their purpose is to allow handicapped people to enter the Stratton Office Building. Mr. Kohorst further testified that it was not unusual to find these ramps at State buildings.

There were not any handrails on the ramps in question at the time of the accident, and there apparently were no standards for the use of such handrails at the time the ramps were built.

Prior to September **24**, 1979, Mr. Kohorst had not received any complaints concerning the sufficiency of the lighting in this area and he is the person to whom such a complaint would have been made. He testified that prior to September **24**, 1979, there had been no complaints of injuries because of insufficient lighting or because of the ramp in this area. He testified that the ramp had been performing adequately prior to September **24**, 1979.

Mr. Kohorst further testified that at the present time when handicapped ramps are constructed, there is a requirement that there be a handrail. He testified that the lights on this porch or portico are turned on manually from a main switch panel, that they are supposed to be turned on at sundown and turned off at 9:00 p.m., and that he did not know if the lights were turned on the evening of the accident.

The testimony of Claimant is that she did not have a

meeting in the building where the accident occurred but that she was escorting a friend to this building where the friend had to attend a meeting. Claimant was on the premises of the Stratton Office Building for the purpose of seeing that her fellow delegate and officer of the Illinois Federation of Labor safely gain access to the building for a meeting.

Claimant was, in that situation, an invitee. The duty of the State to an invitee is reasonable care and to warn of any defects not readily apparent as contrasted to the duty of the State to a licensee, a mere visitor to the premises, which is simply not to wilfully or wantonly injure the licensee. *Welch v. State* (1964), 24 Ill. Ct. Cl. 498; *Burris v. State* (1963), 24 Ill. Ct. Cl. 282.

The question therefore as to the liability of Respondent is whether the State was negligent in constructing the ramp for the benefit of paraplegics who might need the ramp to get into the Stratton Office Building and whether such a ramp was in itself an act of negligence that would create liability on the part of the State.

The fact that this ramp had been in existence since the construction of the Stratton Office Building, which was at least 16 years prior to the date of the accident, supports the Respondent's position that the ramp in itself is not a negligent act on the part of the Respondent. The fact that in all these years there have been no accidents reported in the use of the ramp strengthens Respondent's position that such a ramp is not an act of negligence.

This Court has repeatedly held that the State is not an insurer against accidents that may occur by reason of the condition of a State highway. (*Bloom v. State* (1957), 22 Ill. Ct. Cl. 582, 584.) The same rule is applicable to sidewalks maintained by the State. The State has a duty to exercise reasonable care in the maintenance of its

highways so that dangerous conditions likely to injure persons lawfully there shall not exist. *Sewell v. Board of Trustees of Southern Illinois University* (1979), 32 Ill. Ct. Cl. 430, 433.

This Court has also held on many occasions that for Claimant to recover damages arising from defects in the roadway (or sidewalks), the Claimant must prove the State was negligent and that such negligence was the proximate cause of the injury. This Court has also held that in order for Claimant to recover she must prove that the State had actual or constructive notice of the defect that caused the injury. *Weygandt v. State* (1957), 22 Ill. Ct. Cl. **478, 485**.

The record in this case is completely devoid of any actual or constructive notice of any defect in the area where the accident took place. The mere fact that a ramp had been built for the convenience of that part of the public that had need of such a ramp did not, in the opinion of the Court, constitute a defect that would make the State responsible for the accident such as the one in this case.

Claimant has suggested that a handrail on the ramp in question would probably have prevented the accident that occurred. That is pure conjecture and the fact that handrails were not required at the time of the construction of the building is a strong indication that such an item was not necessary.

This Court has held on many occasions that before recovery can be had, Claimant must prove the State had actual notice of a defect in the roadway (or sidewalks), or in a case of constructive notice, each case must be decided on its own facts. In the present case, Claimant has not proved that a dangerous condition existed or that

the State had knowledge or should have known of any dangerous condition. There had been no previous accidents involving the ramp even though it had been in existence for a number of years. (See *Sewell, supra*, at **433**.)

It is the opinion of this Court that Claimant's motion for default judgment should be denied and Claimant, having failed to show there was negligence on the part of Respondent, should be denied an award.

Case dismissed.

#### ORDER ON DENIAL OF REHEARING

**HOLDERMAN, J.**

This matter comes before the Court upon petition of **Claimant for rehearing and objection to said petition by Respondent.**

Claimant, in her petition for rehearing, states that the Court failed to consider the effect of the absence of lighting at the scene of Claimant's injury. The Court, in its opinion of August **3, 1983**, referred to the lighting conditions and is of the opinion that its dismissal of this cause is correct.

It is hereby ordered that Claimant's petition for rehearing be, and the same is, denied.

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(No. 81-CC-2068— Claim denied.)

**COREY MICHAEL NOONEN, Claimant, v. THE STATE OF ILLINOIS,  
Respondent.**

*Opinion filed October 24, 1983.*

**BRUCE R. BECKER**, for Claimant.

NEIL F. HARTIGAN, Attorney General. (WILLIAM E. WEBBER, Assistant Attorney General, of counsel), for Respondent.

STATE PARKS AND RECREATION AREAS—*State's duty to invitees.* Visitors to State parks are invitees to whom the State owes a duty of reasonable care in maintaining the premises and the State may be charged with constructive notice of dangerous condition when, from circumstances of case, it is determined that the State should have been aware of the condition in the exercise of reasonable care.

SAME—*dog bite— State park— claim denied.* Claimant was bitten on the face by a large dog encountered in a State park, but his claim for damages was denied, as Claimant failed to show that the State, or its agents, had either actual or constructive knowledge of the alleged dangerous condition posed by the dog being in the park and Claimant failed to show that the State did not give Claimant same degree of protection that general public was given.

HOLDERMAN, J.

Claimant in this cause alleges that on May 26, 1980, which was Memorial Day, he was at the Jubilee College State Park in Peoria County, Illinois. He and his girl friend were walking on a public pathway in the park when they came upon a large Malamute dog he had never seen before. He reached down to pet the dog and was bitten on the face. The dog was evidently chained to a tree although there is some conflict in the evidence as to this point.

The issues are as follows: (1) the negligence of the Claimant; (2) the notice of the State; (3) exhaustion of remedies; (4) the credibility of the Claimant; (5) the application of the Recreational Use of Land and Water Areas Act (Ill. Rev. Stat. 1983, ch. 70, pars. 31-37); and (6) admissibility of departmental reports under Rule 14 of this Court.

The evidence shows that Claimant was in the park playing ball with other individuals. The evidence is uncontradicted that there was a large crowd in the park on the day in question.

Claimant alleges that the dog was chained to a tree within sight of the park ranger station and that the chain was approximately 15 feet long. There was never any actual measurement of the chain in question. It is Claimant's position that the State was negligent in allowing the dog to be in the park on such a long leash. The evidence is also uncontradicted that the dog was in the park on a leash longer than allowed by park regulations.

Claimant was bitten on the mouth, on the lower left side of his face, and required medical care and treatment for some period of time. At the time of the hearing in this matter, Claimant was still experiencing numbness in his lips which caused him to drool. He testified he could no longer whistle and he could not engage in the act of kissing without difficulty. Claimant, who had been working at a restaurant prior to this incident, had to have a change of duty because the restaurant owner did not want to have him in the portion of the restaurant where food was being served because of the condition of his face. Claimant testified that during the period of time he was under the doctor's care, he did not have his face covered by bandages because the doctor would not permit bandages to cover the scars and, consequently, he was embarrassed when in a crowd.

Claimant's attorney takes the position that the State was negligent in not properly patrolling the park and protecting the public from the dog.

The State takes the position that Claimant was negligent in stopping to pet the dog which he had never seen before and that there was no exhaustion of remedies by Claimant. The State also questions the credibility of Claimant in this cause. The State calls attention to the Recreational Use of Land and Water Areas (Ill. Rev. Stat. 1983, ch. 70, pars. 31-37), and to the departmental report

(Rule 14). The departmental report dealing with this incident states as follows:

“On 05-26-80 sometime between 2-4 p.m., Officer Baile received a complaint from a female subject in Jubilee Park: She told Baile a man had been bitten by a dog near the office. She refused to identify herself to Raile. Raile went to the location and talked to three persons. One witness stated the incident had happened a half hour ago. One witness stated the dog was tied up and the man jumped at the dog, and got bit in the face. Another witness stated the dog was loose and attacked the man. Another witness stated the dog was tied up but broke the leash when the man jumped at it. All of the persons stated the man that got bit was intoxicated. Officer Baile also noticed that all three witnesses were highly intoxicated. None of the witnesses would identify themselves to Baile, but one did give Baile a license number. That number was registered to a 90 year old female from Bloomington, Ill. The witnesses had stated the person who owned the dog left in that vehicle and was a young man. Officer Baile does not remember the license number, but does remember that the description of the car did **not** match the registration information. Also, Baile was told that the man bitten had been taken to the hospital by a friend. Baile then contacted Rabies Control Officer James Fox, and advised him of all the information. He stated he would follow up on the case. Baile did not hear from Fox until 01-05-81. He told Baile he was unable to ever contact the person who was bitten. He said he left messages at his home and **work** but he never returned calls.”

The report was introduced into evidence over the objections of Claimant’s attorney, although under Rule 14 of this Court “all departmental reports made by any officer thereof relating to any matter or case pending before the Court shall be *prima facie* evidence of the facts set forth therein. . .”

The State also raises the question as to whether or not Respondent had either actual or constructive notice of the dog being in the park. This is an essential element in this case. The record is completely silent as to the length of time the animal in question had been in the park and it is also silent as to whether Respondent knew, or should have known, that the dog was in the park. As stated above, this was a holiday and the park had a large crowd ‘in this area.’

There is also a complete lack of evidence as to whether there was anyone in the ranger station on the

day in question or, if there was, whether they were in a position to see the dog in the park.

In *Wightman v. State* (1978), 32 Ill. Ct. Cl. 546, the Court laid down the rule as to what Claimant must prove before he can recover. The Court stated that visitors to State parks are invitees to whom the State owes a duty of reasonable care in maintaining the premises and that Respondent may be charged with constructive notice of a dangerous condition when, from all the circumstances in a case, it is determined that Respondent should have been aware of the existence of the condition in the exercise of reasonable care. See also *Dumermuth v. State* (1966), 25 Ill. Ct. Cl. 353, 356; *Kamin v. State* (1953), 21 Ill. Ct. Cl. 467.

To recover on a claim, Claimant bears the burden of establishing by a preponderance of the evidence that Respondent breached its duty of reasonable care.

**In** summation, we have the following facts. A dog was chained to a tree in Jubilee College State Park on Memorial Day. Claimant was injured when he stooped to pet the dog with whom he was totally unacquainted. There is no evidence of any kind or character to show that Respondent knew the dog was in the park, nor is there any evidence to show how long the dog had been there. As to whether the dog was vicious, the fact is that Claimant was the only one who was injured by the dog.

The departmental report states that a park ranger interviewed three eyewitnesses, all of whom were intoxicated, who told three different stories—one stated the dog was tied up and the man jumped at the dog and got bit in the face, the second witness stated the dog was loose and attacked Claimant, and the third said the dog was tied up but broke the leash when Claimant jumped

at it. All three witnesses stated Claimant was intoxicated and refused to identify themselves so they could be called as witnesses.

Respondent raises the question as to whether or not Claimant exhausted his remedies as required by the rules of this Court. The transcript of the record shows that on cross-examination Claimant was asked if he had filed suit against the owner of the dog, and he replied, "It wouldn't have done us any good." In response to a further question, he answered that he had never filed suit against the owner although he did know the owner's name. To casually brush away the rule that there has to be an exhaustion of remedies before recovery in the Court of Claims by stating "it wouldn't have done us any good" to file suit against the dog's owner, appears to the Court to be an outright elimination of this rule. This rule, in the opinion of this Court, requires much more direct evidence to show that such testimony does not satisfy the rule requiring an exhaustion of remedies.

It is the Court's opinion that the proximate cause of this unfortunate incident was the act of Claimant himself when he reached down to pet a dog that was completely strange to him. It is an interesting fact to note that the testimony shows the park was crowded and yet the only incidence of misbehavior from the dog came when Claimant bent down to pet it. None of the other visitors to the park that day were in any way attacked by the dog and this is strong evidence that Claimant was doing something the rest of the visitors to the park did not do.

It is the Court's opinion that Respondent was free from negligence of any kind or character. Claimant has failed to show that Respondent did not give him the same degree of protection that the general public was given.

It is abundantly clear that without any showing of either actual or constructive knowledge by Respondent, that to find Respondent guilty would result in making Respondent an insurer of the safety of all persons who use the park. This Court has repeatedly held that it is not an insurer but only owes a duty of reasonable care.

Award denied. Case dismissed.

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(No. 81-CC-2165—Claim denied.)

VIRGINIA GRIFFIN, a minor, by Kent Griffin, her father,  
Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

*Opinion filed November 8, 1983.*

EDWARD A. WOLLER, for Claimant.

NEIL F. HARTIGAN, Attorney General (WILLIAM E. WEBBER, Assistant Attorney General, of counsel), for Respondent.

*NEGLIGENCE—state not insurer of accidents on its property.* State is not insurer of all accidents that occur on its property, and in order to recover for an accident, Claimant must prove that State was negligent and that the negligence was the proximate cause of the accident and resulting injuries.

*SAME—attractive nuisance—essential elements.* In order to recover under the attractive nuisance doctrine, Claimant must show that the premises under defendant's control were maintained in way that was attractive to children and defendant knew children frequented premises; that a dangerous condition existed on premises; that defendant knew or should have known of condition; that defendant failed to remedy condition and that condition caused injury.

*SAME—foreseeability of harm governs suits by child trespassers.* Doctrine of attractive nuisance has been modified by court decisions to the extent that the application of rules of ordinary negligence actually govern the outcome of suits by child trespassers, and the element of attractiveness is significant only insofar as it is indicative of foreseeability.

*SAME—child trespasser—broken glass hidden in leaf pile—state not liable—claim denied.* Claim for injuries sustained by child when she fell on broken glass hidden in a pile of leaves on the grounds of National Guard

Armory denied, even though child was trespasser on grounds, as evidence failed to establish that State knew or should have known of dangerous condition caused by **glass** in leaves, and to rule otherwise, would place an unreasonable burden on State to constantly maintain Armory grounds.

### **ROE, C.J.**

This is a claim brought by Virginia Griffin, a minor, by her father, Kent Griffin. The minor Claimant seeks damages from the State of Illinois for injuries received by her as a result of an incident that occurred on October 19, 1980, on the grounds of the Kewanee National Guard Armory in Kewanee, Illinois. Claimant was playing on piles of leaves on the Armory grounds and cut her leg on broken glass which was hidden under the leaves.

From the evidence presented, it appears that on October 19, 1980, the seven-year-old Claimant was visiting her grandmother along with her mother and four other children. Her grandmother's home is located three houses west of the Armory on First Street in Kewanee. The Claimant, along with the other children, proceeded down First Street and began playing in the area directly south of the Armory storage building. Specifically, the children were playing in a grassy area lying between the First Street sidewalk and a fence located approximately seven feet north of the sidewalk. The fence surrounded the Armory storage area. The area between the fence and sidewalk is Armory property and was the occurrence site.

The minor Claimant, at some point, jumped onto a pile of leaves that had accumulated in the area. Buried beneath the leaves were pieces of broken glass, apparently from bottles thrown from passing cars. While playfully sliding on the leaves, Claimant's right leg was rather severely cut by a piece of the hidden glass. There is no question that Claimant has suffered serious and per-

manent injuries as a result of the injury to her leg. The issue in this case is liability.

As we have said many times, the State is not an insurer against accidents that occur on its property. In order for Claimant to recover, she must prove that the State was negligent and that such negligence was the proximate cause of her accident and resultant injuries. (*Bloom v. State* (1957); 22 Ill. Ct. Cl. 582.) In this case, Claimant attempts to demonstrate negligence by the State and impose liability through the doctrine of attractive nuisance, because in this case the Claimant is a trespassing child.

In order to recover under the attractive nuisance doctrine in this State, it has historically been held that Claimant must show: (1) that the premises under the control of the defendant were maintained in a way that was attractive to children of tender years and defendant knew, or should have known, that children frequented the premises; (2) that a dangerous agency or condition for children existed on the premises; (3) that defendants knew, or should have known, of the dangerous condition or agency; (4) that defendant failed to remedy or correct the dangerous condition or agency, or to protect children from the danger; and (5) that the dangerous condition caused injury to the child. See *Andrews v. General Contracting Company* (1962), 37 Ill. App. 2d 131, 185 N.E.2d 354.

The test enumerated above has been refined somewhat, so that for all practical purposes the application of the rules of ordinary negligence cases actually govern the outcome of suits by child trespassers. The supreme court in *Kahn v. James Burton Company* (1956), 5 Ill. 2d 614, 126 N.E.2d 836, and the appellate court in *Wilinski v. Belmont Builders* (1957), 14 Ill. App. 2d 100, 143 N.E.2d

269, has said, for example, that the element of attractiveness is significant only insofar as it is indicative that the trespass should be anticipated, the true basis of liability being the foreseeability of harm to the child. Nor is it an automatic bar that the dangerous condition was not purposely placed by the Respondent on the area in question. See *Wilinski, supra*. It is very relevant, however, on the question of foreseeability.

There is no question that Claimant was injured by a dangerous condition existing on Respondent's property. The more difficult issue is whether the Respondent knew, or should have known, of the dangerous condition.

Although we are very sympathetic toward the plight of the Claimant, we feel this case must be resolved in favor of the State. The evidence fails to demonstrate that the State knew, or should have known, of the dangerous condition as it existed on October 19, 1980. On this point, the most that can be said from the proofs is that there were prior occasions when bottles were apparently thrown from passing cars traveling on First Street near the Armory area in question. Broken glass on occasions prior to the date of the occurrence in question was found on the accident site by Armory employees and was cleaned up when it was encountered during routine maintenance procedures. In fact, the evidence was quite clear that the Armory grounds, including the accident location, were well maintained.

Blowing leaves during the autumn season of course are not unusual. Testimony of Armory maintenance men indicated that leaves were routinely raked during the autumn season. As a matter of fact, one Armory janitor testified that the accident area was inspected and cleaned as recently as the week preceding the accident. No glass was found at that time.

It is not necessary to discuss the evidence in detail. It suffices to say that the Armory grounds were consistently maintained, that broken glass was sometimes encountered and sometimes it was not. There was no evidence presented that on October 19, 1980, the State knew of the dangerous condition nor was it shown that the State should have known about that condition. The sporadic accumulation of blowing leaves and the sporadic breaking of glass in the area cannot stand as notice to the State of the dangerous condition which existed on October 19, 1980. To rule otherwise would require the State to inspect, rake, and otherwise maintain its grounds literally on a continuing basis. The State's lack of control over the happening of the two events, in this case, negates the necessary element of foreseeability as to this particular occurrence.

Simply stated, the prior incidents of bottle throwing and leaf accumulation are not sufficient to charge the State with knowledge of the existence of the dangerous condition which led to Claimant's injuries. The cases cited by Claimant in her brief are not controlling here. In those cases the Claimants clearly knew or should have known of the dangerous condition existing on the premises within their control. See, for example, *Kahn, supra*; *Wilinski, supra*; *Andres, supra*; *Runions v. Liberty National Bank* (1957), 15 Ill. App. 2d 538, 147 N.E.2d 380; *Kleren v. Bowman* (1957), 15 Ill. App. 2d 148, 145 N.E.2d 810; *Melford v. Gaus & Brown Construction Company* (1958), 17 Ill. App. 2d 497, 151 N.E.2d 128.

For the foregoing reasons it is hereby ordered that this claim be, and hereby is, denied.

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(No. 81-CC-2195—Claimants awarded \$2,170.00.)

THOMAS J. SNEED and BARBARA A. SNEED, Claimants, v.  
THE STATE OF ILLINOIS, Respondent.

*Opinion filed April 20, 1983.*

*Order on denial of rehearing filed January 23, 1984.*

THOMAS J. SNEED, *pro se*, for Claimants.

NEIL F. HARTIGAN, Attorney General (SUE MUELLER,  
Assistant Attorney General, of counsel), for Respondent.

**PERSONAL PROPERTY—drainage altered—property damage—claim allowed.** Claimant's property was damaged when a contractor for the State of Illinois removed dirt from a roadway adjacent to Claimant's property permitting water to enter Claimant's lands and destroy trees and fruit crops, and an award was granted for those damages, as State's bare contention that "unnatural impediments to water flow" could be removed without regard to the consequences was unacceptable and insufficient to preclude imposition of liability.

HOLDERMAN, J.

This is a cause of action brought pursuant to section 8, paragraph (d) of the Court of Claims Act (Ill: Rev. Stat. 1983, ch. 37, par. 439.8 (d)), for property damage sustained by Claimants as a result of actions by a contractor for the State of Illinois in removing dirt from a roadway adjacent to Claimants' property permitting water from a flood to enter upon Claimants' property and 'destroy Claimants' trees and fruit crops.

The facts in this case, as disclosed by the record, are as follows. Claimants owned property directly south of a road called Sears Roebuck Road. Until the removal of the dirt by Respondent, it is evident from the record that the natural flow of water was not across Claimants' property. The record is completely devoid of any information as to when this road was constructed, who constructed it, or how long it had been constructed. The evidence does show that it had been in existence for a considerable period of time and, as a result of its

construction, it changed the natural flow of water and afforded protection to Claimants' property so that they were not flooded at times when they might otherwise have suffered damage. The evidence is clear that construction work, under the control of Respondent, removed part of this road and, as a result, flood water entered upon Claimants' property and caused the damage complained of.

It is Respondent's contention that the State has no obligation to protect unnatural barriers such as the Sears Roebuck Road from the actions of its contractors, thereby changing the flow of water. Respondent cites law to the effect that the owner of a dominant estate is entitled to the uninterrupted flow of surface waters from its property to lower or servient lands. There is no question but that this is the law of the State of Illinois. In this case, however, we find that the natural flow of water had been altered by the construction of the road in question by parties unknown as far as this record is concerned and the period of its existence is also unknown.

Respondent did not cite any law to the effect that the removal of a barrier such as the one in the present case which caused Claimants' damage is allowable. With the absence of such citations, it appears the action of the State was the proximate cause of the damage in question.

The record is clear that Claimants' personal property, trees and crops were damaged and Claimants were required to do extensive work with their own equipment to repair the damage and restore dirt to the road area.

The Court cannot accept Respondent's contention that it may destroy or alter "unnatural impediments to water flow" without regard to the consequences to

persons and property owners who relied on the presence of such impediments to natural water flow to protect their property therefrom. Respondent did not offer any evidence or explanation showing it had the right to remove that portion of the Sears Roebuck Road and did admit that the removal was by Respondent's contractor. The only evidence submitted was to the value of the property and the damage sustained by Claimant which was in the amount of \$2,170.00.

An award is hereby entered in favor of Claimants in the amount of \$2,170.00.

#### ORDER ON DENIAL OF REHEARING

This matter comes before the Court upon motion of Respondent for rehearing.

Under date of April 20, 1983, an award was entered by this Court in favor of Claimants. Oral argument was held in this cause on November 8, 1983.

The Court, having heard oral argument and read the briefs submitted in said cause, is of the opinion that its original order granting an award in favor of Claimants was correct.

Respondent's petition for rehearing is hereby denied and the original award in the amount of \$2,170.00 is confirmed.

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(No. 81-CC-2583—Claimant awarded \$281.81.)

**ECONOMY FIRE & CASUALTY COMPANY**, as subrogee of Yorktown Insurance Agency, Inc., Claimant, *v.* **THE STATE OF ILLINOIS**, Respondent:

*Opinion filed March 8, 1984.*

**ORNER, WASSERMAN & MOORE, LTD.** (ESTHER J. SCHWARTZ, of counsel), for Claimant.

**NEIL F. HARTIGAN**, Attorney General (EDWARD C. HURLEY III, Assistant Attorney General, of counsel), for Respondent.

*NEGLIGENCE—motorist struck from rear not always entitled to judgment as matter of law.* Facts of case must generally be considered in resolving rear-end collisions, as driver approaching another from rear has duty to maintain safe lookout and must consider possibility of having to stop suddenly, and each motorist has duty to signal for turns or lane changes and further duty not to make turn or change until it is reasonably safe to do so.

*SAME—negligent lane change—rear-end collision—comparative negligence—claim allowed.* Claimant's comparative negligence in failing to be prepared for a sudden stop while approaching State vehicle from rear required reduction of award for injuries sustained in accident which occurred when State vehicle negligently made lane change in front of Claimant's vehicle and then came to sudden stop.

**POCH, J.**

This claim is for property damages due to an automobile accident which occurred on January 8, 1981, along Skokie Boulevard at or near its intersection with Oakton Avenue in the city of Niles, county of Cook, and State of Illinois. The Claimant's automobile was being driven by an agent of the Claimant, Gordon Faller. The Respondent's vehicle was being driven by an employee of the State of Illinois, Morton Friedman. Claimant has brought this tort action under section 8(d) of the Court of Claims Act (Ill. Rev. Stat. 1983, ch. 37, par. 439.8(d)) seeking to recover property damages in the amount of one thousand one hundred twenty seven and 25/100 (\$1,127.25) dollars. Claimant, Yorktown Insurance Agency paid two hundred (\$200.00) dollars, and Claimant,

Economy Fire & Casualty paid nine hundred twenty seven and 25/100 (\$927.25) dollars.

Southbound Skokie Boulevard approaching Oakton Avenue is four lanes. The far left lane is a left-turn-only lane, the middle two lanes are for through traffic, and the far right lane is a right-turn-only lane. This right-turn-only lane only existed for approximately three quarters of a block prior to Oakton Avenue.

The testimony at the trial was that both vehicles were southbound in the right hand middle or through lane. The Claimant's vehicle entered into the far right-hand lane (right turn only) shortly after said lane came into existence. The Respondent's vehicle, which was in front of the Claimant's vehicle, entered into the right-turn-only lane sometime later. The Respondent's vehicle came to a stop and was struck from behind by the Claimant's vehicle.

The Claimant testified that he was proceeding southbound on Skokie Boulevard at approximately 20 to 25 miles per hour in the right-turn lane intending to make a right turn onto Oakton Street. Claimant further testified that Respondent's vehicle swiftly changed lanes and suddenly came to a stop in the right-turn lane causing Claimant's vehicle to rear end Respondent's vehicle.

Respondent testified that he pulled into the right-turn lane and a vehicle in front of him stopped. Respondent stopped and was struck from behind by the Claimant.

Rear end collisions are generally decided on the facts of each case. Obviously, each driver in a situation such as set forth in the instant case has certain duties. A driver approaching another vehicle from the rear has a duty to maintain a safe lookout and must take into account the prospect of having to stop his vehicle

suddenly. (*Polke v. Phillips* (1980), 86 Ill. App. 3d 677, 408 N.E.2d 348.) Furthermore, a motorist has a duty to signal for a turn or lane change and the further duty of not making such a turn or a lane change until it is reasonably safe to do so. (Ill. Rev. Stat., ch. 95½, par. 162A; *Corder u. Smythers* (1967), 86 Ill. App. 2d 37; *Piper u. Lamb* (1960), 27 Ill. App. 2d 99.) Therefore, it does not follow that every person who is struck from the rear is entitled to a judgment as a matter of law. *Ryon v. Javior* (1979), 69 Ill. App. 3d 946, 387 N.E.2d 936.

In the instant case, the evidence shows that the Respondent changed lanes when it was not reasonably safe and that the Claimant did not maintain a proper lookout to avoid the accident in question. Thus, the Claimant's comparative negligence is attributed to the accident. The Court finds that the Respondent was 25% negligent and the Claimant was 75% negligent. The evidence is not in dispute that the Claimant incurred one thousand one hundred twenty seven and 25/100 (\$1,127.25) dollars in damages. The award herein, therefore, shall be 25% of said sum or two hundred eighty one and 81/100 (\$281.81) dollars.

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(No. 82-CC-0035—Claimant awarded \$131.94.)

CHARLES J. SPENCER, Claimant, v. THE STATE OF ILLINOIS,  
Respondent.

*Order filed March 7, 1983.*

*Order filed September 19, 1983.*

*Opinion filed December 7, 1983.*

LEAHY & LEAHY, for Claimant.

NEIL F. HARTIGAN, Attorney General (WILLIAM E.

**WEBBER**, Assistant Attorney General, (of counsel), for Respondent.

*STATE EMPLOYEES' BACK SALARY CLAIMS—correction officer trainee—extended leave of absence denied—terminated—claim denied.* Claimant, a correction officer trainee, was terminated after being denied an extension of a leave of absence due to an injury; his claim was denied, as he received notice of termination while on a non-pay status, and as a trainee, he had no specific status other than a common law employee, and any alleged irregularities under the Personnel Code failed to create a cause of action.

*PRACTICE AND PROCEDURE—tardy brief filed by Respondent not grounds for summary judgment or default.* The Court of Claim's policy with regard to Respondent's failure to file a brief or the tardy filing of brief is that the commissioner should proceed with his report to the court without benefit of the brief, since this procedure allows the commissioner to perform his assigned task without undue prejudice to the Claimant or the taxpayers of Illinois.

## ORDER

**ROE, C.J.**

This cause, having already come on to be heard, and this order being issued *nunc pro tunc*.

On April 2, 1982, the Claimant by counsel filed a motion to recover certain costs which he was required to incur unnecessarily by certain inadvertent actions by the Respondent. The motion was heard and decided in the Claimant's favor from the bench during the course of oral argument on his case in chief on January 11, 1983. No post-judgment pleadings having been filed, the decision became final on February 11, 1983. However, no written order has been heretofore issued. Because the award made is not contingent upon our decision of the merits of Claimant's case we issue this written order now to facilitate payment without further delay.

Wherefore, it is hereby ordered that Claimant be, and hereby is, awarded the sum of **\$131.94** in conformity with our decision on January 11, 1983.

## ORDER

HOLDERMAN, J.

This matter comes before the Court upon the Claimant's motion for judgment which was filed on September **30, 1982**. Oral argument was had in this matter at the request of the Claimant in January of **1983**.

The grounds for the motion were stated as follows:

- “1. Hearing was held in this matter on April 27, 1982.
2. Claimant's Brief was filed on June 25, 1982.
3. Respondents' Brief was due on August 24, 1982.
4. Respondents' have filed no Brief nor has any extension of time been granted Respondents.”

Claimant then requested judgment for **\$32,146.00** be entered against the Respondent.

We sympathize with the Claimant's predicament. It is very unusual for the Respondent not to file a timely brief in this Court and even more unusual for an extension of time to be requested. However, failure to file a brief or a tardy filing of a brief is not grounds for summary or default judgment. In such situations it is this Court's policy for the commissioner to proceed with his report to the Court without benefit of the brief, *i.e.* the Court will proceed to rule on the merits without waiting (and usually without benefit of knowing the Respondent's position). If a later brief is filed before a decision is rendered, it is subject to being stricken in the Court's discretion upon appropriate motion by the other party. We have considered this issue on numerous occasions and it is our opinion that this approach is fair to the Claimant and not unduly harsh on the taxpayers of Illinois.

In many cases (apparently the case at bar included),

out of frustration a party makes a motion for relief in the nature of default or summary judgment. In such a situation the parties unknowingly are causing further delay. The commissioner who heard the case and is familiar with the proceedings and issues has no authority to rule on the motion. The motion has the effect of taking the case out of the commissioner's hands and causing it to be assigned to a judge who is called upon to make a decision without benefit of the report of the commissioner. The whole purpose of having commissioners is then for naught, and the judges' backlog becomes greater.

In summary, we construe Claimant's motion to be in the nature of one for default judgment and as such, it is hereby denied. If we were to construe it as a motion for summary judgment, it would be pointless because the hearing has been held and the case is ripe for a decision. It appears that all Claimant was seeking by filing the motion is a decision from the Court on the merits. We have heard oral argument on the merits and will consider those arguments in conjunction with the commissioner's report when it is filed. The commissioner is directed to prepare and file his report without undue delay now that the motion at bar has been decided.

## OPINION

HOLDERMAN, J.

This matter comes before the Court as a result of a claim filed by Claimant Charles J. Spencer. Claimant was employed as a correction officer trainee at the Menard Correctional Center by the Department of Corrections on May 14, 1976. He was injured and obtained a leave of absence from his employment on August 30, 1976. This leave of absence was without pay, and was extended from November of 1976 at various intervals

through January **24,1978**. On October **18,1977**, Claimant requested, in writing, an extension and, upon the granting of said extension, the request contained a handwritten note stating, "This is the final leave I will approve— 90 days," and was signed by Warden **M. P. Lane**.

On January **23, 1978**, Claimant was advised by Clearlyn Giordana, personnel officer, that due to Warden Lane's order, there could be no extensions of his leave of absence. On March **16,1978**, Ms. Giordana wrote Warden Lane asking his permission to either terminate Claimant or extend his leave of absence. Warden Lane replied, "If we do not have an extension, then I suggest termination."

The evidence indicates that Claimant received a copy of a personnel action form *to* terminate his employment on **March 17,1978**, with the termination backdated to be effective January **25,1978**. This was the last communication received by Claimant from the Department. He was not asked to return his uniforms, identification cards, or his number tags. His doctor did not release him to return to work until the following August.

There is considerable disputed testimony as to the form and signature for termination. Claimant relies on the fact that the actions of his superior were improper and this brought about his termination. Specifically, he was told the warden would grant no further leave extension, placing him in a position where applying for the same would be a useless act. He was then terminated because he had not filed for an extension.

It is Respondent's position, which was argued strenuously, that this dispute should fall within the jurisdiction of the Civil Service Commission, which position is opposed by the Claimant. It is his contention that trainees do not fall within the jurisdiction of the Civil Service

Code, nor its protections. His position would seem to be supported under section 8b.17 of the Personnel Code (Ill. Rev. Stat. 1983, ch. 127, par. 63b108b.17).

It would therefore follow that the specific issue confronting this Court is what status or rights a trainee has when employed by the State of Illinois. It would appear from a reading of the Personnel Code that a trainee and probationary employee enjoy a very similar status, the only difference being that a probationary employee already has acquired the skills necessary for a particular job and a probation period is allowed to see if he is adaptable and proper for the job. A trainee, however, would seem to be a person **who** enters into a probationary period of training which may or may not result in permanent employment once he is trained for a particular job description.

The Department, in this case, in effect said we cannot continue you as a trainee if you are going to continue to take these extensions and, for whatever reasons, notified Claimant that his employment was terminated as of March 1978. The backdating of his termination had no effect on Claimant since he was in a non-pay status at all times and dates mentioned herein.

The question before the Court, therefore, is what rights under the laws of the State of Illinois did Claimant enjoy. There was no express employment contract and the termination, in any event, appeared to be in good faith. The issue of whether or not this was retaliatory discharge was not raised by either party and therefore is not before the Court. It appears that Claimant is relying upon implied duty on the part of Respondent. The Illinois courts have yet to allow actions for an implied duty to terminate only in good faith in the absence of an express employment contract. A good discussion of these

rights is found in the case of *Sargent v. Illinois Institute of Technology* (1979), 78 Ill. App. 3d 117,397 N.E.2d 443.

It is the Court's opinion that the form, structure and method of discharge is really not relevant to Claimant's cause of action. He would certainly have no more rights than a probationary employee under the Personnel Code. It has been held that a probationary employee who is terminated four days prior to his six-month service has no right to a hearing or a cause of action concerning his discharge. *Swanson v. Visotsky* (1968), 97 Ill. App. 2d 305,240 N.E.2d 444.

It is the Court's conclusion and finding that Claimant received notice of his termination on a non-pay status in March of 1978. It is the Court's further finding that as a trainee, he acquired no specific status other than any other common law employee, and that any irregularities under the Personnel Code are irrelevant and do not create a cause of action.

Claim denied.

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(No. 82-CC-0249—Claimant awarded \$3,500.00.)

ALLEN DREWES, Claimant, *v.* THE STATE OF ILLINOIS,  
Respondent.

Order filed July 1, 1983.

McCLELLAN & HIRSH, for Claimant.

NEIL F. HARTIGAN, Attorney General (JAMES A. KOCH,  
Assistant Attorney General, of counsel), for Respondent.

STIPULATIONS—*property damage—claim awarded.* Based on the joint stipulation of the parties, an award was granted for the Claimant's personal property damage caused by State.

ROE, C.J.

This matter comes before the Court upon the joint stipulation of Claimant and Respondent to the entry of an award for Claimant's personal property damage in the amount of **\$3500.00**, Respondent having conceded liability for such loss to that extent. The Court not being otherwise duly advised in the premises, therefore,

It is hereby ordered that an award be entered in favor of Claimant, Allen Drewes, in the amount of **\$3500.00** in full and final satisfaction of his personal property claim.

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(No. 82-CC-0317—Claim dismissed.)

MICHAEL J. BLANEY AND SUSAN BLANEY, Claimants, *v.* THE STATE OF ILLINOIS, Respondent.

*Order filed January 23, 1984.*

*Order on motion for reconsideration filed April 3, 1984.*

KATZMAN & ASSOCIATES, for Claimants.

NEIL F. HARTIGAN, Attorney General (WILLIAM E. WEBBER, Assistant Attorney General, of counsel), for Respondent.

STATE PARKS AND RECREATION AREAS—*accident at State park—general release—motion to dismiss granted.* State's motion to dismiss Claimants' cause for damages arising from an accident at a State park was granted where evidence established that Claimants signed a general release in acceptance of a settlement draft, notwithstanding fact that State of Illinois was not specifically named in release.

HOLDERMAN, J.

This matter comes before the Court upon motion of Respondent to dismiss said cause and Claimants' response to said motion.

The incident for which this claim was filed took place on August 25, 1979, at approximately 4:00 p.m., at Hazlett State Park, County of Madison, State of Illinois, which is at Carlyle Lake.

On February 5, 1981, a settlement draft was issued to Michael Blaney for loss dated August 25, 1979, in payment of "final settlement of any and all claims" and was issued on behalf of the insured, Carlyle Sailing Association *et al.*, said amount of payment being \$1,500.00.

Attached to Respondent's motion to dismiss was a copy of a release of all claims, exhibit No. 4, where the Claimants, Michael J. Blaney, and his wife, Susan B. Blaney, both of whom are attorneys, signed the release, wherein they agreed that:

"They do hereby release, acquit and forever discharge Carlyle Sailing Association/Continental Casualty Company and all other persons, firms and corporations who might be liable of and from any and all actions, causes of action, claims, demands, damages, costs, **loss** of services, expenses and compensation, on account of, or in any way growing out of, any and **all** known and unknown personal injuries and property damage resulting or to result from accident that occurred **on** or **nhout** the 25th day of **August**, 1979, at or near Alton, Illinois."

It is Respondent's contention that although the State of Illinois was not specifically named in the release, when Claimants accepted the settlement draft and signed the same, they in fact accepted settlement from the State of Illinois and, accordingly, the State was released.

Claimants, in their response to Respondent's motion to dismiss, set forth that the State of Illinois and Carlyle Sailing Association were each liable in their own right for the injuries of the Claimants and that at no time did Carlyle Sailing Association by and through its insurance agent represent to Claimants that it represented the State of Illinois. Claimants further state that the document relied on for the Respondent's motion to dismiss was not intended by the parties to release the State of Illinois

from the claim of Claimants but rather was intended only to be a promise not to sue Carlyle Sailing Association, and therefore the motion to dismiss should be denied.

The lease agreement between the State of Illinois and Carlyle Sailing Association, Inc., provided, on page 11 under subtitle insurance, that the concessionaire agreed to provide comprehensive general and public liability insurance and that “the policies shall name the State of Illinois, Department of Conservation, and the concessionaire as named insured.” This was done as shown in exhibit No. 2-2.

It is the State’s contention that the release of one joint feisor is a release of all joint feisors. Exhibit No. 2-2 refers to “approximately 20 acres, Eldon Hazlet State Park, Carlyle Lake, Illinois” and under “Name of Person or Organization (Additional Insured)” is listed as follows:

“State of **Illinois**  
Department of Conservation  
Division of Land & Historic Sites  
901 S. **Spring** Street  
Springfield, **IL** 62706”

It is the Court’s opinion that the release, signed by Claimants, which specifically discharged “Carlyle Sailing Assoc./Continental Casualty Co. and all other persons, firms and corporations who might be liable of and from any and all actions, causes of action, claims, demands, damages, costs, loss of services . . .” when the accident occurred on the 25th day of August 1979, was sufficiently broad to release Respondent.

Respondent’s motion to dismiss is granted and this cause is dismissed.

#### ORDER ON MOTION FOR RECONSIDERATION

This matter comes before the Court upon motion of

Claimants to reconsider an order of dismissal entered by this Court on January 23, 1984, and Respondent's objections to said motion.

The Court is of the opinion that the Court's order of dismissal was correct; therefore, Claimants' motion of reconsideration is denied and this cause remains dismissed.

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(Nos. 82-CC-0372 through 82-CC-0376—Claims dismissed.)

**LOWELL D. MOLT, CORNELIUS MACK, RICHARD C. PERKINS, RALPH A. GOSDA, and LEONARD R. LEHNER, Claimants, v. THE STATE OF ILLINOIS, Respondent.**

*Order filed February 14, 1984.*

**WILLIAM K. CAVANAGH, JR.,** for Claimants.

**NEIL F. HARTIGAN,** Attorney General (**WILLIAM E. WEBBER,** Assistant Attorney General, of counsel), for Respondent.

**STATE EMPLOYEES' BACK SALARY CLAIMS—*prevailing wage dispute—interim period—claim denied.*** State was not shown to have agreed to implement increase in prevailing wage based on increase in union scale immediately upon date of industry labor agreement increasing scale, therefore, Court of Claims dismissed action seeking retroactive compensation for period of time between labor agreement and date State was obligated to increase prevailing rate.

**ROE, C.J.**

This cause is before the Court on Respondent's motion to dismiss.

The Claimants are seeking retroactive compensation based on a difference between the union scale agreed to by the industry and the prevailing rate paid by the State during the interim period between the effective date of the industry labor agreement and the time the State

changed its prevailing rate scale. Their claims rely on an agreement that had been negotiated between the Plumbers and Steamfitters Local **137** and the West Central Illinois Plumbing and Piping Contractors Association of Springfield and vicinity which had an effective date of April **1,1981**. It is the Claimants' contention that the State was bound by this agreement and therefore obligated to implement a wage increase for its employees retroactive to April **1,1981**. The State contends that it was not bound by this agreement and therefore could implement a wage increase to conform the wages paid by it to the prevailing rate in the vicinity according to its own policy.

This case presents a set of circumstances similar to those presented in the case of *Hollender v. State* (1944), **14 Ill. Ct. Cl. 40**. In *Hollender, supra*, the claimants were members of Local **411** of the United Association of Journeymen Plumbers and Steamfitters of the United States and Canada who were employed by the State at Dixon State Hospital. It was alleged that on May **30, 1942**, the Union entered into an agreement with the contractors of Lee County, Illinois, which immediately increased union members' wages from \$**1.37½** per hour to \$**1.70** per hour. The Claimants contended that the State was also bound by this agreement and therefore obligated to implement the same wage increase on the same date. The State did not recognize and implement the wage increase until January **1,1943**.

The Court in *Hollender, supra*, disagreed with the Claimants' contention. It found that the increase in hourly wages did not arise from a negotiated contract with the State but was an action taken solely on the behalf of the local union for the benefit of its members. While the contractors in Lee County may have recognized the \$**1.70** per hour rate as the prevailing rate under

contracts negotiated between them and the union, it had not been alleged that the State entered into any binding contract to pay the same wage rate until January 1, 1943. The *Hollender, supra*, case was later cited with approval by this Court in *Hum v. State* (1981), 34 Ill. Ct. Cl. 163, and *Courtwright v. State* (1981), 34 Ill. Ct. Cl. 165, for the proposition that the State, not having been a party to an agreement between the union and local contractors, is not bound to pay the same wage rate unless and until it agrees to do so.

The same situation that existed in *Hollender, supra*, exists in the claims presently before this Court. While it appears that the local industry contractors had agreed through a contract negotiated with Local 137 to implement a wage increase starting April 1, 1981, we find that the State has not been shown to have agreed to implement a wage increase or to have been under any obligation (contractual, statutory, or otherwise) to do so until July 1, 1983. The Claimants, therefore, are not entitled to receive any retroactive compensation for the period of time running from April 1, 1983, to July 1, 1983.

Based on the foregoing, it is hereby ordered that these claims be, and hereby are, dismissed.

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(Nos. 82-CC-0434, 82-CC-0435 cons.— Claimant awarded \$11,642.09.)

HENRY D. MOORE, JR., Claimant, v. THE STATE OF ILLINOIS,  
Respondent.

*Opinion filed June 1, 1984.*

THOMAS J. EDSTROM, for Claimant.

NEIL F. HARTIGAN, Attorney General (WILLIAM E.

WEBBER, Assistant Attorney General, of counsel), for Respondent.

*EMPLOYMENT—discharge of prison chaplain—grievance—stipulation—mitigation—award granted.* Prison chaplain who was discharged for failing to inform superiors of pending prison escape he had learned of through confidential information provided by inmate was granted award based on stipulation following arbitration of grievance filed under collective bargaining agreement.

ROE, C.J.

This matter is before the Court on the joint stipulation of the parties. The Court finds as follows.

This is an arbitration case which was processed under terms of a collective bargaining agreement between the State of Illinois and the American Federation of State, County and Municipal Employees. The grievance was filed on behalf of Chaplain Henry D. Moore, Jr., an Episcopalian priest who was assigned to the Menard Correctional Center in Menard, Illinois. The problem arose as a result of an inmate confiding in Chaplain Moore about a pending prison escape attempt and the chaplain's failure to properly inform his supervisors of the knowledge that had been imparted to him by the unnamed inmate. As a result of the chaplain's failure to report this impending escape, two inmates broke out of the Menard State Penitentiary. They were suspected of assaulting two citizens and of killing a liquor store owner near St. Louis not long after their escape. Upon investigation of the events surrounding the escape, prison officials learned from the unnamed inmate that he had known of the escape plans and had shared his knowledge with Chaplain Moore. Following the disclosure of Chaplain Moore's knowledge by the unnamed inmate, the events are described in the arbitration hearing record as follows:

"At the suggestion of Senior Chaplain Hoyer, Chaplain Moore, who was ill with bronchitis, decided on Thursday, January 17, to take a few days sick

leave. But about 8:30 or 9:00 p.m. on Thursday, Hoyer called the Grievant at home and asked him to attend a meeting at 11:00 a.m. on Friday, January 18, in the office of Assistant Warden Chrans. At this meeting was Robert Horn, Chief of Chaplains who had arrived from Springfield, Illinois, as well as Moore, Hoyer and Chrans.

During the meeting the Grievant was told that the Warden was very upset about the developments surrounding the escape. At some point in the forty-five minute meeting (described as being a very emotional one), there was a discussion of the probability of a disciplinary hearing (with the potential outcome being discharge of the Grievant) or as an alternative option, resignation. If Chaplain Moore resigned, there were assurances of assistance in relocating him at another State correctional center.

Reverend Moore elected to resign and the personnel papers were completed within a few minutes. The resignation was effective immediately. Reverend Moore was asked to clean out his desk and remove his personal items the next day (Saturday), which he did.

There was no Union involvement prior to the following week. The grievance was dated January 30."

At the hearing, counsel for the parties agreed that the **issue** should be framed as follows:

"Whether the Employer violated Article IX, Sections 4 or 5, of the Agreement when Rev. Henry D. Moore, Jr. was separated from employment with the Department of Corrections on January 18, 1980, and during the course of events which led to such separation."

The grievance read:

"The Union has just become aware that Rev. Moore was forced to sign a resignation. This resignation was not processed like other resignations and at the time Rev. Moore was not allowed Union representation. Union demands Rev. Moore be reinstated in his last position as Chaplain, resignation be withdrawn and he lose no time in above matter and he be made whole."

The grievance was granted by the arbitrator on July 31, 1981.

The joint stipulation of the parties raises only the mitigation. During the period of Rev. Moore's separation from State service he would have earned a gross salary of **\$27,453.64**. During the period of his separation he was able to mitigate his losses to the extent of \$19,649.68. He also received during this period of time **\$1,751.00** by way of unemployment compensation. We have reviewed the

record and find that the Claimant met his responsibilities with respect to mitigation of his losses.

It is therefore ordered that this Claimant be granted an award in the amount of **\$7,803.96** subject to appropriate additions for F.I.C.A. and/or any appropriate retirement program as well as appropriate deductions and withholding for F.I.C.A. and/or any appropriate retirement program as well as State and Federal taxes, with the Office of Employment Security, unemployment division, to receive **\$1,751.00** from Claimant's net reimbursement for unemployment payments made to this Claimant, all as more fully set forth in the appendix attached hereto and made a part hereof.

#### APPENDIX A

##### Identification of State Contributions and Deductions from Back Salary Award

To the State Employees' Retirement System:

Employee's contribution to State Employees' Retirement System	<u><b>1098.15</b></u>
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Employee's contribution to FICA	<u><b>1738.20</b></u>
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State's contribution to State Employees' Retirement System	<u><b>2099.63</b></u>
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State's contribution to FICA	<u><b>1738.20</b></u>
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To Illinois State Treasurer to be remitted to  
Internal Revenue Service:

Claimant's Federal Income Tax	<u><b>1560.79</b></u>
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To Illinois Department:

Claimant's Illinois Income Tax	<u><b>234.12</b></u>
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To Office of Employment Security: Director Dept. of Labor	<u>1751.00</u>
To the Claimant: Net Salary	<u>1422.00</u>
<b>Total award \$11642.09</b>	

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(No. 82-CC-0489—Claimant awarded \$14,597.06.)

**JAMES PAUL, Claimant, v. THE STATE OF ILLINOIS, Respondent.**

*Opinion filed March 15, 1984.*

JAMES M. DRAKE, for Claimant.

NEIL F. HARTIGAN, Attorney General (WILLIAM E. WEBBER, Assistant Attorney General, of counsel), for Respondent.

*PRACTICE AND PROCEDURE—motion to amend pleadings allowed.* Claimant was allowed to amend pleadings to include additional amount allegedly due as result of reversal of suspension from employment.

*STATE EMPLOYEES' BACK SALARY CLAIMS—reinstated employee—back wages expressly authorized by law.* Insufficiency of lapsed funds did not bar payment of claim for back wages due improperly discharged community service supervisor, as Personnel Code evinces legislative intent that such person be paid regardless of whether agency has spent its appropriation.

*SAME—wrongful discharge—mitigation established—award granted.* Claimant met obligation of mitigating losses due to discharge from employment where evidence showed that he did all he possibly could to seek other employment in view of his age, his occupation, the general state of the economy and the nature of the charges against him.

*SAME—Wrongful discharge—no loss as to vacation days.* Under circumstances of Claimant's case, evidence failed to show that he suffered any additional loss with regard to vacation days, and award granted was held to have compensated him to the extent that the wrongful deprivation of salary resulted in financial loss.

ROE, C.J.

This is a claim by a former employee of the Respondent for back wages due as the result of a wrongful

discharge. The Claimant, James Paul, was suspended on November 1, 1980. He returned to work on December 1, 1980 and was again suspended on December 1, 1980, pending discharge, but was paid from December 1, 1980, until December 11, 1980, at which time his discharge became effective. He had been employed as a Community Service Supervisor II with the Illinois Commission on Delinquency Prevention. The Civil Service Commission, after lengthy hearings, returned him to work on July 16, 1981. It found insufficient evidence to sustain all but one charge and only ordered a 30-day suspension on that charge.

On September 21, 1981, the Claimant filed this claim. Attached to the complaint as Exhibit B is a letter from the Department of Children and Family Services which was stipulated to be part of the record. It shows that Claimant's lost income for the period of December 11, 1980, through June 30, 1981, was \$13,354.62, based on a daily rate of \$85.33. This figure includes \$1,023.96 for vacation days he would have earned over that period had he worked and not used them.

A hearing was held on August 12, 1982, and evidence as to the amount of damages and mitigation efforts was adduced. However, during the time his claim was pending in the Court of Claims, the Claimant was pursuing an administrative review action in the Circuit Court of Sangamon County seeking reversal of the 30-day suspension sustained by the Civil Service Commission. After the hearing on damages in this Court and during the time the parties were briefing this claim, the circuit court, on September 14, 1982, reversed the 30-day suspension order, thereby clearing the Claimant of all charges.

Three weeks after the circuit court's decision the Claimant moved to amend his complaint to claim an

additional sum of \$2,559.90 based on \$85.33 per day for the 30-day period of the month of November 1980. The record indicates that the motion was not ruled on. The Respondent did not file a separate pleading to the motion but did address comments to it in a replication brief. Therein the Respondent raised several objections including (1) that the issue of compensation for November 1980 was being untimely raised, (2) that the record makes no mention of compensation due for that month, and (3) that Claimant is seeking \$2,559.90 when in fact the document Claimant offered as a departmental report shows that Claimant was only earning a monthly salary of \$1,856.00.

Pursuant to sections 2—616 and 2—617 of the Code of Civil Procedure (Ill. Rev. Stat. 1983, ch. 110, pars. 2—616, 2—617), amendments to a complaint may be made at any time. Perhaps a hearing on the Claimant's motion would have been proper in view of the objections the Respondent expressed. However, we find that the Claimant has filed sufficient documentation and justification for us to allow him to amend his complaint to include the amount due as the result of the reversal of his 30-day suspension. Our granting his motion would best serve the interests of judicial economy and efficiency, for this claim has been pending for some time and it is quite certain that the Claimant would file another claim were we not to allow him to include it in the case at bar. We do note the Respondent's objections and find the additional amount that the Claimant would have earned for the month of November 1980 to be \$1,856.00. In addition, we point out to the parties that this opinion will not become final for 30 days. Both parties have that period within which to ask for a rehearing on the matter if they so desire. Motion granted.

The threshold issue which must be decided concerns the availability of appropriations with which the employee could have been paid had he not been wrongfully discharged; The record indicates that the employing agency of the Claimant, the Commission on Delinquency Prevention, was abolished by the legislature effective July 1, 1981. Prior to the layoff of all the agency's employees on said date, **\$24,300.00** was paid out to the staff to compensate for unused vacation time. This liquidation left a total of \$26.19 in the line item for personal services (from which line item the Claimant should have been paid). There is nothing in the record to indicate that any funds were available to be transferred into the personal services line item had such a transfer been done in time. In summary, the record shows that the agency spent virtually all of its funds prior to its extinction and would have had none left to pay Mr. Paul.

The volumes of the Court of Claims, Reports are replete with cases where agencies have incurred obligations in excess of the amounts appropriated to them and the creditor has sought relief in this Court. It is a fundamental principle in this Court that such claims must be denied. The case of *VanNattan v. State* (1981), 34 Ill. Ct. Cl. 260, is very similar. There the Claimant's job was abolished and he obtained reemployment rights through the Civil Service Commission. However, the agency did not reinstate him until 10 months later. The agency lapsed no money with which he could have been paid. The Court stated:

"The law is quite clear on this issue. Even though Claimant in equity and good conscience appears to be owed his lost wages we are constrained by law to deny his claim. Where insufficient funds lapse from which payment of a claim would have been made, absent the showing that the claim falls within the narrow exception of being expressly required by law, the claim must be denied. In connection with this we point out that article VIII, section 2(b) of the Constitution of the State of Illinois provides that the General Assembly by law shall make appropriations for all expenditures of public funds by the

State. If this Court were to grant an award in the case at **bar** we would in effect be appropriating funds. Said authority lies solely with the Legislature.” (34 Ill. Ct. Cl. 260, 263.)

In the case at bar the agency spent all of the funds appropriated to it for personal services by the legislature and if we were to make an award we would essentially be providing the agency more money—in effect appropriating funds.

However, section 11(b) of the Personnel Code (Ill. Rev. Stat., ch. 127, par. 63b111b), provides that every employee reinstated for the period for which he was suspended, discharged, or improperly laid off shall receive full compensation for such period notwithstanding the fact that any person was employed to perform any duties of such employee during the time of such suspension, discharge or layoff. This seems to us to evince a legislative intent that such a person be paid regardless of whether or not the agency spent the money. We find that payment of any amount of back wages due the Claimant under the facts of this case to be expressly authorized by law.

In so finding we know that we are overruling the *Van Nattan, supra*, decision and finding yet another set of facts within the narrow exception to the general rule. Mr. Van Nattan’s claim was presented to the legislature following our decision, the legislature considered the matter, and Mr. Van Nattan was eventually paid. Because of the constitutional allocation of authority to the legislature noted in the above quoted passage from *Van Nattan, supra*, we are mindful that we must exercise extreme caution in deciding what obligations are expressly authorized by law. We think the approach taken here is correct and proper from both legal and policy points of view. Our decision, however, must be limited so that

it only applies so as not to bar back pay up to the date the legislature refused to fund the agency's operations. Even though the Claimant was ordered reinstated two days after the agency's abolition, any portion of the claim relating to that two-day period must be denied.'

Having found that this claim is not barred by the insufficiency of lapsed funds we turn now to the issue of mitigation. The facts with respect to the Claimant's mitigation of his losses are as follows. James Paul was in his late fifties during the relevant time period. He had spent virtually his entire life in youth work, 17 years of that time with the delinquency programs with the State of Illinois. In mitigating one's losses in a case such as this, one is required to seek relatively similar work within the same general locality. The Claimant applied for work at Elliot's Children's World, the Illinois Department of Children and Family Services, the Illinois Department of Corrections, the Pekin Housing Authority, the Tazewell County Court Services, and he tried to get help through his State representative.

Also, he sought work in private industry. He went to a well-placed friend at Midwest Solvents but was unable to get work. He applied at the Private Industries Corporation, Greater Peoria Contractors and Suppliers Association, Johnson's Moving and Storage, Maloof Real Estate Company, and Cabinet Pack. Finally, he was able to get part-time work from a friend at Cabinet Pack and earned a total of \$618.00.

Additionally, the record indicates that the Claimant spent a good deal of time preparing for litigation and defending himself. We have previously determined that such efforts are relevant to the issue of mitigation.

Due to the nature of the charges levelled against him

which caused his suspension and discharge (which charges need not be described herein), however, he had in reality no chance of obtaining youth-oriented employment. Upon telling other prospective employers about the circumstances under which he was forced to leave his job with the Respondent, they too were not receptive to hiring him. We feel we comprehend the situation and understand the prospective employers' reactions and the futility in Claimant's efforts. In conclusion, considering the Claimant's age, his occupation, the general state of the economy (which we take judicial notice of), the nature of the charges against him, and the time spent in refuting those charges, we find that the Claimant has met his obligation to mitigate his losses.

The final issue on the merits of the claim involves vacation pay as a proper element of damages in a claim seeking back wages as a result of a wrongful discharge. Our research indicated that the question has not previously been presented to the Court under the facts of this case. It is the Claimant's position here that had he not been wrongfully discharged he would have earned vacation days and would have had the right to have them liquidated by compensation upon the agency's abolition just as his co-workers were paid.

In *Harrington v. State* (1974), 30 Ill. Ct. Cl. 67, the claimant sought payment for accrued vacation time pursuant to Personnel Rule 3—290 which provides as follows:

“Salary in lieu of vacation: No salary payment **shall** be made in lieu of vacation not taken except on termination of employment, in which case the effective date of termination is not extended by reason of said salary payment.”

The Claimant in *Harrington, supra*, had changed employment from one agency of the State to another. The issue therein was whether his employment had terminated or

he had merely transferred to another job. In granting payment for accrued vacation time, the Court decided that the Claimant's employment had in fact been terminated and his situation fell within the rule. The Claimant was not seeking redress for wrongful discharge but merely payment for days actually accrued. In the case at bar, Mr. Paul was paid for vacation days actually accrued up to the time of his discharge.

Although *Shimeall v. State* (1979), 32 Ill. Ct. Cl. 760 would appear to be directly on point, upon careful analysis it is clear that the issue was not raised by the Respondent nor was the Court apprised of anything in the record to indicate the Claimant should be barred from receiving vacation pay as an element of damages in a wrongful discharge claim. In a case involving much the same facts as *Shimeall, supra*, this Court in *Shaw v. State* (1981), 34 Ill. Ct. Cl. 126, denied vacation pay. The Claimants in those cases had been wrongfully discharged and ordered reinstated. Upon reinstatement, the agency credited the Claimants with the maximum amount of vacation days they were by rule allowed to carry. Although the rationale used by the Court in denying the claim for vacation days in *Shaw, supra*, was much more involved, it can basically be summarized that the Claimant therein was made whole by the restoration of the agency of the vacation days upon the Claimant's reinstatement. Although it was shown that the Claimant would have earned more vacation time than that with which he was credited had he worked over the entire period of his wrongful discharge, he would have either used the balance of the vacation days or lapsed them during that time. Thus he actually lost nothing.

In *People ex rel. Bourne v. Johnson* (1965), 32 Ill. 2d 324, 205 N.E.2d 470, the supreme court stated, "The

theory underlying a suit for back salary is to make the employee whole—to compensate him to the extent that the wrongful deprivation of salary has resulted in financial loss”. It is the Claimant’s position that he was deprived of his job and but for that deprivation he would have worked and earned vacation days. Had he worked and earned vacation days he would have been terminated, along with the rest of the agency’s employees, at the end of June 30, 1981. Just as the other employees were paid for accrued vacation time upon their termination, he, too, would have been entitled to such payment. Moreover, section 11(b) of the Personnel Code (Ill. Rev. Stat., ch. 127, par. 63b111b) provides that upon reinstatement one is to be paid lost benefits, and the right to earn and be compensated for vacation time is certainly a benefit of the Claimant’s employment.

However, upon close analysis it is clear to us that the Claimant has suffered no loss with respect to the vacation days. The record shows that during the month of December 1980, when he was removed from the payroll, he was paid for 54 vacation days, said payment totalling \$4,607.98. A person with the Claimant’s length of tenure with the State earns 20 vacation days per year. Although the record is silent on the matter, we will give the Claimant the benefit of the doubt and assume that of those 54 vacation days for which he was paid he earned only 14 of them in calendar year 1978. Pursuant to the Personnel Rules, specifically 80 Ill. Ad. Code, ch. 1, section 303—250, he could have only carried that many days up to December 31, 1980, after which he would have lapsed the 14 days. Had he actually worked continuously through June 30, 1981, he would have only earned **12** more vacation days. Therefore, he would have either lost the 14 days or actually taken them off but only gained 12 more. Were we to pay him for the 12 additional days he would in

effect be made more than whole because he would be paid for the 14 days he would have either used or lapsed and 12 additional days.

In summary, following *People ex rel. Bourne v. Johnson, supra*, in order to “compensate the claimant to the extent that the wrongful deprivation of salary has resulted in financial loss” we are treating him as if he had been continuously employed. When the situation is viewed as such he has already been compensated for 14 days which he would have either actually taken off or lapsed. He would not have been paid for those 14 days had he been continuously employed. In our view, those days more than cancel out the 12 more he would have earned had he worked and could have been compensated for had he not taken them off.

In conclusion, the Claimant is hereby awarded the sum of \$13,578.66, plus employer contributions and less employee deductions as more fully set forth in the appendix attached hereto and incorporated herein. We arrived at the gross figure by adding what the Claimant would have earned for the month of November 1980, the balance of the month of December 1980, for which he has not been paid, and what he would have earned from January through June 1981, and then subtracting what he actually earned in mitigation of his losses.

#### APPENDIX A

##### Identification of State Contributions and Deductions from Back Salary Award

To the State Employees' Retirement System:

Employee's contribution to State Employees' Retirement System	<u>1086.29</u>
Employee's contribution to FICA	<u>.00</u>

State's contribution to State Employees' Retirement System	<u>1018.40</u>
State's contribution to FICA	<u>.00</u>
To Illinois State Treasurer to be remitted to Internal Revenue Service:	
Claimant's Federal Income Tax	<u>2715.73</u>
To Illinois Department:	
Claimant's Illinois Income Tax	<u>407.36</u>
To the Claimant:	
Net salary	<u>9369.28</u>
Total award	<b>\$14597.07</b>

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(No. 82-CC-0495—Claim denied.)

**ARTHUR J. ALLEN, SR.**, Claimant, *v.* **THE STATE OF ILLINOIS**,  
Respondent.

Opinion filed *June 28, 1984*.

**HARLAN HELLER, LTD.** (**M. JOHN HEFNER, JR.**, of  
counsel), for Claimant.

**NEIL F. HARTIGAN**, Attorney General (**SUE MUELLER**,  
Assistant Attorney General, of counsel), for Respondent.

**HIGHWAYS**—state not *insurer* of highways. For liability to be imposed due to negligent maintenance of highway, Claimant must prove by preponderance of evidence that State breached duty of reasonable care and that negligence flowing from breach proximately caused accident, as State is not insurer of all persons travelling on highways.

**SAME**—maintenance of highways—State's duty. State has duty to exercise reasonable care in maintenance of highways to prevent defective and dangerous conditions from injuring travellers, and if highways are in dangerously defective condition and State has notice of condition, State is negligent if it does not notify or warn public of condition.

*SAME—bumpy patch in highway—motorcycle accident—not unreasonably dangerous—claim denied.* Claimant was injured when his motorcycle struck a patched section of highway and went out of control, but his claim for those injuries was denied, as he failed to demonstrate that the patched area was unreasonably dangerous.

*SAME—patched section of highway—not unreasonably dangerous—no warning sign required.* Where patched section of highway was not shown to have been in unreasonably dangerous condition, State had no duty to post warning signs, as such signs are only required when condition is unreasonably dangerous.

ROE, C.J.

This is a claim brought by Arthur J. Allen, Sr., against the State of Illinois whereby Claimant seeks damages for personal injuries he sustained as the result of an accident in which he lost control of his motorcycle on a patched area of Illinois Route 57 in Coles County, approximately one-half mile south of the Route 45 interchange at Mattoon, Illinois. The accident occurred on May 31, 1981, at 7:30 p.m.

Claimant contends that the patched area in question caused him to lose control of his motorcycle when he encountered it. He claims that the patched area was a defective condition of which the State had notice and that the roadway, therefore, was not in a reasonably safe condition, thereby making the State negligent. Claimant contends further that the State was negligent for failing to post warning signs advising the travelling public of the alleged dangerous condition. The State denied Claimant's contentions. An evidentiary hearing was held on January 20, 1983.

As the Court has said many times, the State is not an insurer of all persons travelling upon its highways. (*Bloom v. State* (1957), 22 Ill. Ct. C1.582; *Jackson v. State* (1981), 34 Ill. Ct. Cl. 63.) For liability to be imposed upon the State, Claimant must prove by a preponderance of the evidence that the State breached its duty of reasonable

care and the negligence flowing from the breach proximately caused the accident and Claimant's injuries. *Estate of Brochman v. State* (1975), 31 Ill. Ct. Cl. 53; *Laine v. State* (1977), 32 Ill. Ct. Cl. 10 (1977).

It is the duty of the State to exercise reasonable care in the maintenance and care of its highways in order that defective and dangerous conditions likely to injure persons lawfully on the highways shall not exist. (*Moldenhauer v. State* (1978), 32 Ill. Ct. Cl. 514.) The exercise of reasonable care requires the State to keep its highways reasonably safe. (*Schuck v. State* (1965), 25 Ill. Ct. Cl. 209.) If the highways are in a dangerously defective condition and therefore not reasonably safe and the State is on notice of such condition, the State is negligent if it does not notify or warn the public of such condition. *Clark v. State* (1974), 30 Ill. Ct. Cl. 32; *Moldenhauer, supra*.

The Court finds that the foregoing principles of law as applied to the facts of this case mandate the conclusion that Claimant has failed to meet its burden of proof. A close examination of the evidence presented at the hearing discloses that Claimant indeed lost control of his motorcycle when he drove onto the patched area of highway. However, the evidence fails to demonstrate that the patched area was in such a defective and dangerous condition that it left the highway unfit for the purpose for which it was intended, or that the highway was not reasonably safe. (*Schuck, supra*.) The mere happening of this accident, of course, is not enough to impose liability, since as indicated, the State is not an insurer (*Bloom, supra*). The State is not required to make its highway perfect. See *Laine, supra*.

The only occurrence witness to testify was the Claimant. He testified that shortly after entering Route

57 southbound from Route 45, he prepared to pass a slow-moving vehicle driving ahead of him. He looked in his rear-view mirror, saw no traffic behind him, drove his motorcycle into the passing lane and proceeded to pass the slow-moving vehicle. He then accelerated to a speed of approximately 60 miles per hour and began to drive his motorcycle back into his original lane of travel and in front of the vehicle that he had just passed. While making this maneuver he was looking in his rear-view mirror and not at the roadway in front of him. It was at that instant that the front wheel of his motorcycle struck what Claimant described as a hole or bump. Claimant's motorcycle then went into "speed wobble", a phenomenon whereby the front wheel begins shaking violently. Claimant lost control and the motorcycle fell, resulting in various injuries to Claimant. Claimant was familiar with Highway 57 as he had traversed it on prior occasions and had never noticed the bump previously.

Claimant did not describe the patched area where the "speed wobble" occurred beyond referring to it as a bump or hole. He did identify two photographic exhibits which he stated were accurate portrayals of the accident site and the patch in question. Claimant suggests that his photographic exhibits clearly depict an unreasonably dangerous condition. The Court does not agree. It is difficult to make that conclusion from the photographs since the angle of the photographs and other factors undoubtedly effect the viewer's perception of what is depicted and those relevant factors were not addressed. This, of course, would have equal application to the photographs introduced by the State which depict patched areas and, which on first glance, appear harmless. Claimant provided no testimony detailing those important factors, such as the shape, height, configuration, and other matters that go *to* the heart of the ultimate issue in

this case, which is of course the question of whether or not the patch was in an unreasonably dangerous condition.

The crucial testimony was provided by Paul Fleming, maintenance field technician for the State. Called as an adverse witness by Claimant, Fleming testified that he was directly responsible for patching on Route 57 and of course the accident vicinity. On a regular basis prior to the accident, Mr. Fleming patrolled Route 57 and caused all necessary patch work to be done by the crews.

Mr. Fleming identified the patch depicted in Claimant's photographic exhibits as one made by his crews. He indicated that the patch did not meet the requirements of the standard specifications for road and bridge construction. Those specifications were admitted into evidence and Mr. Fleming explained that they only applied to new highway construction by private contractors and not to State crews doing patch work on existing highways.

Fleming provided lengthy testimony on State maintenance standards regarding highway patching and discussed the feasibility of such things as asphalt and concrete as patch work material. It will serve no purpose to discuss that testimony here. It suffices to say that it was Fleming's un rebutted testimony that the patch work in question, including that depicted in Claimant's photographic exhibits, was acceptable within the State's highway maintenance standards. Mr. Fleming's testimony on this point is unchallenged and we accept it.

Very simply stated, Claimant has failed to demonstrate by a preponderance of the evidence that the patched area of highway, which undoubtedly played a role in the accident, was unreasonably dangerous. This is the only proper conclusion in light of Mr. Fleming's un rebutted testimony. As the State points out in its brief

and as stated previously, the Court has never held that all State roads must be bump free. To hold that they must would be to make the State an insurer.

Claimant must also fail on his allegation that the State was negligent for failing to warn of the alleged dangerous condition. There is no duty to warn unless there is an unreasonably dangerous condition, and as indicated, Claimant's proof has failed on that issue. In light of the foregoing, it is not necessary to discuss the question of Claimant's own conduct or the extent of his injuries.

It is therefore ordered that this claim be, and hereby is, denied.

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(No. 82-CC-0574—Claimants awarded \$500.00.)

**DALE GOETTEN and CAROLYN GODAR GOETTEN, Claimants, v.  
THE STATE OF ILLINOIS, Respondent.**

*Opinion filed January 6, 1984.*

DALE GOETTEN and CAROLYN GODAR GOETTEN, *pro se*, for Claimants.

NEIL F. HARTIGAN, Attorney General (SUE MUELLER, Assistant Attorney General, of counsel), for Respondent.

**PRISONERS AND INMATES—escapees from youth center—property damage—claim allowed.** Compensation was allowed Claimants for damages caused to Claimants' automobile and theft of property contained in vehicle, as evidence established that State's negligence in failing to properly supervise two residents of youth center led to escape and resulting loss.

ROE, C.J.

The Claimants seek compensation pursuant to an Act Concerning Damages Caused by Escaped Inmates (Ill. Rev. Stat. 1979, ch. 23, par. 4041), for losses incurred due to damage to their automobile and the theft of

property contained in the vehicle. These losses were allegedly caused by the negligence of the State in failing to properly supervise two residents of the Illinois Youth Center at Pere Marquette. On June 27, 1981, two young men escaped from the center, stole the Claimants' automobile and later abandoned it in damaged condition. Certain items of personal property contained in the vehicle when it was stolen were missing when it was found.

Based on the record before us, we find that the Claimants are entitled to recover for the losses they have incurred.

We find that the Claimants' losses total \$500.00, which includes \$375.00 for the total loss of their automobile, \$75.00 for the personal contents stolen from the vehicle, \$25.00 for the costs of towing the vehicle, and \$25.00 for the rental by the Claimants of a truck to return the vehicle to their home.

It is hereby ordered that the Claimants be, and hereby are, awarded the sum of \$500.00.

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(No. 82-CC-0809 — Claim dismissed.)

**ROSA and ALBERT LUCHT, Claimants, v. THE STATE OF ILLINOIS,**  
Respondent.

*Opinion filed October 3, 1983.*

JEFFERSON LEWIS and NOLAN LIPSKY, for Claimants.

NEIL F. HARTIGAN, Attorney General (SUE MUELLER,  
Assistant Attorney General, of counsel), for Respondent.

**NEGLIGENCE—state has no duty to remove snow. Requiring State to remove snow from parking lot would place State in position of being insurer**

of safety of persons using lot, and Court of Claims has repeatedly held that State is not insurer of persons using its facilities, but where State does perform gratuitous service of clearing area of snow, it would not be liable unless a dangerous condition was evidence of gross negligence.

*SAME—icy parking lot—fall—non-State employee—claim denied.* Claimant was employed by private concern located near State facilities and rode to work in car pool with State employees who parked their vehicle on State parking lot, and Claimant sustained injuries when she fell on icy parking lot, but her claim for those injuries was denied because she failed to establish her cause by a preponderance of evidence, as State had no duty to clear lot, she knew of icy condition, and no notice by State **would** have emphasized the condition any more than her actual knowledge.

### **HOLDERMAN, J.**

Claimant in this cause, Rosa Lucht, was a member of a car pool which brought her and several employees of the Department of Revenue to Springfield, Illinois. Claimant was not an employee of the State of Illinois but she worked in a position approximately four blocks from where the accident occurred. She was employed as a secretary by United Cerebral Palsy.

This car pool had been in existence for some time and it was a well-established routine for them to park in the Department of Revenue parking lot in Springfield. On the day in question, they left their point of origin approximately 15 minutes earlier than usual because it had sleeted during the night and everything was covered with snow and ice, resulting in very slick roads and other places where ice had accumulated.

On the morning in question, Claimant testified to the fact that the roads were icy and the parking lot was both snowy and icy. Claimant, on the day in question, got out of the vehicle and walked approximately 10 feet, at which point she slipped and fell upon an accumulation of ice and snow on the surface of the parking lot. This is an area in which the Claimant was familiar since it was the customary point of discharge for the passengers in

the car. Most of the passengers worked for the State of Illinois in the immediate area.

It is Claimant's contention that the parking lot in question contained rough spots on the pavement because of the potholes thereon. Claimant was wearing snow boots because of weather conditions. She did not request that the driver of the car take her the four blocks to her place of employment, but she got out of the car as usual in an area she was familiar with, knowing that the sleet storm had caused an accumulation of ice and snow.

When Claimant fell, she cracked her left wrist and was unable to return to work for approximately six weeks.

It is Claimant's contention that the Respondent was negligent in the maintenance of the area in which the accident occurred. It is her further contention that she was an invitee and that the State negligently and carelessly permitted the parking lot to be maintained in a dangerous and unsafe condition without giving warning of these conditions. This was despite the fact that Claimant was familiar with the area and conversant of the fact that this was a sleety, icy and snowy morning.

Claimant relies on the case of *Dietz v. Bellville Co-op Grain CO.* (1933), 273 Ill. App. 164. She contends that by being in the company of Department of Revenue employees at the time of her accident, Claimant acquired invitee status. The *Dietz* case holds that "it is the duty of persons who invite others upon their premises to keep such premises in a reasonably safe condition so that the invitees will not be injured by reason of any unsafe condition of the premises, yet the law does not make the owners of premises insurers of persons thereon." (273 Ill. App. 164, 167.) By merely being in the presence of

employees of the State of Illinois does not make Claimant an invitee and, in any event, the State of Illinois is not an insurer of persons upon its premises.

In the case of *Helton v. Board of Trustees of Southern Illinois University* (1965), 25 Ill. Ct. Cl. 238, 241, the Court held that “an invitee is a person who is invited or permitted to enter or remain on land for a purpose of the occupier. . . .” Certainly Claimant was not there for any purpose of the occupier in this instance, but as a matter of convenience for herself. The *Helton* case also held that “where evidence disclosed that Claimant was merely a licensee, he was required to take the premises as he found them, and in order to recover must prove Respondent guilty of wilful and wanton misconduct.” Certainly wilful or wanton misconduct is not shown in the present case, and the State of Illinois cannot be held liable for sleet that accumulated the night before.

Even if Mrs. Lucht had been an invitee, Claimants must still prove Respondent guilty of ordinary negligence. Claimants base their argument on what they perceive to be the Respondent’s duty to warn Mrs. Lucht of the icy conditions in the parking lot. The Court finds this argument unpersuasive for the following reasons. First, the Illinois appellate court has ruled that a property owner is not liable for a business invitee’s fall and consequent injury in an icy parking lot maintained by the property owner for the use of its customers, where the condition is a natural one and not caused or aggravated by the property owner. (*Anderson v. David Development Corp.* (1968), 99 Ill. App. 2d 55, 241 N.E.2d 222.) The Court does not mention a duty to warn as a basis for liability under these circumstances.

In *Lansing v. County of McLean* (1978), 69 Ill. 2d 562, 372 N.E.2d 822), the Illinois Supreme Court stated

that notice by the defendant of the icy condition was necessary to establish a duty to warn. In Lansing, the period of time between the plaintiff's accident and the snowfall was three days. The Court stated that this brief period of time was not sufficient to establish a presumption of notice. In the case at bar, the period of time that had elapsed between the ice storm and Mrs. Lucht's accident was even shorter.

Second, Mrs. Lucht testified that she noticed while riding to work that the roads were slick. Mrs. Lucht and her companions had left for work approximately 15 minutes early due to these weather conditions. It is obvious from this testimony that Mrs. Lucht had knowledge of the icy conditions. Considering this, a warning by Respondent would have served no purpose. Mrs. Lucht requested to be let out at the Department of Revenue's parking lot although she was not an employee of the Department. Her place of employment was approximately four blocks away. Given her knowledge of the icy conditions, it would seem that Mrs. Lucht had assumed the risk involved in walking from the parking lot to her place of employment rather than requesting to be dropped at her office.

To require the State to remove the snow and ice that had accumulated a few hours before the accident would put the State in the position of being an insurer. This Court has repeatedly held that the State of Illinois is not an insurer of persons who use its facilities. In *Levy v. State of Illinois* (1958), 22 Ill. Ct. Cl. 694, 699, the Court held that "Respondent is not liable for injuries resulting from the natural accumulation of snow and ice, and would be under no obligation to clear the walks in the first instance. By clearing them, Respondent was performing a gratuitous service, and, hence, would not be

liable unless a dangerous condition was evidence of gross negligence.”

The record shows Claimant was familiar with the area in question and, instead of asking to be dropped off at her place of employment approximately four blocks away, she voluntarily got out of the car at the parking lot knowing of the icy and snowy conditions. She had full knowledge of the weather conditions and no notice by the Respondent could have emphasized the condition of the parking lot any more than the knowledge she already had.

Claimants having failed in their duty to establish their cause by a preponderance of the evidence, award is denied and this claim is dismissed.

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(No. 82-CC-0978—Claimant awarded \$2,750.00.)

CHARLES RAY FOLDEN, Claimant, *v.* THE STATE OF ILLINOIS,  
Respondent.

*Order filed September 22, 1983.*

PEEK & GANDY, for Claimant.

NEIL F. HARTIGAN, Attorney General (SUE MUELLER,  
Assistant Attorney General, of counsel), for Respondent.

*STIPULATIONS—excavation on highway—motorcycle accident—stipulation—claim allowed.* Based on joint stipulation of the parties, claim was allowed for property damage and injuries sustained by Claimant when he was blinded by oncoming traffic and crashed into excavation on highway that was marked by lighted barricades, as evidence established that State was 55% negligent and Claimant was 45% negligent.

HOLDERMAN, J.

This cause having come for consideration on the

joint stipulation of the Claimant and Respondent and the Court being duly advised in the premises:

Finds, that on June **29,1981**, the Respondent, acting through the Department of Transportation, was repairing Illinois Route **54** with the job site situated approximately three miles east of the City of Pinckneyville, Illinois, in the westbound lane. At the end of the regular work day, being **4:00** p.m., the Respondent had excavated an opening in the westbound lane of said highway, and by way of warning those persons rightfully on that highway, both then and after dark, had erected wooden barriers adjacent to the east and west edges of the excavation with some flashing lights atop the barriers. Furthermore, Respondent caused warning signs to be placed about a mile in either direction of the job site where the excavation was located in **the highway**.

At or about the hour of 10:00 p.m. on said date, the Claimant was westbound on said highway on his 1975 Yamaha motorcycle which was equipped with a headlight, then in operation. Simultaneously, as Claimant approached Respondent's job site three miles east of Pinckneyville, there was vehicular traffic approaching him from the west going east with headlights on. As the Claimant approached the job site, he was unable to see the warning lights because those lights were very dim and he was blinded by the oncoming vehicular traffic lights. As a result, Claimant was unaware of the precise location of the excavation and had slowed his speed; but, nevertheless, before the Claimant could stop his motorcycle, he drove off into the excavation.

As a result of the Claimant driving off into the excavation, his 1975 motorcycle was completely damaged beyond repair, and he suffered cuts, bruises and abrasions, became sore, lame and unable to work at his usual

occupation for several days, during which time he lost days of employment, incurred medical bills, and suffered pain and disfigurement from cuts to his face and body.

The Claimant's damages for personal injury, pain, suffering and disfigurement, his lost wages and property damage are stipulated to be the sum of five thousand dollars (\$5,000.00). However, it is further stipulated that although the Respondent, acting through the Department of Transportation, was guilty of negligence, Claimant was nevertheless also negligent to the extent of 453; and therefore, the Claimant's recovery should be limited to the sum of two thousand seven hundred fifty dollars (\$2,750.00). Both parties agree that this award will constitute full and final satisfaction of the claim herein or any other claim arising out the same occurrence.

While this Court is not necessarily bound by a stipulation such as this, it has no desire to interpose a controversy where none appears to exist. The stipulation submitted by Claimant and Respondent appears to have been entered into freely and fairly, and its contents appear to be reasonable. The Court, therefore, finds no reason not to accept it and follow its recommendations for an award of \$2,750.00.

Claimant is hereby awarded the amount of \$2,750.00 in full and final satisfaction of the instant claim.

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(No. 82-CC-1876—Claimant awarded \$10,034.31.)

**LEONA PETERS, Claimant, v. THE STATE OF ILLINOIS,  
Respondent.**

*opinion filed May 4, 1984.*

ONESTO, GIGLIO & ASSOCIATES, for Claimant.

NEIL F. HARTIGAN, Attorney General (JAMES A. KOCH, Assistant Attorney General, of counsel), for Respondent.

NEGLIGENCE—*owner's duty to invitees*. One who occupies or is in charge of property has duty to use reasonable and ordinary care to keep property reasonably safe for the benefit of those who come upon property as invitees.

*SAME—dangerous condition—duty to warn*. Occupier of premises is expected to have superior knowledge of premises' condition and is held to higher standard of knowledge, both presumed and actual, than an invitee, and occupier 'has duty to remedy or warn of dangerous conditions where reasonable exercise of care would have disclosed existence of such condition.

*SAME—person has no reason to look for danger where there is no reason to suspect if*.

*SAME—trip and fall—floor mat—State building—claim allowed*. Award was granted for injuries sustained by Claimant when she tripped and fell on defective floor mat at State office building while she was visiting building on business with State agency, as evidence established that Claimant was not contributorily negligent and State should have either remedied defective condition or given warnings of 'condition.

## MONTANA, J.

This is a claim of Leona Peters against the Respondent, the State of Illinois, for personal injuries sustained when Ms. Peters fell in the offices of the Unemployment Compensation Board in Chicago, Illinois, on August 7, 1981. Ms. Peters was at the Unemployment Compensation Board to conduct some business at the Board's office.

The testimony showed that Ms. Peters, 57 years old, had been at the offices of the Unemployment Compensation Board a number of times before August 7, 1981. Claimant was wearing flat-soled shoes and carrying a small purse. She had been at the Unemployment Compensation Board for approximately three hours and was exiting through the front, public entrance when she was injured.

As Claimant exited, she placed her left foot upon a heavy duty rubber mat which Respondent had caused to be placed in their offices, directly in front of the first set

of two double action metal and plate glass doors leading to the outside. After Claimant placed her left foot on the mat, she felt the toe of the right foot catch an edge of the mat as she was lifting her right foot off the floor. As a result, Ms. Peters fell forward against the right side of the first double set of doors which was locked. She struck the door and fell back onto the mat. Ms. Peters sustained a fracture of the left shoulder as a result of her fall, and was hospitalized for approximately one week.

Testimony revealed that the rubber mat upon which Claimant tripped was constructed of rubber fastened together with metal wire. The mat was approximately one-half inch in height and four feet by 11 feet in length. As a result of its construction, the mat did not lay uniformly flat on the floor, but was raised in certain spots, particularly around the right front edge. Ms. Peters testified that after she fell, she was sitting upon the mat and observed that one section of the mat was turned upward towards the door and that metal wires were protruding from it. Ms. Peters introduced several photographs of the mat into evidence, which had been taken by investigators for the State. Mr. William Simmons, office manager of the Bureau of Employment Security, confirmed that these photographs truly and accurately depicted the condition of the mat on the day of the incident.

One who occupies or is in charge of property, such as the State in this case, is bound to use reasonable or ordinary care and prudence to keep the property reasonably safe for the benefit of those who come upon it as invitees. (*Joyner v. State* (1955), 22 Ill. Ct. Cl. 213; *Duble v. State* (1967), 26 Ill. Ct. Cl. 89.) In this case, Leona Peters was an invitee as she came upon the premises of the Unemployment Compensation Board in connection

with its activities. (*Hiller v. Harsh* (1981), 100 Ill. App. 3d 332, 426 N.E.2d 960.) There was no evidence adduced by either party showing that the other party had notice that the mat was in an unreasonably dangerous condition.

This Court finds, however, that the State is liable in this case because it could have and should have discovered the condition of the mat through the exercise of ordinary care. (*Maytnier v. Rush* (1967), 80 Ill. App. 2d 336, 225 N.E.2d 83.) As the occupier of the premises, the State is expected to have superior knowledge of the premises' condition, and is held to a higher standard of knowledge, both presumed and actual, of defects in the premises, than is Ms. Peters, an invitee. Hence, the State here had a duty to remedy or warn of the defective condition of the mat, notwithstanding the fact that it had no actual notice of its condition, because in fact in the exercise of reasonable care it should have known of the mat's condition. *Beccue v. Rockford Park District* (1968), 94 Ill. App. 2d 179, 236 N.E.2d 105.

This Court also finds that Claimant was not contributorily negligent. The evidence showed that Ms. Peters was reasonably dressed on the day of the incident, and was wearing flat-soled shoes. She was not leaving the premises in a hasty manner but was walking normally as she left. An invitee may assume that others have done their duty to give proper warning of hidden dangers, and apart from obvious dangers, can assume the premises are reasonably safe. (*Allgauer v. LeBastille, Znc.* (1981), 101 Ill. App. 3d 978, 428 N.E.2d 1146.) Put another way, where a person has no reason to suspect danger, he is not required to look for it. *Prater v. Veach* (1962), 35 Ill. App. 61, 181 N.E.2d 739.

In the instant case, since a reasonable person of ordinary prudence would not have suspected that step-

ping upon and walking across a door mat would cause a fall because of its defective condition, this Court finds that Leona Peters was in the exercise of ordinary and reasonable care for her own safety as she exited the offices of the Unemployment Compensation Board in Chicago on August 7, 1981.

We now turn to the appropriate damages to award Claimant. As a result of the fall, Claimant received a fractured left shoulder. It appears from the record that Claimant expended **\$1,312.31** for unreimbursed medical bills with respect to this injury. The Claimant testified that as a result of the accident she was unable to work from the date of the occurrence through April 1982 and that she suffered continuing discomfort during all that period.

We believe an award of **\$1,312.31** for medical bills, **\$4,522.00** for lost earning ability and **\$4,200.00** for pain and suffering is a fair and just award in this case.

Claimant is hereby awarded the sum of ten thousand thirty-four dollars and thirty-one cents (**\$10,034.31**).

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(No. 82-CC-2304—Claimant awarded \$7,500.00.)

ANGELA WEYHAUPT, Claimant, v. THE STATE OF ILLINOIS,  
Respondent.

Opinion filed October 31, 1983.

DEBORAH SPECTOR, for Claimant.

NEIL F. HARTIGAN, Attorney General (ROBERT J. SKLAMBERG, Assistant Attorney General, of counsel), for Respondent.

**PRISONERS AND INMATES—assaulted librarian—stipulation—claim allowed. Claimant was granted an award for the injuries she suffered when she was assaulted by an inmate of correctional facility while she was working as**

**librarian in facility for library system which provided services to Department of Corrections on contract basis.**

POCH, J.

This cause coming on to be heard on the joint stipulation of th'e parties hereto, the Court being fully advised in the premises, finds:

That this is a personal injury action brought pursuant to section 8(d) of the Court of Claims Act (Ill. Rev. Stat. 1981, ch. 37, par. 439.8(d)).

At the time of the incident, the Bur Oak library System had a contract with the Illinois Department of Corrections to provide library services in certain of the Department's facilities. On July 7, 1980, Claimant was employed by Bur Oak as a correctional librarian and was assigned to Stateville Correctional Center in Joliet, Illinois.

On July 7, 1980, Claimant was assaulted while she was working as a library assistant at Stateville.

It is hereby ordered that the Claimant, Angela Weyhaupt, be and hereby is awarded the sum of seven thousand five hundred dollars and no cents (\$7,500.00), in full satisfaction of this claim.

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(No. 82-CC-2350— Claim denied.)

**L. K. COMSTOCK & COMPANY, INC.,** a New York corporation,  
Claimant, *v.* **THE STATE OF ILLINOIS,** Respondent.

*Order filed June 26, 1984.*

*Amended opinion filed June 28, 1984.*

O'HALLORAN, LIVELY & WALKER (PAUL T. LIVELY, of counsel), for Claimant.

NEIL F. HARTIGAN, Attorney General (ERIN O'CONNELL, Assistant Attorney General, of counsel), for Respondent.

LAPSED APPROPRIATIONS—*appropriation* of funds solely power of legislature. Basic rule in Court of Claims is that no award will be made when appropriations have lapsed and insufficient funds remain to pay claim, or where no appropriation was made for an obligation, as the appropriation of funds for public use is constitutionally the power of the legislature, and the Court of Claims would be usurping the legislative prerogative by making an award under such circumstances.

CONTRACTS—*change order*—lapsed appropriation—claim denied. Claim arising for construction services performed for Capital Development Board was denied where project funds were exhausted prior to payment of Claimant, Court of Claims lacks power to make award in such circumstances, grant of award would constitute appropriation of funds and would usurp exclusive power of legislature.

## ORDER

MONTANA, J.

This matter coming to be heard on the joint stipulation of the parties hereto, due notice having been given and the Court being fully advised;

Finds that this claim for construction services was performed by the Claimant for the Capital Development Board. The services were properly authorized and performed to the specifications and satisfaction of the Capital Development Board. This Claim arises because project funds were exhausted prior to payment of the Claimant for the services herein claimed. Furthermore, \$60,000.00 held in retainage under a Retention Trust agreement shall be promptly released to the Claimant.

Section 30 of An Act in relation to State finance (Ill. Rev. Stat. 1981, ch. 127, par. 166) prohibits obligating the State to any indebtedness in excess of the money appropriated. Therefore, the Court has no authority to grant an award on this claim because to do so would be to add money to the project account which was not appro-

priated by the General Assembly. It is hereby ordered that the claims herein be dismissed without prejudice.

### AMENDED OPINION

ROE, C.J

This is a claim by a prime contractor on a Capital Development Board project for breach of contract. The case is before the Court on a joint stipulation.

The facts as alleged in the complaint are briefly as follows. On or about May 5, 1977, the Respondent awarded the Claimant a contract for the provision of certain electrical work for the University of Illinois Replacement Hospital Project located in Chicago, Illinois, and known as CDB Project No. 830-030-007. Pursuant to the terms of the contract the Claimant was to be paid a base contract price, including alternates, of \$6,201,892.00 plus change orders and less deletions to the base. During the course of Claimant's performance of the contract the base was increased to \$6,631,764.14 due to various change orders agreed upon by the parties. To date the Respondent has paid the Claimant on performance of the contract the sum of \$6,333,556.80 leaving a balance due and owing of \$299,207.34. The Claimant alleges breach of contract for the Respondent's wrongful refusal to pay. Prior to the filing of the claim Respondent took no action except to attempt to backcharge \$266,162.00 to the Claimant's contract, which backcharge Claimant contests.

In order to settle and compromise this claim the parties stipulated and agreed to the reduction of a change order (No. 31—EL—19) from \$161,977.00 to \$138,240.71, thereby reducing the balance due to \$295,471.05 and adjusting the Claimant's prayer for relief

accordingly. Respondent then consented to entry of judgment in favor of the Claimant and against the Respondent in the amount of **\$275,471.05**. It was understood and agreed that in partial satisfaction of the judgment the amount of **\$60,000.00** will be promptly released and paid to the Claimant from the Retention Trust Account arrangements established under the Retention Trust Agreement with the Claimant and the Harris Trust and Savings Bank of Chicago for the construction project. Said payment will be made plus interest under the terms of the Retention Trust Agreement.

The remaining balance of **\$215,471.05** represents the amounts not paid by the Respondent for change order No. **31—EL—18** in the amount of **\$77,230.34** and change order No. **31—EL—19** in the amount of **\$138,240.71** both of which the Respondent acknowledged are properly payable as change orders to the owner-contractor agreement. The Respondent acknowledged that the Claimant performed the work required by these two change orders at the direction of the Respondent acting by and through the Capital Development Board, that the Claimant has fully and properly completed all work required thereunder, and that the change orders are otherwise due and payable. Respondent affirmed that the sole reason the two change orders have not been paid is because the Respondent has heretofore not appropriated money for their payment.

The Respondent further acknowledged that it does not now have and agrees not to assert any claim or demand against the Claimant arising out of or in any way related to the construction of CDB project No. **830-030-007** for purported delays in the completion of construction, although it did reserve all claims, demands, causes

of action, or suits which it has or may have against any other person or entity arising out of or in any way related to the subject matter of the project.

Lastly, it was agreed that funds for change order Nos. **31-EL-18** and **31-EL-19** should be appropriated as there is no dispute that the work required by those change orders was requested by the Respondent through the Capital Development Board and was completed by the Claimant.

Although this Court is not bound by such stipulations, we do not seek to interpose controversy where none appears to exist. This stipulation appears to have been entered into fairly and at arms length and, based solely on the record before us, *we concur* with the parties with the exceptions noted hereinafter.

Because no funds were appropriated for the change orders which are the subject of this lawsuit we cannot concur in entering judgment for the Claimant and against the Respondent. It is a basic rule in the Court of Claims that where an insufficient amount of appropriations have lapsed or where no appropriation was made to pay an obligation, this Court will not make an award. (*J. T. Blankenship and Associates v. State* (1975), 31 Ill. Ct. Cl. 116.) Appropriating funds for public use is constitutionally solely the power of the legislature and were we to make an award herein we would in effect be usurping the legislative prerogative. For that reason we make no comment as to the parties' stipulation that such funds should be appropriated. In addition, issuance of or agreement to the change orders by the Capital Development Board was prohibited by Ill. Rev. Stat. 1981, ch. 127, par. 166 which provides "No officer, institution, department, board or commission shall contract any indebtedness on behalf of the State, nor assume to bind

the State in amount in excess of the money appropriated, unless expressly by law.”

It does appear however that the \$60,000.00 remaining in the Retention Trust Account was appropriated for this project and can be paid to the Claimant without any action or opinion by this Court.

Accordingly, it is hereby ordered that this claim be, and hereby is, denied.

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(No. 82-CC-2554—Claim dismissed.)

**NATIONAL RAILROAD PASSENGER CORPORATION, Claimant: v.  
THE STATE OF ILLINOIS, Respondent.**

*Order filed-September 22,1982.*

*Order on denial of rehearing filed December 27,1983.*

**LORD, BISSELL & BROOK, for Claimant.**

**NEIL F. HARTIGAN, Attorney General (LYNN W. SCHOCK, Assistant Attorney General, of counsel), for Respondent.**

*PRACTICE AND PROCEDURE—authority of Court of Claims.* Court of Claims is not court of general jurisdiction, and cases show that Court of Claims has no authority to allow claims based on *quantum meruit*, that estoppel is no defense, and that the Court of Claims is not a court of equity.

*CONTRACTS—contract claim—limitations period expired—claim dismissed.* Action for balance due on contract by which Claimant provided certain rail services to State was dismissed, as statute of limitations applicable to contract claims had expired before action was brought, notwithstanding Claimant’s contention that arbitration under contract tolled limitations period, since holding that limitations period was tolled by arbitration clause would require a party to pursue a useless act.

**HOLDERMAN, J.**

This case is before this Court on a motion to dismiss filed by Respondent. The claim arises out of a contract

between Amtrak and the State dated August **1,1975**, and amended September **1,1975**. Under the contract Amtrak agreed to furnish certain rail services. Amtrak furnished services for fiscal years **1975** and **1976**. The State paid Amtrak **\$333,132** less than the amount billed and refused to pay the balance.

The contract contained a provision for arbitration of any dispute in accordance with the rules of the American Arbitration Association.

On October **15,1981**, Amtrak demanded arbitration and subsequent thereto the arbitrator allowed Claimant's claim in the sum of **\$98,647.00** plus **\$668.23** as a share of fees. The complaint before this Court was for **\$99,315.23** and was filed in May **1982** based on the arbitrator's award.

The Respondent contends the arbitration clause is invalid and that more than five years expired before the claim was filed in this Court.

The Claimant contends the arbitration clause is, or ought to be, found valid and that no cause of action accrued until the arbitrator made his award based on the hearing before it.

A study of past cases will reveal that this Court has limitations which are applicable here.

The Court of Claims is not a court of general jurisdiction. Cases show that we have no authority to allow claims based on *quantum meruit*; that estoppel is no defense; that we are not a court of equity and cannot allow claims based thereon. We are referred to often times as a "quasi-court".

The legislature has granted this Court authority to decide cases only in specific cases, and we must adhere

to the limits imposed on us. This a concession to the rule that the State, as a sovereign, cannot be sued.

In deciding our cases, we must decide them within the authority granted to us regardless of any harshness involved.

Were we authorized to consider equities, our holdings might be different in many cases, but we deem it beyond our authority to do so. The legislature has limited us in this regard.

In the case before us we are compelled to decide solely whether the statute of limitations has run since the accrual of the cause of action arose; we can give no credence to harshness nor to estoppel.

Based on the record before us, we find that the cause of action, if any, arose over five years before any claim was filed here. We further find that the State cannot be held to be estopped from raising such a defense based on any efforts to arbitrate under terms of the contract entered into.

The Claimant could have protected itself by filing a claim here and indicating that it was pursuing the separate remedy of arbitration. This would have prevented the application of the statute of limitations being invoked. At that time, we could have considered whether arbitration was available and had we decided it was not, Claimant could then proceed before this Court. This position is supported by our recent case of *Ryder Truck Rental, Inc., v. State* (1982), 35 Ill. Ct. Cl. 841.

We hold that arbitration under the contract did not toll the statute of limitations from running.

While we aren't compelled to decide whether arbitration under the contract was valid, we do say that in the

opinion of this Court the procedure was invalid. Under the statute this Court has *exclusive* jurisdiction to hear contract claims against the State. Arbitration is not available as a substitute. Ill. Rev. Stat., ch. 37, par. 439.8.

Motion to dismiss is allowed.

## ORDER ON DENIAL OF REHEARING

**HOLDERMAN, J.**

Claimant has filed a petition for rehearing of our order dismissing its complaint. Our order was entered on September 22, 1982. Oral arguments were made on its motion. We mention here that this case was very ably argued, both orally and by briefs, by both the Claimant and the State.

The case was dismissed originally on the grounds that the five-year statute of limitations had run before the claim was filed before this Court. It is Claimant's position the statute had not run because of the arbitration clause in the contract sued upon.

Claimant's basic argument is that "arbitration was a prerequisite to the accrual of its claim against the State and therefore, the Statute of Limitations did not begin to run until completion of the proceedings".

While this could be true if the arbitration clause were an acceptable procedure, we fail to see how the same effect can be given to it when it is determined that the clause on arbitration is an invalid clause. If it is void, it is void for all purposes. To recognize partial validity, is not, in our judgment, a sound position for this Court to take. To hold that the arbitration clause was valid for the purpose of tolling the statute of limitations would require a party to pursue a useless act before bringing his action

before this Court. We are not constrained to require such a futile action.

While it isn't a determining factor, we do point out that on November **13**, 1981, the Claimant was apprised by letter that the State insisted that any action had to be brought in the Court of Claims, which had sole jurisdiction, and that arbitration was not an acceptable procedure. By our holding, we are confirming that the writer of the letter was correct — arbitration is contrary to law and therefore should be given no effect whatsoever.

Petition for rehearing denied.

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(No. 82-CC-2578—Claim denied.)

**LESTER OETCEN**, Claimant, *v.* **THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS**, Respondent.

*Order filed March 6, 1984.*

**RAMMELKAMP, BRADNEY, HALL, DAHMAN & KUSTER**,  
for Claimant.

**WARREN H. GLOCKNER**, for Respondent.

**WORKERS' COMPENSATION**—*alleged fraud in settlement of workers' compensation claim— not proven— claim denied.* Claimant filed action in Court of Claims alleging that he was injured while employed by State and received compensation under Workers' Compensation Act, but was fraudulently denied additional benefits to which he was entitled pursuant to statutory amendments allowing rate adjustments because the State employee who handled the claim failed to include a provision in the settlement allowing for such adjustments, as the record failed to contain any evidence of misrepresentation with intent to defraud.

**HOLDERMAN, J.**

Claimant's complaint sets forth that he was injured while an employee of Respondent on July 19, 1967. He

was compensated for medical benefits and other benefits due him under the Workers' Compensation Act, for temporary disability, for loss of 28% use of lower extremity and for a number of weeks for total disability.

However, he alleges that additional benefits were due him for the years 1977, 1978, 1979, and 1980 in the total amount of \$2,017.99, under provisions of an Act adopted in 1975 allowing rate adjustments for each of those years. He further stated that Respondent on September 6, 1973, tendered him a settlement sheet which he signed but which neglected to include provisions for any rate adjustments.

It appeared at the hearing that Claimant was compensated for the year 1980, and therefore his claim was reduced to \$1,304.83 for 1977, 1978, and 1979.

Claimant's position is that the Respondent acted fraudulently in submitting the settlement sheet without such a provision, and that he signed it believing that all his workers' compensation entitlements were included therein.

He alleges that the settlement sheet was made "with intent to induce him into signing", and that "Respondent had secured for him all benefits" under the Act to which he was entitled.

In paragraph 10 of his complaint he alleges:

"Respondent *knew such representation was false*; that in fact unless an award was given or settlement contract approved, Claimant could not receive full benefits."

In paragraph 11.4 he states that Respondent "represented to Claimant that there had been a change in the

law and that once certain forms were signed, Claimant would be receiving his rate adjustment.” And in 11.5 that “Claimant signed the forms in reliance as to the representations made by Respondent.”

Claimant first sought on November 12, 1979, to have this claim for rate adjustment compensation adjudicated before the Industrial Commission, but his claim was denied on the ground that the Commission lacked jurisdiction to allow rate adjustments Claimant would have received had he filed before July 1, 1975. The Commission lacked jurisdiction to allow rate adjustments Claimant would have received had he filed before July 1, 1975. The Commission did decide, on a separate request, that Claimant was entitled to a rate adjustment compensation under section 8(g) of the Workers’ Compensation Act (Ill. Rev. Stat. 1979, ch. 48, 138.8(g)), and was granted an award which resulted in him receiving the rate adjustment, but not including the years 1977, 1978, and 1979.

An evidentiary hearing was held July 7, 1983, to determine if the facts showed Respondent had indeed practiced fraud on the Complainant.

In his brief Claimant states:

“The basis of Claimant’s argument is that the Respondent entered into a 1973 ‘green sheet settlement’ in violation of Section 23 of the Illinois Workers’ Compensation Act and fraudulently represented to Claimant that he would receive the full benefits under the Workers’ Compensation Act. An Application for Adjustment of Claim was not filed until 1979 and a Decision of the Arbitrator was not entered until February 27, 1979, awarding Petitioner a pension for life. This delay resulted in Claimant being denied rate adjustments for the years

1977, 1978 and 1979, as provided by Section 8(g) of the Workers' Compensation Act."

Statutory provisions applicable are the following found in section 8 of the Workers' Compensation Act (Ill. Rev. Stat. 1979, ch. 48, par. 138).

Section 8(g), provides in part:

"Every award for permanent total disability entered by the Commission on or after July 1, 1965, under which compensation payments shall become due and payable after the effective date of this mandatory Act and every award for death benefits for permanent total disability entered by the Commission on or after the effective date of the amendatory Act shall be subject to annual adjustments as to the amount of the compensation rate therein provided. Such adjustments shall first be made on July 15, 1977 and all awards made and entered prior to the effective date of this amendatory Act and on July 15 of each year thereafter. In all other cases such adjustments shall be made on July 15 of the second year next following the date of the entry of the award and shall further be made on July 15 annually thereafter. . ."

**Section 7(f) (Ill. Rev. Stat. 1979, ch. 48, par. 138.7(f))** provides in part:

"On July 15, 1976 and on January 15, 1977, and on each year thereafter the employer shall further pay a sum equal to one-half of one percent of all compensation payments made by him after the effective date of this Amendatory Act of 1975, either under this Act or under the Workers' Occupational Diseases Act, whether by lump sum settlement or weekly compensation payments, made during the first six months and during the second six months respectively of the fiscal year next preceding the date of the payments. . ."

**Section 23 (Ill. Rev. Stat. 1979, ch. 48, par. 138.23)** provides in pertinent part:

"No employee, personal representative, or beneficiary shall have power to waive any of the provisions of this Act in regard to the amount the compensation which may be payable to such employee, personal representative or beneficiary hereunder except after approval by the Commission and any employer, individually or by his agent, service company or insurance carrier who shall enter into any payment purporting to compromise or settle the compensation rights of an employee, personal representative or beneficiary without first obtaining the approval of the Industrial Commission as aforesaid shall be barred from raising the defense of limitation in any proceedings subsequently brought by such employee, personal representative or beneficiary."

It appears from the testimony that **Max N. Pike** was employed by the University of Illinois from 1956 to

**1979** as a supervisor of accident compensation, handling contacts with various claimants who had suffered an injury. He testified that his function was managing claims so that “Mr. Oetgen would receive benefits from the University under the Act.” In connection with his claim, Claimant contacted Mr. Pike on many numerous occasions. On September **6, 1973**, a document (green sheet settlement) was signed by Claimant and Max Pike which set forth, in itemized form, the benefits which Claimant would be entitled to for his injury of July **19, 1967**.

In **1978**, according to Mr. Pike, Claimant contacted him and stated he had been advised of a change in the Workers’ Compensation Act which would entitle him to additional benefits. Pike stated he did not know of the change. The change in the Act provided for certain rate adjustments. This change in the Act was made after the September 6, **1973**, memorandum.

At a hearing before the Industrial Commission on October **21, 1980**, Mr. Oetgen stated that at the time he signed the memo of September **6, 1973**, Mr. Pike represented that the benefits listed would be complete benefits due him. He further testified that Mr. Pike called him in **1978** and said there would be an adjustment in his pension because of a new law ‘that was passed.

Claimant argues that Respondent violated section **23** of the Workers’ Compensation Act (Ill. Rev. Stat. **1979**, ch. **48**, par. **138.23**) by entering into the “agreement” of September **6, 1973**, and by representing that he would receive full benefits under the Act, and that in so doing it committed a fraud on Claimant.

It appears that Claimant did place complete confidence in Mr. Pike in the handling of his claim. He

complains that Respondent waited three years after the 1975 amendment to advise him on the rate adjustments he could be entitled to. His position is that Respondent prepared the green sheet settlement with the intent that Claimant rely on it and *do nothing further* and all benefits, even future benefits which were then unknown, would be forthcoming.

Numerous cases were cited by Claimant to support the principle that an employer can't lull a Claimant into a false sense of security and allow the statute of limitations to expire. In such cases, the employer has been held estopped from invoking the statute of limitations. These cases are sound in their holding but do not control this case based on an alleged false misrepresentation as we find no evidence that there was indeed a false representation on September 6, 1973.

In reply the Respondent argues that the case before the Court is one based on fraud; that Claimant has claimed the green sheet settlement sheet was presented to him with a representation that Respondent had secured all benefits for him and that "Respondent knew such representation to be false."

The essential elements of fraud are a misrepresentation of a material fact, coupled with *scienter*, deception and injury. *Mustain v. Shaver* (1981), 96 Ill. App. 3d 86, 420 N.E.2d 1197.

The record fails to contain any evidence of a misrepresentation with intent to defraud made by the Respondent. Even though Claimant relied on Mr. Pike and even assuming that he was told the benefits in the green sheet settlement were full benefits, how can that be construed to be a false statement when the Act providing for rate adjustments was not enacted until July 1, 1975?

This was a future event and could not have been anticipated in any representation made in 1973. There was no express statement in the green sheet of September 6, 1973, that constituted a misrepresentation, and the evidence does not establish any verbal representation that would be the basis of fraud.

We find scant evidence to support the conclusion that Mr. Pike had a duty to alert himself to future changes in the Workers' Compensation Act and to notify Claimant of such changes. Nor do we find that Claimant has proved that there was a fraudulent misrepresentation by Respondent when the green sheet settlement was executed.

Basically, the Claimant's position is that when the Act was amended in 1975, the Respondent should have been aware of it and advised the Claimant what to do. We do not feel the testimony supports this conclusion, and even if it did, Respondent's failure would not constitute fraud at the time of the signing of the green sheet settlement. At best he presents only an appeal to fairness because Respondent had helped him at the outset of his claim, but certainly he failed to meet his burden of proving fraud by Respondent.

Claimant has failed to meet its burden of proving fraud as alleged in its complaint.

Claim denied.

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(No. 83-CC-0014—Claimant awarded \$10,000.00.)

**MARK W. JOHNSON, Claimant, v. THE STATE OF ILLINOIS**  
Respondent.

*Opinion filed November 30, 1983.*

CALIFF, HOOPER, **Fox & DIELEY** (DENNIS R. **Fox**, of counsel), for Claimant.

NEIL F. HARTIGAN, Attorney General (SUE MUELLER, Assistant Attorney General, of counsel), for Respondent.

*NEGLIGENCE—collision with snowplow—claim allowed.* Claimant's vehicle was struck by State snowplow when Claimant attempted to pass snowplow and plow made turn to left, and award was granted to claimant for resulting damages for personal injuries, as evidence established that Claimant was not negligent, and driver of snowplow was negligent in making the turn without determining whether it was reasonably safe.

**POCH, J**

Claimant seeks to recover damages for personal injuries sustained as a result of an accident in which Claimant's pick-up truck collided with a State snowplow.

An evidentiary hearing was conducted by Commissioner Bruno **P. Bernabei**, on March 18, 1983. The commissioner has duly filed his report, together with the transcript, together with the briefs, now before the Court.

A summary of the facts determined at the hearing before the commissioner is as follows:

The accident occurred at 1:20 p.m. on March **4**, 1982, on U. S. Route 6 at its intersection with the Oakwood Country Club Road in Colona Township, Henry County, Illinois.

The collision occurred when Claimant, traveling westbound behind the snowplow, entered the eastbound lane of travel and attempted to pass the snowplow. As

Claimant began accelerating to pass, the operator turned the snowplow to the left from the westbound lane into the eastbound lane in an attempt to turn into Oakwood Country Club Road. It was the intent of the operator of the snowplow at that point to turn around and proceed back eastward on Route 6.

Claimant contends that the accident and his injuries were the proximate result of Mr. Parchert's negligent operation of the snowplow. Respondent denies that Mr. Parchet was negligent and contends that if he was, Claimant's own negligence should reduce his award proportionally. Claimant denies any negligence.

Claimant testified that weather conditions at the time of the accident were good, except that the highway was wet, apparently from melted snow. Claimant had been traveling west on Route 6 for several miles when he came upon the snowplow which was traveling about 30 m.p.h. and was not engaged in plowing operations. Between the two vehicles was a Cadillac automobile operated by an unknown driver.

Claimant further testified that at the point where Route 6 was, passing was permitted and the Cadillac automobile passed the plow. Claimant then pulled his vehicle into the eastbound lane at a point five car lengths behind the snowplow.

Claimant observed the Cadillac successfully complete its pass, saw that it was clear for him to pass, saw no turn signal actuated on the plow, and began to accelerate. At this time the snowplow turned to the left into the eastbound lane in an attempt to enter the Oakwood Country Club Road. Claimant braked, skidded a short distance, and struck the left rear of the snowplow.

Mr. James Parchert, the snowplow operator, testified

that he was traveling westbound on Route 6 for about six miles at a speed of **25** m.p.h., and that for the last two or three miles he was not engaged in plowing operations since there was no snow on the road.

On that two- or three-mile stretch leading to the point of the accident, several westbound vehicles passed the snowplow as he was proceeding west on Route 6. Parchert was attempting to find a side road so that he could turn around and proceed back eastward.

Parchert further testified that he saw the Cadillac automobile pass him a few seconds before he made his turn to the left. He saw Claimant's vehicle when he glanced in his rear view mirror approximately **250** feet east of the Oakwood Country Club Road. At that point Claimant was several car lengths behind Parchert and still in the westbound lane. Parchert did not remember if he looked for Claimant's vehicle again prior to the time he made the left turn. He did testify that he did not see Claimant's vehicle again until the collision. Parchert testified that from the point where he observed Claimant's vehicle **250** feet east of Oakwood Country Club Road to the time of the collision, he made the decision to turn around on Oakwood Country Club Road and had his left-turn signals on the entire distance.

State trooper Herbert Anderson and Department of Transportation field engineer Harry Faveri both testified that when they arrived at the scene after the accident they found the snowplow's left-turn signals still operating.

The Court finds from the evidence that the State employee, James Parchert, negligently operated the snowplow. Knowing that the Claimant was traveling behind him and that vehicles were routinely passing his

slow-moving snowplow, Parchert travelled some 250 feet and made a left turn across the passing lane without looking back to determine if the turn could be made in a reasonably safe manner. Failure to give an appropriate left turn signal as required by section 11—804 of the Illinois Vehicle Code (Ill. Rev. Stat. 1983, ch. 95½, par. 11—804), is a statutory violation and is *prima facie* evidence of negligence. *Old Second National Bank of Aurora v. Bauman* (1980), 86 Ill. App. 3d 315, 408 N.E.2d 224.

The Court further finds that Claimant was not guilty of negligence and therefore his damages will not be reduced pursuant to the theory of comparative negligence. *Alvis v. Riber* (1981), 85 Ill. 2d 1,421 N.E.2d 886.

Dr. Edward D. Lanigan, Claimant's treating physician, testified that as a result of the accident, Claimant suffered a concussion which caused him severe headaches for several days. Claimant sustained a four-inch laceration on the right side of his forehead through all of the soft tissues around the skull, and 40 to 50 stitches were required to close the wound which left a permanent scar. Claimant's medical bills amounted to \$972.80.

Based upon the record the Court finds that Claimant has proven his claim by a preponderance of the evidence that the Respondent was negligent.

It is hereby ordered that Claimant be and hereby is awarded the sum of ten thousand (\$10,000.00) dollars.

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(No. 83-CC-0081—Claimants awarded \$8,400.00.)

**LILIAN LEE and DONALD TWEEDY, Claimants, v. THE STATE OF ILLINOIS, Respondent.**

**Order filed March 20, 1984.**

**MOORE, NELSON & STIPP (GORDEN R. STIPP, of counsel), Claimants.**

**NEIL F. HARTIGAN, Attorney General (SUE MUELLER, Assistant Attorney General, of counsel), for Respondent.**

**LAPSED APPROPRIATIONS—rent due—stipulation—award granted.** Based on the joint stipulation of the parties, an award was granted for the rent due Claimants for the use of their building for a drivers' license facility, as the appropriation from which the claim would have been paid had lapsed, but sufficient funds remained in it to pay the claim, and the parties agreed as to an amount which would constitute full and final satisfaction.

**POCH, J.**

This cause coming on to be heard on the joint stipulation of the Claimant and the Respondent and the Court being fully advised in the premises:

Finds, that during the period of July 1, 1978, to June 30, 1981, the Claimants were the owners, as tenants in common, of a certain commercial building and real estate consisting of approximately 1400 square feet and located at R.R.1, North Dixie Highway, Hoopeston, Vermillion County, Illinois.

On July 1, 1978, Claimants entered into a written lease agreement with the State of Illinois, through the office of Alan J. Dixon, Secretary of State (here and after referred to as lessee), for use by lessee and its Driver Services Department of the premises herein described as the drivers license examination facility, for an initial two-year period and for a total consideration of \$16,800.00, payable in 24 monthly rental installments of \$700.00 each, commencing July 1, 1978. A true copy of the lease

agreement was attached to the joint stipulation of the parties as Exhibit A.

On April 4, 1980, pursuant to section III (c) of the lease agreement, lesse exercised its option to renew said lease for an additional two-year period by written letter, dated April 4, 1980. A true copy of the renewal letter was attached to the joint stipulation of the Claimant and the Respondent as Exhibit B.

Satisfactory delivery of goods and services was provided by Claimants to lessee pursuant to the lease agreement, and lessee continuously occupied, and continues to occupy the premises and operates a drivers license examination facility on the premises belonging to the Claimants from July 1, 1978, to the present.

There remains in controversy, and unpaid by the Respondent to the Claimants, a total sum of \$8,400.00, which the Claimants maintain they are entitled to receive from the Respondent. This \$8,400.00 is for the rent payments for fiscal year 1981. The appropriation from which this claim would have been paid is 1233-011-35010-1200-00-00. This appropriation has lapsed, and sufficient funds remain in it to pay this claim.

This is a matter of lapsed appropriations, and no new issues of law were presented. No other evidence, oral or written, was presented to the Court, and both parties waived briefs.

Both parties agreed that this award of \$8,400.00 will constitute full and final satisfaction of the claim herein or any other claim arising out of the same occurrence.

While this Court is not necessarily bound by a stipulation such as this, it has no desire to interpose a controversy where none appears to exist. The stipulation submitted by the parties appears to have been entered

into freely and fairly, and its contents appear to be reasonable. The Court, therefore, finds no reason not to accept this stipulation and to follow its recommendation of an award for \$8,400.00.

It is hereby ordered, that the Claimants be awarded \$8,400.00 in full and final satisfaction of this Claim.

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(No. 83-CC-0157—Claimant awarded \$4,393.78.)

**GAIL MANGLE, Claimant, v. THE STATE OF ILLINOIS,**  
**Respondent.**

Order filed September 26, 1983.

**DOUGLAS G. BROWN, P.C. (MARK S. ROHR, of counsel),**  
 for Claimant.

**NEIL F. HARTIGAN, Attorney General (SUE MUELLER,**  
 Assistant Attorney General, of counsel), for Respondent.

*CONTRACTS—stipulation—contract services—award granted.* Stipulation by State was considered in making award for remaining amount due on contract by which Claimant provided telephone collection services to Department of Public Aid, as amount due was agreed upon, funds existed in account from which claim would have been paid and departmental report supporting stipulation was *prima facie* evidence of facts set forth therein.

ROE, C.J.

This cause having come for consideration on the Respondent's stipulation and the Court being duly advised in the premises:

Finds, that the Claimant in this' matter was an independent contractor contracted with the Illinois Department of Public Aid to provide telephone collection services during the period' of July 1981 through June 1982. Claimant is now requesting \$4,574.24 remaining on her contract. The original ceiling on this contract was \$25,000.00. The Illinois Department of Public Aid is

unable to determine the quality of the Claimant's performance because of missing records. However the Department has determined that the Claimant has been paid **\$20,606.22** on her contract, and the amount remaining is **\$4,393.78**. The account from which this claim would have been paid is a non-appropriated revolving fund, commonly referred to as the **421 Fund, 421-47855-1900-01-99**, the public assistance recovery trust fund.

This information was received from a departmental report attached to the Respondent's stipulation. That departmental report, under Rule **14** of the Rules of the Court of Claims of the State of Illinois, is considered to be *prima facie* evidence, of the facts set forth therein.

The Illinois Department of Public Aid has agreed to liability in this matter in the amount of **\$4,393.78**.

It is hereby ordered that the Claimant be, and hereby is, awarded the amount of **\$4,393.78**, from the public assistance recovery trust fund, Fund **421, 421-47855-1900-01-99**. This payment shall be in complete accord and satisfaction of this claim. The claim for attorney fees is denied.

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(No. 83-CC-0287—Claim dismissed)

S. D. LOUGE AND ASSOCIATES, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

*Order filed March 8, 1984.*

WESTERVELT, JOHNSON, NICOLL & KELLER, for Claimant.

NEIL F. HARTIGAN, Attorney General (SUE MUELLER, Assistant Attorney General, of counsel), for Respondent.,

CONTRACTS—*contract not proven—claim denied*. Claimant's action to recover for services rendered in investigating workers' compensation claim was dismissed, as Claimant failed to prove that it properly contracted with State of Illinois to provide such services.

ROE, C.J.

This cause having come for consideration on the Respondent's motion to dismiss and the Court being duly advised in the premises:

Finds, that Claimant is seeking payment for services rendered when it allegedly investigated a workers' compensation claim. Claimant alleges that he was authorized to do this work on behalf of the State of Illinois by Baroni & Baroni. Claimant has failed to produce a contract between itself and Baroni & Baroni, and has also failed to show any evidence that Baroni & Baroni was an authorized agent of the State of Illinois. The Illinois Department of Central Management Services, State department or agency, issued a departmental report which is considered *prima facie* evidence of the facts set forth therein pursuant to Rule 14 of the Rules of the Court of Claims of the State of Illinois. This departmental report indicates that the agency has no contract on file with either the Claimant or Baroni & Baroni, and has absolutely no knowledge of receiving any services from the Claimant or that the Claimant's services were retained by anyone having the authority to issue a contract on behalf of the State of Illinois or Central Management Services.

It is axiomatic that this Court will not authorize payment of a claim by a vendor who is unable to prove from the onset that it properly contracted with the State of Illinois.

It is hereby ordered that this case be dismissed.

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(No. 83-CC-0315—Claimant awarded \$1,774.11.)

**AETNA CASUALTY & SURETY COMPANY OF ILLINOIS, Claimant, v.  
THE STATE OF ILLINOIS, Respondent.**

*Order filed April 12, 1984.*

AETNA CASUALTY & SURETY CO. OF ILLINOIS, *pro se*,  
for Claimant.

NEIL F. HARTIGAN, Attorney General (WILLIAM E.  
WEBBER, Assistant Attorney General, of counsel), for  
Respondent.

REPRESENTATION AND INDEMNIFICATION ACT—*supersedeas bond for Attorney General—award granted.* Claimant, as surety, posted *supersedeas* bond for Attorney General as required by Federal court when State appealed civil contempt citation arising from civil rights action which resulted in consent decree and Claimant was granted award for sum due when Claimant performed under bond.

ROE, C.J.

This cause comes on to be heard on the Respondent's motion to reopen and reconsider an award which we previously held in abeyance by order of this Court dated January 5, 1984;

The court finds:

1. That Claimant, Aetna Casualty & Surety Company of Illinois, as surety, posted a *supersedeas* bond for the Office of the Attorney General as principal.
2. That the bond was required of the State of Illinois by a Federal district judge when the State appealed a civil contempt citation, *Hughes v. Vujovich*, No. 80-2729, in which the assistant Attorney General for the State of Illinois was ordered to pay attorney fees of \$1,500.00 and expenses of **\$46.34**, plus interest.
3. That that proceeding arose out of a case entitled *Hughes v. Gentry*, No. 78-C-2523, which was a civil rights case which ended with a consent decree dated

April 4, 1980, which required the Department of Corrections to pay plaintiff **\$525.00**.

4. That the assistant Attorney General for the State was held in civil contempt when he attempted to set off against this payment an amount owed by the plaintiff to the State as a result of an award of attorney fees in *Hughes v. Rowe*, No. 77-C-4583.

5. That the Court of Appeals for the Seventh Circuit affirmed the decision of the Federal court in *Hughes v. Vujovich*, No. 80-2729.

6. That Claimant paid to Shiff, Hardin & Waite, attorneys for Russell B. Hughes, Jr., **\$1,774.11** on June 23, 1982.

7. That the assistant Attorney General for the State is a State employee with the right of indemnification under "An Act to provide for Representation and Indemnification in certain civil lawsuits." Ill. Rev. Stat. 1981, ch. 127, par. 1301 *et seq.*

8. That by posting of the *supersedeas* bond and making the required payment for attorney fees, expenses and interest, the Claimant here succeeds to the right of indemnification.

9. That the claim at bar was pending in this Court on the date of our decision in *Norman v. State* (1983), 35 Ill. Ct. Cl. 895, and, said decision having prospective effect only, is not barred thereby.

Wherefore, it is hereby ordered that the Claimant be, and hereby is, awarded the sum of **\$1,774.11**.

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(No. 83-CC-0326—Claim dismissed.)

**NILE MARRIOTT, Claimant, v. THE STATE OF ILLINOIS,**  
Respondent.

Order filed December 21, 1982.

Order on motion to vacate filed September 26, 1983.

**SHEA, ROGAL & ASSOCIATES, LTD.,** for Claimant.’

**TYRONE C. FAHNER, Attorney General (WILLIAM E. WEBBER, Assistant Attorney General, of counsel),** for Respondent.

LEASES—conditional lease—condition not met—claim dismissed. Lease was conditional on appropriation of funds to pay rent due, and therefore claim for rent due was denied, as condition was not met, since legislature failed to make required appropriation.

**ROE, C.J.**

This cause coming on to be heard on the motion of the Respondent to dismiss, ‘it appearing that due notice has been given, and the Court being fully advised in the premises;

Claimant seeks the sum of \$55,696.08 for rent unpaid for the balance of the term of a lease entered into between him and the Respondent. The lease in question was signed on May 16, 1980, to be effective commencing June 1, 1980, for the 36-month period terminating on June 30, 1983. The tenant, the Environmental Protection Agency, vacated the premises prior to June 30, 1981, but paid the rent through said date.

The lease, a copy of which was attached to the complaint, contains a provision as follows:

“Lessor understands and agrees that continuation of this lease and all obligations and covenants hereunder, during the term, or any subsequent renewal or extension of this lease, shall be subject to passage of a suitable appropriation to the Agency by the General Assembly of the State of Illinois, and to lawful availability to the Agency of sufficient funds for the payment of rent. If this lease is terminated as hereinafter provided, the rental of the monthly rate specified shall be payable only to the date of termination.”

The Civil Administrative Code (Ill. Rev. Stat., ch. 127, par. 63b13.2), requires that all leases negotiated by the Department of Administrative Services contain such a clause.

Apparently the legislature in appropriating funds for the Environmental Protection Agency's ordinary and contingent expenses for fiscal years 1982 and 1983 inserted language to the effect that the line item appropriation for contractual services could not be used to pay the rent on the lease in question here. It would therefore seem the lease agreement was conditional, and with the condition not having been met it cannot be enforced. However, Claimant asserts in his complaint (he filed no responsive pleading to the motion to dismiss; the time for doing so having expired at the time this opinion was being prepared) that the language in the appropriations legislation restricting the agency's use of the line item is a substantive provision and such provisions are without effect, presumably because they are unconstitutional. In its motion to dismiss, Respondent makes a counter: argument in favor of the legislation's constitutionality.

Although a copy of the legislation was not provided us by either party, we find it unnecessary to review it. We find that this Court's holding on rehearing in the case of *Gossar v. State* (1962), 24 Ill. Ct. Cl. **183**, 192, is dispositive of the issue. We do not feel authorized to pass on the constitutionality of an act of the legislature. In addition, it should be pointed out that we have no authority to grant the relief sought without going to the legislature and it has already considered the matter.

Accordingly, we find that the lease was conditional, that the condition was not met, and therefore the terms of the lease cannot be enforced. It is hereby ordered that this claim be, and hereby is, dismissed.

## ORDER ON MOTION TO VACATE

ROE, C.J.

This cause comes on to be heard on the Claimant's motion to vacate, due notice having been given, and the Court being fully advised in the premises:

We have reviewed the motion at bar and find that it does not state sufficient cause to vacate our order of dismissal dated December 21, 1982. No error was alluded to nor were any facts supposedly overlooked alleged.

Wherefore, it is hereby ordered that this claim be, and hereby is, dismissed.

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(No. 83-CC-0494—Claimants awarded \$750.00.)

DESIREE GROENLAND and MICHAEL GROENLAND, Claimants, v.  
THE STATE OF ILLINOIS, Respondent.

*Opinion filed February 27, 1984.*

TUTT & KODNER, for Claimants.

NEIL F. HARTIGAN, Attorney General (ROBERT J. SKLAMBERG, Assistant Attorney General, of counsel), for Respondent.

*STIPULATIONS—broken edge of highway—car into ditch—claim allowed.* Pursuant to the joint stipulation of the parties, Claimant was granted an award for the injuries suffered when her car struck a broken section on the edge of the highway, went out of control and traveled into a ditch.

RAUCCI, J.

This cause coming on to be heard on the joint stipulation of the parties hereto, the Court being fully advised in the premises, finds:

That this is a personal injury action brought pursuant to section 8(d) of the Court of Claims Act. Ill. Rev. Stat. 1981, ch. 37, par. 439.8(d).

On December 1, 1981, Respondent had control and responsibility for maintenance of a State highway known as Route 68, at or near its intersection with Quentin Road, in Palatine Township, Illinois. At the time of the accident, the Claimants' automobile, which was being operated by Desiree Groenland, struck a broken section of the edge of the highway, causing her to lose control of the automobile and travel into a ditch located next to the highway.

It is therefore ordered that the Claimants, Desiree Groenland and Michael Groenland, be and hereby are awarded the sum of seven hundred fifty dollars and no/cents (\$750.00), in full satisfaction of this claim.

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(No. 83-CC-0584—Claimant awarded \$3,500.00.)

OREST F. BELVEDERE, JR., Claimant, *v.* THE STATE OF ILLINOIS,  
Respondent.

*Opinion filed September 1, 1983.*

OREST F. BELVEDERE, JR., *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (GLEN P. LARNER, Assistant Attorney General, of counsel), for Respondent.

**BAILMENTS—*inmate's property destroyed in fire—claim allowed.*** Inmate of correctional facility was granted award for property lost when cell caught fire, as evidence established that Claimant requested State to store items on evening before fire, as Claimant was going to hospital the next day, and State refused request, and State's failure to store items was proximate cause of loss that occurred.

HOLDERMAN, J.

Claimant in this cause was a resident of Stateville Correctional Center. He has filed suit for loss of personal property that occurred on May **21,1981**, when he was a resident of Pontiac Correctional Center. Claimant was taken from his cell to a hospital in Pontiac, Illinois, for medical attention, at approximately 6 o'clock in the morning. His cell mate was a barber in the institution barber shop and he left the cell about 6:30 a.m. for breakfast and to report to work. The cell was vacant thereafter.

At approximately **11:45** a.m., a fire was discovered in the cell. The State fire marshal, after investigation, concluded that the fire was caused by a cigarette smoldering on a mattress in the cell. Claimant's property was totally destroyed in the fire.

On May **20**, 1981, the day before the fire, Claimant learned he would be going to the hospital the next day and he expressly asked a cell house sergeant and a lieutenant to store his property in a store room. Contrary to departmental regulations, they refused to do so even though his property at that time was stored largely in boxes as a result of having just moved from one cell house to another. Both the sergeant and the lieutenant refused to remove his property, as requested by Claimant, with the result that the property was destroyed in the fire.

Claimant testified at some length as to the loss he had incurred and his claim was further substantiated by resident personal property permits and various other documents that were introduced at the time of the trial.

Claimant's original claim was for **\$5,369.00**. It ap-

pears to the Court that the value of the property lost was at least \$3,500.00.

This Court has held that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual and physical possession of such property. See *Scott v. State* (1978), 32 Ill. Ct. Cl. 756.

In the present case, the State did not take actual possession of the property in question, although it is the Court's opinion that the request made by Claimant that they do so, which request was made the day before the loss incurred and was denied, places the Respondent in the position of having failed to abide by its own rules. It is interesting to note that the Respondent did not introduce any evidence as to the reason for the refusal of the sergeant and lieutenant to take possession as requested by Claimant.

It is also interesting to note that the Claimant's cell was vacant for several hours before the fire actually occurred which is strong evidence of the fact that someone else was in the cell and left the cigarette which caused the fire.

It is the Court's opinion that the failure of the sergeant and lieutenant to take possession of the Claimant's personal property as he requested was the proximate cause of the loss that occurred. Claimant is therefore awarded the sum of three thousand five hundred (\$3,500.00)dollars, in full, final and complete settlement of all his claims.

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(No. 83-CC-1268—Claimant awarded \$7,000.00.)

**SPAETH AND COMPANY, Claimant, v. THE STATE OF ILLINOIS,**  
Respondent.

*Opinion filed July 1, 1983.*

THEODORE J. PRIESTER, for Claimant.

NEIL F. HARTIGAN, Attorney General (SUE MUELLER,  
Assistant Attorney General, of counsel), for Respondent.

**LAPSED APPROPRIATIONS—rent claim allowed—stipulation.** Claim allowed for rent, as expenditure was properly authorized and parties entered joint stipulation showing that sufficient amount lapsed to cover amount due.

POCH, J.

The record in this cause indicates that this is a standard lapsed appropriation claim. The Attorney General and the Claimant have entered into a joint stipulation based upon a report forwarded to the Office of the Attorney General by the Department of Labor, Bureau of Employment Security.

This Court finds that this was a properly authorized expenditure at prices reasonable, usual and customary in the area where received, of which \$7,000.00 remains unpaid. The purpose of the expenditure for which this claim was filed was for rent for October 1982 for 1510 6th Avenue, Moline, Illinois.

Money was appropriated under line item #052-45211-1200-00-00. A sufficient amount lapsed to cover this claim. Claimant's social security or Federal tax I.D. number is 36-6087509.

It is hereby ordered that the Claimant be and is hereby awarded, in full satisfaction of this claim, the sum of \$7,000.00.

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(Nos. 83-CC-1488, 83-CC-1489—Claim denied.)

CARMODY AUTO, Claimant, *v.* THE STATE OF ILLINOIS,  
Respondent.

*Order filed May 9, 1984.*

LEONARD H. CARMODY, *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (SUE MUELLER,  
Assistant Attorney General, of counsel), for Respondent.

*LEASES—lapsed appropriation—claim denied.* Although claim for rent due was fair and proper, claim was denied for lack of adequate appropriation from which it could have been paid, as stipulation of parties showed that there was no money remaining in appropriation to pay claim and grant of award by Court of Claims would usurp exclusive power of legislature.

ROE, C.J.

This cause having come for consideration on the joint stipulation of the Claimant, Carmody Auto, and the Respondent, State of Illinois, and the Court being duly advised in the premises;

The Court finds that these claims arise from the same lease, concern the same building, during the same time period, and would have been paid from the same appropriation. It appears from the joint stipulation submitted by the parties that the building in question is owned by Carmody Auto, and is located in East St. Louis, Illinois, where it was used continually from September through December 1981 by the State Community College, East St. Louis, Illinois, pursuant to a lease. When the lease was terminated in December of 1981, the weather was such that it was difficult for the State Community College to completely vacate the building, and the building was not completely vacated until February 1982. During this time the State Community College incurred the amount of \$1,511.66 in rent at a rate of \$755.83 per month. Furthermore, because of the inclem-

ent weather, the State Community College was unable to complete cleaning the building and making some repairs in the amount of \$840.00. Both of these amounts were stipulated to as being reasonable by the Claimant and the Respondent.

The stipulation of the Claimant and Respondent also establishes that there was no money remaining in the appropriation of the Community College to pay this claim, and the 2% transfer funds were also unavailable. This Court has consistently held in the past that it is unable to expend an appropriation beyond what the legislature has appropriated for that fiscal year. Article VIII, section 2(b) of the Illinois Constitution of 1980 prohibits this Court from appropriating money to pay this claim, as does section 30 of "An Act in relation to State finance" (Ill. Rev. Stat. 1983, ch. 127, par. 166). We have consistently held, as in *St. Mary's Hospital v. State* (1981), 35 Ill. Ct. Cl. 440, that to make an award where no unobligated funds lapsed at the end of the fiscal year would be to make a supplemental appropriation and, according to the constitution of this State, this is a power belonging solely to the legislature. Ill. Const. 1970, art. VIII, sec. 2(b).

This Court is not necessarily bound by a stipulation such as was submitted by the Claimant and the Respondent in this matter. However, the Court has no desire to interpose a controversy where none appears to exist. This stipulation submitted by the parties appears to have been entered into freely and fairly and its contents appear to be reasonable. The Court, therefore, finds no reason not to accept this stipulation.

It is hereby ordered that this claim, although it is a fair and proper claim against the State of Illinois, which

should have been paid, must be denied by this Court for lack of an adequate appropriation from which it could have been paid.

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(No. 83-CC-1590—Claim dismissed.)

**UNIVERSITY OF CHICAGO HOSPITAL, Claimant, v. THE STATE OF ILLINOIS, Respondent.**

*Opinion filed May 17, 1984.*

**HAYT, HAYT & LANDAU, for Claimant..**

**NEIL F. HARTICAN,, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counskl), for Respondent.**

**PUBLIC AID CODE—neonatal care—ineligible child—claim denied.** Hospital's claim for neonatal services rendered for newborn child of public aid recipient was denied, as services were rendered after mother was discharged from hospital and no application was ever made to make child eligible for medical assistance program in its own right, and a newborn child does not become a recipient simply as a result of birth to a recipient mother, since all persons wishing benefits must timely apply.

**ROE, C.J.**

This cause coming on to be heard on Respondent's motion to dismiss, due notice having been given and the Court being fully advised finds as follows:

The University of Chicago Hospital is here seeking a \$2,793.60 vendor payment, as provided in section 11—13 of the Public Aid Code (Ill. Rev. Stat. 1983, ch. 23, par. 11—13), from the Illinois Department of Public Aid (**IDPA**), for inpatient neonatal services which it rendered to a newborn infant during May and June of 1979. The subject, services began with the date on which the infant's mother; a public aid recipient, was discharged from

Claimant's hospital, and ended with the infant's discharge eight days later.

As explained by IDPA in its departmental report, hospitals are to bill both the mother's and the newborn's care to IDPA on a single invoice, covering services from the mother's admission for childbirth and including the days during which both mother and newborn were patients. Claimant did so in this case, and was paid in full by IDPA for the services furnished prior to the mother's discharge. The subsequent neonatal services for this infant are not, however, eligible for payment by the State, since at no time here relevant did the mother apply to IDPA to request recipient status for her newborn daughter. In the absence of such application, IDPA had no authority to determine the infant's eligibility for State-paid medical assistance.

As IDPA points out, a newborn child does not become a recipient simply as a result of his or her birth to a recipient mother. All persons wishing the benefits of recipient status must timely apply to IDPA for that status. In the case of minor children, the Public Aid Code (Ill. Rev. Stat. 1983, ch. 23, par. 11—15) provides that a parent, relative or guardian may apply for recipient status on the minor's behalf. IDPA's medical assistance program (MAP) *Handbook for Hospitals* outlines the procedures whereby the Claimant could have aided the mother in applying for MAP coverage for her infant. Since no application was submitted, there was no MAP coverage for the subject services.

Because this infant was not determined eligible for recipient status with respect to the period during which these services were rendered, payment by the State would be contrary to IDPA requirements.

It is hereby ordered that the claim be dismissed, the Claimant having failed to demonstrate an entitlement to payment for the subject neonatal services.

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(No. 83-CC-1706—Claim denied.)

MICHAEL H. ROBINSON, Claimant, *v.* THE STATE OF ILLINOIS,  
Respondent.

*Opinion filed February 2, 1984.*

MICHAEL H. ROBINSON, *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (ROBERT J. SKLAMBERG, Assistant Attorney General, of counsel), for Respondent.

NEGLIGENCE—*inmate of correctional facility— head injury while cleaning garage—luck of due care—claim denied.* Inmate of correctional facility suffered a head injury when an object fell from atop a cabinet which was being moved while inmate was cleaning garage, but claim for injuries was denied, as evidence established that inmate was familiar with garage area, having cleaned it for some time, but failed to exercise due care for his own safety on the occasion of his injury and the lack of due care was proximate cause of injury.

POCH, J.

This claim arises from personal injuries suffered by Claimant while he was an inmate at Joliet Correctional Center.

The Claimant, Michael H. Robinson, was an inmate at the Joliet Correctional Center on January 10, 1983. He and another inmate were assigned to clean a garage on the institution premises. Claimant had pulled away from the wall a six-foot-tall metal storage cabinet so that he could clean behind it. When he pushed the cabinet back towards the wall an automotive bead breaker fell off the cabinet and hit him on the head. As a result of the blow

on the head, Claimant suffered a painful injury but with no permanent ill effects.

A bead breaker is a heavy metal stand (26 pounds or more in weight) on which a tire rests while someone breaks the tire away from the rim. It was approximately two feet long, eight inches wide and two and a half feet tall. It was painted yellow. On January 9, 1983, the day before the accident, Claimant was likewise assigned to clean the garage and had taken the bead breaker from the top of the cabinet and put it on a table. Prior to Claimant's coming to work on January 10, 1983, someone had put the bead breaker back on top of the cabinet. A water pipe, suspended by straps fastened to the ceiling, ran the length of the room above the cabinet. At some unspecified time someone had hung a vehicle exhaust pipe from the water pipe. When Claimant pushed the cabinet back up against the wall the bead breaker came in contact with the exhaust pipe hanging from the water pipe, and this caused the bead breaker to tip over and fall off the cabinet.

Claimant was thoroughly familiar with the garage, having been cleaning it on an average of once a week for some time.

The record clearly indicates that the Claimant, in failing to verify the location of the bead breaker before pulling the cabinet away from the wall and pushing it back up against the wall, was not acting with due care for his own safety, and that his lack of care was the proximate cause of the accident.

It is the opinion of this Court that the Claimant has failed to prove the State was negligent and an award is hereby denied.

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(No. 83-CC-1707—Claimant awarded \$2,000.00.)

LAUREN L. LISS, Claimant, *v.* THE BOARD OF REGENTS OF THE  
REGENCY UNIVERSITY SYSTEM, Respondent.

*Order filed August 29, 1983.*

ALEXANDER & ZALEWA, for Claimant.

JOHN W. COUNTRYMAN, for Respondent.

STIPULATIONS—*joint stipulation—claim allowed.* Based on the joint stipulation of the parties, claim was allowed in full and final settlement against State.

HOLDERMAN, J.

This matter comes before the Court upon stipulation of Respondent. It is the Court's understanding that the parties hereto have agreed that Claimant is entitled to the sum of \$2,000.00 as full, final and complete settlement against the Respondent.

The stipulation, filed by Respondent, states that Claimant and her attorney have agreed to settle this case for said sum.

Award is hereby entered in favor of Claimant in the amount of two thousand (\$2,000.00) dollars, and according to a letter from Claimant's counsel at Northern Illinois University, said check in the above amount should be made payable to Lauren L. Liss and Mark J. Liss.

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(No. 83-CC-1720—Claimant awarded \$7,070.51.)

MARY BARTELME HOMES, Claimant, *v.* THE STATE OF ILLINOIS,  
Respondent.

*Opinion filed September 22, 1983.*

MCCARTHY & LEVIN, for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

LAPSED APPROPRIATIONS—obligations in excess of appropriations prohibited *unless* expressly authorized by law. State may not be obligated to any indebtedness in excess of money appropriated unless expressly authorized by law.

SAME—group home care services for wards of state—required by law—claim allowed. Claim for, group home care services rendered to children in custody of Department of Children and Family Services was allowed even though no funds remained in appropriation out of which claim should have been paid, as such services were required by law and provider should not be penalized because of State's difficulty in forecasting specific appropriation requirements for particular fiscal year.

**HOLDERMAN, J.**

The record in this cause indicates that the purpose of the expenditure by the Department of Children and Family Services for which this claim was filed was group home care services provided to children in the custody of the Department of Children and Family Services.

The Department of Children and Family Services has submitted a report on this claim which states that there were no funds remaining in the appropriation out of which this claim should have been paid (appropriation and fund No. 001-41817-4400-08-00), but that there were funds in appropriation and fund No. 001-41817-4400-02-00 which could have been transferred into the 06 fund if the Department had requested that a transfer bill be passed by the General Assembly. No transfer bill was passed, so technically these funds were not available to the Department for the payment of this claim.

Section 30 of "An Act in relation to State finance" (Ill. Rev. Stat. 1981, ch. 127, par. 166) prohibits obligating the State to any indebtedness in excess of the money appropriated for a department, unless expressly authorized by law. Therefore, the only way an award on this

claim may be made is if this expenditure was expressly authorized by law. Previously, expenditures for food and medical care for prisoners have been recognized to be expressly authorized by law. (*Fergus u. Brady* (1917), 277 Ill. 272.) Also the Court has considered this problem in connection with the apprehension and return of fugitives. In those cases, the Court has made awards on the basis that payment was expressly authorized by law.

The children for whom Claimant performed the services for which payment is sought were placed in the custody of the Department of Children and Family Services by order of the Circuit Court of Cook County pursuant to the Juvenile Court Act. (Ill. Rev. Stat. 1981, ch. 37, par. 701—1 *et seq.*) Section 1—12 of the Juvenile Court Act imposes upon the legal custodian of a child the duty to provide him with food, shelter, education and ordinary medical care.

The Court has considered the limitations placed on the Department of Children and Family Services by the General Assembly. It is the function of the General Assembly to control the expenditures of public funds by the various agencies of State government. However, this is a situation very close to that of *Fergus u. Brady*. Here, as in *Fergus u. Brady*, the State agency had custody by court order and was authorized by law to provide basic necessities for the persons in custody, in this instance children.

The invoice for these services was submitted after the close of the fiscal year, but the Department of Children and Family Services was required to pay that invoice out of funds for that prior fiscal year. This situation leads to unique and difficult forecasting problems for the Department of Children and Family Services. The provider of these services should not be

penalized because the Department is unable to accurately forecast specific appropriation fund requirements for each fiscal year. Had the Department been able to properly forecast, sufficient funds would have been available for the payment of this claim.

Because the expenditure here in question was required by law, it is hereby ordered that the claimant, Mary Bartelme Homes be and is hereby awarded the sum of \$7,070.51.

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(No. 83-CC-2016—Claim denied.)

**GEM CITY VINELAND Co., INC., Claimant, v. THE STATE OF ILLINOIS, Respondent.**

*Order filed November 29, 1983.*

GEM CITY VINELAND Co., INC., *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (WILLIAM E. WEBBER, Assistant Attorney General, of counsel), for Respondent.

**LICENSES—*wine manufacturer's license refund denied.*** Claimant was denied a refund of the fee paid for a wine manufacturer's license, as there was no statute authorizing the recovery of such a fee paid voluntarily and without compulsion, the evidence established that Claimant did pay the fee voluntarily and there was no mistake of law, but Claimant merely decided that a different type of wine-making license was desired.

POCH, J.

This cause comes before this Court on Respondent's motion to dismiss. The facts of the case are that the Claimant on February 1, 1983, made application for a first-class wine manufacturer's license and paid the sum of \$500.00 in accordance with the statute. The Illinois Liquor Control Commission issued a first-class wine

manufacturer's license to the Claimant on February **24, 1983**. Following the issuance of the first-class wine manufacturer's license, the Claimant, on March **17, 1983**, applied for a first-class wine maker's license and again paid the fee as required by statute. Then, before the issuance of the first-class wine maker's license, the Claimant applied on March **25, 1983**, for a wine maker's retail license and again paid the appropriate fee. On April **4, 1983**, both the first-class wine maker's license and wine maker's retail license were issued. Upon the issuance of the first-class wine maker and wine maker's retail licenses the Claimant voluntarily surrendered the first-class wine manufacturer's license. The Claimant would now like to have a refund for the amount paid for the first-class manufacturer's license. The Claimant may or may not have understood the legal significance attached to each license, but the Claimant did in fact get what it bargained for. If the Claimant made a mistake as to the legal significance of the license, this constitutes a mistake of law for which there is no recovery under the law. The Court in *Southside Petroleum Co. v. State* (1947), 16 Ill. Ct. Cl. **284**, stated:

**"A mistake of law is an erroneous conclusion as to the legal effect of known facts and therefore under the law payments made by Claimants are clearly a mistake of law and are not recoverable."**

Again in the same case, the Court stated that:

**"Fees and taxes paid voluntarily and without any compulsion or duress, cannot be recovered in the absence of a statute authorizing such recovery."** (16 Ill. Ct. Cl. **284, 286.**)

This Court is unaware of any statute authorizing the recovery for taxes paid voluntarily and without compulsion or duress.

To grant this Claimant a recovery would invite every licensee who simply changed their minds about wanting a license to seek a refund claiming mistake. No

license transaction would ever be final until the lapse of the licensing period.

For the above reasons, this claim is hereby denied.

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(No. 83-CC-2390—Claimant awarded \$5,543.09.)

LEE COUNTY, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed August 24, 1983.

ROBERT E. ROTH, for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

LAPSED APPROPRIATIONS—*return of fugitives*—claim allowed. County's claim for funds expended in returning fugitives from justice was granted based on the joint stipulation of the parties even though appropriations for that purpose were expended, as the State was unable to anticipate the exact amount necessary for this type of expense, but such expenditures are required by law.

POCH, J.

This cause coming to be heard on the joint stipulation of the parties hereto and the Court being fully advised in the premises;

This court finds that this expenditure was for the return, by the County of Lee, of fugitives from justice. Law enforcement officers are required to travel to other jurisdictions for the return of fugitives when the fugitives have been located and apprehended in various jurisdictions throughout the country. The expenses herein reflect the expenses incurred by the County of Lee in sending its law enforcement officers to return apprehended fugitives. The investigation and reports from the Department of Law Enforcement indicate that the appropriations for

this purpose were expended, leaving some of these expenses unpaid. Under the rules set forth in *Fergus v. Brady* (1917), 277 Ill. 272, this Court finds that inasmuch as the State was unable to anticipate the amount necessary to appropriate for this expense and that since this expenditure was one required of the State by statute, this Court awards the Claimant the amount of \$5,543.09.

It is hereby ordered that the sum of \$5,543.09 be and is hereby awarded to Claimant, County of Lee, in full satisfaction of the claim herein presented to the State of Illinois.

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(Nos. 83-CC-2586, 83-CC-2603, 83-CC-2701, 83-CC-2702, 84-CC-0113, 84-CC-0368, 84-CC-0425 cons. & not cons.—Claimants awarded \$590,634.52.)

MARILYN HARRIS *et al.*, Claimants, *v.* THE STATE OF ILLINOIS,  
Respondent.

*Opinion filed October 5, 1983.*

AVIVA FUTORIAN and DIANE REDLEAF, for Claimants.

NEIL F. HARTIGAN, Attorney General (ROBERT J. SKLAMBERG, Assistant Attorney General, of counsel), for Respondent.

*LAPSED APPROPRIATIONS—public aid benefits—claim delayed by Federal litigation—award granted.* Claims for benefits under AFDC program were not paid due to nonavailability of State funds for the period in which the debt was incurred and the State's inability to acknowledge the debt because of pending Federal litigation, but, based on the parties' joint stipulation predicated on the Federal court decision, award was granted.

ROE, C.J.

This cause coming on to be heard on the joint stipulation of the parties hereto, the Court being fully advised in the premises, finds;

That the multiple-party group of Claimants listed herein consists of **540** Claimants seeking individual judgments of varying amounts. These claims, in the aggregate amount of five hundred ninety thousand six hundred thirty-four dollars and fifty-two cents (**\$590,634.52**), are for recovery of benefits to which the named Claimants were entitled between April **1980**, and March **17, 1982**, but did not receive, under the Aid to Families with Dependent Children (AFDC) program of the Illinois Department of Public Aid. The joint stipulation is preceded by and predicated upon a U.S. district court decision in litigation entitled *Simpson v. Miller*, **81 C 2985**. This expenditure is authorized in article **IV** of the Public Aid Code (Ill. Rev. Stat. **1981**, ch. **23**, par. **4-1 et seq.**).

The amount due would have been paid in the regular course of business had the obligation been acknowledged by Respondent at the appropriate time. Such acknowledgment was not then possible because of protracted Federal court litigation, and Claimants could not be timely notified of their right to file claims until recently. By then, the appropriation of funds with which the Department of Public Aid would ordinarily pay such claims had lapsed.

The sole reason said obligation was not previously paid is the present nonavailability of State funds appropriated to the Department for the period in which this debt was incurred. Had this claim been acknowledged while such funds were available, it would normally have been paid extrajudicially: This is confirmed by the written report of the Department, a copy of which is attached to the joint stipulation.

It is therefore ordered that the multiple-party Claimants, Marilyn Harris *et al.*, be and are hereby each awarded the sums specified in the parties' joint stipula-

tion and exhibit R-1 thereto, for an aggregate amount of five hundred ninety thousand six hundred thirty-four dollars and fifty-two cents (**\$590,634.52**).

· APPENDIX—EXHIBIT R-1

Harris v. IDPA (Second Amended Complaint)

Adams, Barbara	\$ 150.00	
Adams, Dana	640.00	
Alessio, Elaine	210.00	
Alfaro, Charlotte	1,174.00	
Almore, Thelma	810.00	
Alvarez, Betty	275.00	
Alwerdt, Brenda	140.00	
Ammons, Barbara	123.00	
Anderson, Clara	120.00	
Anderson, Gloria	300.00	
Anderson, Linda	1,612.50	
Anderson, Patricia	1,900.00	
Applewhite, Lorraine	2,700.00	
Ash, Pamela S.	340.59	
Ashford, Brenda	420.00	
Bahl, Sharon	1,215.00	
Bailey, Erma	322.50	
Baines, Cynthia	780.00	
Barker, Maryanne	720.00	
Bartley, Patricia	1,404.00	
•Baxter, Eva (Oliver)	11500	—filed 7/29/83 as Oliver, Edna Baxter, No. 84-CC-364, a separate claim
Beasley, Sharon	920.00	
Beck, Sandra R.	2,100.00	
Bell, Debra E.	387.00	
Benson, Dorothy	3,200.00	
Benton, Evey	1,460.00	
Benton, Verna	3,070.00	
Berger, Mary	3,230.00	
Berkley, Deborah Jean	50.00	
Bernabei, Barbara	293.50	
Berry, Sandra	540.00	
Berry, Valerie	1,500.00	
Berry, Vicky	1,020.00	
Beunnett, Janette	465.00	
Bickert, Cynthia	428.00	
Billingsley, Brenda	105.00	
•Bingham, Rochelle	1,020.00	—filed 5/10/83 as No. 83-CC-2333, a separate claim

Birdsley, Cathryn	360.00
Birge, Sherry	1,000.00
Birmingham, Connie	1,440.00
Bizzle, Victoria	338.00
Blair, Gloria	1,200.00
Blakey, Rebecca	1,075.00
Blevins, Yolanda	150.00
Blount, Mary Ann T.	995.00
Bobbitt, Arlene	420.00
Bonds, Essie	210.00
Bones, Janis	1,020.00
Bonney, Janet	1,050.00
Booker, Elizabeth	1,700.00
Bradford, Genola	1,120.00
Bradley, Beverly	2,160.00
Brandon, Thelma	1,920.00
Brantley, Gloria	267.00
Brittnum, Sadie	5,370.00
Brock, Ann	1,140.00
Brooks, Diane	<b>1,780.00</b>
Brooks, Minnie	840.00
Brown, Antionette	362.50
Brown, Brenda	313.00
Brown, Carolyn	435.00
Brown, Cassandra	2,240.00
Brown, Jessie Lee	2,200.00
Brown, Juanita	179.00
• Bruchert, Mary J.	1,210.00—filed 5/20/83 as No. 83-CC-2414, a separate claim
Burnett, Charletta	366.50
Butler, Olivia	2,709.00
Byrd, Earnestine	135.00
Cadenas, Lynne	310.00
Camarillo, Guadalupe	360.00
Carter, Minnie	1,920.00
Castillo, Sylvia	1,000.00
Castillo, Tonette	1,040.00
Chambers, Ruthye	160.00
Chandler, Gwendolyn	1,800.00
Chatman, Renee	2,226.66
Chavis, Rosemarie	1,204.00
Childress, Barbara	2,520.00
Childs, Dorothy	1,490.00
Churchill, Phyllis	980.00
Clark, Marcia	140.00
Clinton, Willie M.	4,644.00
Close, Patricia A.	2,793.00
Coleman, Elizabeth	<b>600.00</b>
Coleman, Mabelene	1,400.00

Collins, Cuppie	850.00
Combs, Yolanda	420.00
'Compton, Irma J	650.00—filed 5/9/83 as No. 83-CC-2328, a separate claim
Connor, Jennifer	600.00—83-CC-2549
Connors, Donna	4,500.00—83-CC-2464
Cooper, Rosetta	2,451.00
Cooper, Theresa	1,935.00
Copenny, Lavern (Bridges) '	200.00
Corral, Maria	840.00
Couch, Terri	1,346.60
Cowans, Linda	1,000.00
Cowger, David	520.00
Cox, Elois	157.50
Crawford, Angela	660.00
'Crockett, Carmen	816.44—filed 7/6/83 as No. 84-CC-113, a separate claim
Crowell, Diane	1,444.50
Cruz, Maribel	344.00
Currie, Regina	2,580.00
Curtis, Joyce	520.00
Cutler, Donna	3,700.00
Dague, Nadine	174.50
Dahlman, Janet	723.28
Dailey, Ruthie	585.00
Darring, Karen	480.00
'Daugherty, Felicia	195.00—filed 6/16/83 as No. 83-CC-2701, a separate claim
'Davidson, Carolyn	200.00—filed 6/16/83 as No. 83-CC-2702, a separate claim
Davis, Annette	75.00
Davis, Deborah (Sandoval)	2,920.00
Davis, Delvona	600.00
Davis, Everdane	1,300.00
Dehart, Dora	360.00
Delaney, Lillie Mae	1,200.00
Dennis, Carol	<b>540.00</b>
Denniston, Lucinda	160.00
Desbiens, Karla M.	3,096.00
Diaz, Alicia	300.00
Dickey, Phillis	<b>650.00</b>
Dobbins, Betty	300.00
Dorsey, Phyllis L.	<b>550.00</b>
Douglas, Brenda	540.00
Drazy, Renee	1,400.00
Darling, Patricia Ann	860.00
Durbin, Kathy	277.90
Durham, Cora	500.00
Dye, Mary	1,892.00

Edmonds, Valerie	345.00
Edmund, Priscilla	242.00
Edwards, Peggy	2,902.50
Elliott, Charlene	1,650.00
Ellis, Maggie J.	3,633.50
Embery, Susan	175.00
Ephriam, Tarry	640.00
Estes, Carolyn	1,600.00
Evans, Joyce	1,935.00
Everts, Karen	1,844.00
Ewings, Diane	4,650.00
Faletti, Virginia	9.40
Farmer, Catherine	1,430.00
Feimster, Karen	575.00
Ferrell, Willa	1,300.00
Fields, Martha Jean	30.00
Finley, Martha A.	1,030.00
Finmara, Giovanna	800.00
Flake, Emma	1,200.00
Fleming, Betty	2,520.00
Flowers, Glen L.	1,180.00
Foster, Rosaline	2,950.00
Frazier, Rebecca	700.00
Freeman, Carrie Mae	148.44
Fulford, Gloria	720.00
Bailey, Delaine	846.00
Gaines, Fannie	750.00
Garcia, Carol	422.00
Gardner, Catherine	3,120.00
Garner, Annie	300.00
Garth, Margo	324.00
Gaston, Eleanor	165.00
Geiss, Ellen	451.50
Genovese, Marian	650.00
Gerord, Mable	360.00
Gibbs, Donna	4,800.00
Gill, Gwendolyn	300.00
Gillespie, Connie	1,083.00
Godinez, Cheryl	840.00
Goehl, Linda C.	161.00
Gomez, Emily	1,400.00
Gomez, Teresa	280.00
Gordon, Dorothy	160.00
Grafreed, Mary L.	1,634.00
Green, Darlene	847.00
Greenfield, Minnie	480.00
Gregory, Mattie	300.00
Griffin, Lovie	<b>2,300.00</b>
Gross, Terrie	430.00

Gulley, Deborah	215.00
Gustavson, Dennis	1,600.00—filed 8/15/83 as No. 84-CC-425, a separate claim
Hale, Ella	430.00
Hall, Addie	900.00
Hall, Ernestine	1,440.50
Hall, Lizzie	980.00
Hamilton, Mary	903.00
Harbor, Sherby	150.00
Harding, Diane	1,350.00
Harlan, Patricia	800.00
Harris, Dallas	3,165.00
Harris, Debbie	900.00
Harris, Marilyn	2,161.50
Harris, Teresa	419.00
Harrison, Brenda	594.00—filed 9/7/83 as No. 84-CC-551, a separate claim
Hartsock, Teresa G.	860.00
Hawkins, Louise	250.00
Hawrysko, Kathleen	390.00
Headley, Marilyn (Milton)	768.00
Heavlin, Sandra	1,672.52
Helfrich, Karen	<b>270.00</b>
Hemmitt, Janice	3,040.00
Herman, Joanne	3,010.00
Hernandez, Felicita	900.00
Hickmon, Jacqueline	840.00
Hicks, Carol Sue	2,300.00
Hicks, Dorothy	2,835.00
Hinton, Flora	2,050.00
Holman, Patricia	608.00
Holmes, Debra	450.00
Holmes, Diane	360.00
Holmes, Judith	133.62
Holmes, Ora	1,520.00
Holt, Debra	910.00
Horton, Sadie	2,580.00
Hoskins, Donna R.	637.00
Hotchkiss, Gwendolyn	320.00
Hough, Emma	920.00
Houston, Ellen	1,806.00
Houston, Marcian	800.00
Howard, Gwendolyn	420.00
Howlett, Joane	527.00
Hudson, Annie	160.00
Hudson, Deborah	3,780.00
Hughs, Patricia	783.00
Hunter, Karina L.	540.00
Hunter, Karina L.	774.00

Hunter, Ruby	420.00
Isenhart, Sheila	621.80
Ivy, Loretta	1,410.00
Jackson, Alesia	1,935.00
Jackson, Annie	576.00
Jackson, Christine	2,360.00
Jackson, Dave	1,260.00
Jackson, Deborah	900.00
Jackson, Janice	360.00
Jackson, Karen	1,155.00
Jackson, Ophelia	200.00
James, Julia	2,470.00
Jarrett, Brenda	78.40
Jefferson, Valerie	2,173.15
Jennings, Darlene	380.00
Jimenez, Josephine	1,548.00
Johnson, Alta Marie	300.00
Johnson, Barbara	920.00
Johnson, Claudia	2,400.00
Johnson, Crozelle	280.34
Johnson, Deborah	175.00
Johnson, Doris J.	550.00
Johnson, Dorothy	2,451.00
Johnson, Jacqueline	935.00
Johnson, Mary	1,040.00
Johnson, Maxine	450.00
Johnson, Michelle	232.50
Johnson, Patricia	4,160.00
Johnson, Sandra	229.00
Jones, Bobbie	840.00
Jones, Georgia	3,680.00
Jones, Louise	1,360.00
Jones, Lucy Mae	630.00
Jordan, Juanita	1,500.00
Joseph, Cynthia	600.00
Katich, Deborah	448.00
Keithley, Marcia	670.00
Kennedy, Annie	1,350.00
Kessel, Lori S.	575.00
Kimbrough, Alberta	544.00
King, Barbara	800.00
King, Diane S.	400.00
Kitchen, Nancy	300.00
"Knight, Peggy Ann	300.00—filed 5/17/83 as No. 83-CC-2399, a separate claim
*Kostecka, Robin	1,260.00—filed 8/17/83 as No. 84-CC-455, a separate claim
Kowatch, Diane	1,977.00
Kyle, Marie	280.00

Labon, Essie	967.50
Lane, Annie	3,220.00
Lane, Carol	1,920.00
Lannom, Patricia Marie	1,032.00
Large, Georgie	962.28
Lasey, Mary	434.00
Lathion, Mary Alice	800.00
Lawshee, Mary L.	420.00
LeShore, Juanita	2,760.00
Leblanc, Delores	709.50
Lebron, Margarita	1,000.00
Lee, Irma Jean	265.64
Lewis, Sheila	600.00
Lhotak, Karen	492.50
Lietz, Roberta	99.00
Lindsey, Diane	575.00
Lindsey, Eva	860.00
Livingston, Fannie	285.00
Lodes, Mary K.	462.50
Lopez, Joyce	480.00
Lucas, Brenda	<b>335.00</b>
Lyles, Jacalyn	1,882.28
Lynch, Jeanette	450.00
Mackey, Dorothy	1,050.00
Maddox, Dorothy	2,080.00
Madison, Rhonda	640.00
Majercin, Greta Kay	1,618.00
Maple, Delores	300.00
Marlow, Ollie	250.00
Marlowe, Teresa	300.00
Masa, Claudia	162.35
Mason, Ethel	640.00
Mason, Mary	1,715.00
'Maxie, Wendy Kaye	500.00—filed 7/29/83 as No. 84-CC-365, a separate claim
McCants, Lorraine	1,207.50
McCaster, Emma	900.00
'McCollough, Patricia	2,700.00—filed 5/13/83 as No. 83-CC-2383, a separate claim
McConnell, Bonita	280.00
McCord, Evelyn A.	190.00
McCurry, Diane	1,200.00
McDonald, Helen	<b>336.00</b>
McDonald, Ida	2,064.00
°McGary, Janet D.	325.00—filed 5/16/83 as No. 83-CC-2340, a separate claim
McGee, Terri	924.50
McKee, Janice	2,720.00

McKnight, Aletha	232.00
McPhan, Claudia	1,376.00
McQuillin, Jennifer	720.00
Means, Shirley	2,112.00
Michalek, Norma	552.00
Miller, Carolyn	832.00
Miller, Diana	2,880.00
Miller, Lessie	450.00
Miller, Lou Ada	1,440.00
° Miller, Susanna	1,190.00—filed 5/17/83 as No. 83-CC-2400, a separate claim
Miller, Virgie	396.00
Millins, Wendy	112.70
Mills, Alice	1,500.00
Minor, Sandra	550.00
Mims, Letha	888.00
Mitchell, Patricia	420.00
Mobley, Judy	1,997.50
Moll, Marcia	537.50
Montgomery, Deloris	645.00
Mooney, Flossie	602.00
Moore, Beverly	540.00
Moore, Willie B.	960.00
Moore, Zernighda	2,064.00
Moriarity, Debra	3,450.00
Morin, Joan	250.00
Morris, Emma J.	500.00
Morrow, Lillie M.	1,218.75
Moss, Pamela	501.15
Moyer, Geneva	1,216.25
Mudd, Navita	200.00
Murphy, Sharon	280.00
Murray, Barbarajean	392.00
Myers, Jean	16.00
° Najera, Mary	1,064.00—filed 8/16/83 as No. 84-CC-453, a separate claim
Nason, Jacqueline	990.00
Neal, Doris	1,062.50
Neal, Patricia Ann	1,140.00
Nicholas, Gwendolyn	172.00
Noel, Marie A.	536.00
Novakovich, Joann	550.00
Nowels, Cynthia	903.00
O'Brien, Helen	629.70
O'Donnell, Margaret	235.00
Oglesby, Elfrieda	1,520.00
Olivio, Amalia	803.00
Otten, Judy L.	118.22

Page, Patricia	165.00
"Page, Stephanie	1,505.00—filed 5/16/83 as No. 83-CC-2388, a separate claim
Pate, Dorothy	1,935.00
Payner, Kathy Pople	80.00
Payton, Barbara	600 00
Perez, Aida	490 00
Perry, Betty	1,827.50
Perry, Jeanne	90 00
Peters, Marvalene	1,340 00
Pitts, Shirley	1,200.00
Pizano, Brenda	890.00
Poe, Jacqueline	1,750 00
Porter, Johnnie M.	900.00
Porter, Stella	662.50
Potts, Pamela	105.00
Powell, Albertha	160.00
Powell, Cynthia	2,240.00
Powell, Elizabeth	780.00
Presswood, Willie Mae	900.00
Price, Debra Joann	2,657 00
Pritchett, Doretta	168.00
Quinn, Joan	950.00
Randle, Jennette	2,800.00
Reddick, Kimberley S.	322.50
Reed, Diane	452.50
Reed, Michelle	107 50
Reid, Beatrice	1,140.00
Reid, Clarisy	1,400.00
Rembert, Valerie	200 00
Rhyns, Vernice	200.00
Richard, Bernice	400.00
Richardson, Gwenette	774.00
Riezinger, Lois	600 00
Riggleman, Karen	56.00
Rios, Lourdes	2,280.00
Rivera, Luz	375.00
Rivera, Sylvia	1,200.00
Robinson, Agnes	600.00
Robinson, Euzette	140.00
Robinson, Ruby	2,600.00
Rogers, Joyce	205.00
Root, Tammy Feemster	600.00
Rosado, Blanca	1,200.00
Routh, Nancy	432.00
Rush, Charlean	790.00
Rutledge, Luella	1,485.00
Ryan, Joan Tracy	550.00
Saddler, Syrena	2,025.00

◦Sample, Robin E.	5,462.70—filed 8/15/83 as No. 84-CC-437, a separate claim
Samuels, Alicia	2,100.00
Sanders, Vera	2,720.00
◦Sandifer, Beverly Ann	300.00—filed 5/17/83 as No. 83-CC-2401, a separate claim
Scales, Beatrice	1,120.00
Scales, Fredia	3,050.00
Scott, Florida	880.00
Scott, Rose	210.00
Seamon, Jacqueline	225.00
Seroka, Janice	1,080.00
Shahbaz, Sarah	1,741.50
Shack, Amanda	860.00
Shade, Cynthia	1,376.00
◦Shaffer, Angela	150.00—filed 6/8/83 as No. 83-CC-2603, a separate claim
Shamley, Lula	390.00
Sharon, Yolanda	2,400.00
Shelby, Freda	2,365.00
Shelvy, Patricia	700.00
Shelwood, Willie C.	3,880.00
Sheppard, Carlotta	1,720.00
Sherrill, Linda	4,085.00
Shirley, Brenda	397.50
Simpson, Deborah	1,080.00
Simpson, Doris	2,660.00
Simpson, Karen	2,546.00
"Sims, Charles L.	600.00—filed 8/3/83 as No. 84-CC-368, a separate claim
Sisney, Willetta	1,000.00
Slaughter, <b>Cora</b>	150.00
Smith, Frankie	1,000.00
Smith, Freddie	2,000.00
Smith, Glenda	2,520.00
Smith, Gwendolyn	480.00
Smith, Inell	4,800.00
Smith, Joe Ann	1,150.00
Smith, Vanessa	94.00
Sorini, Georgette	220.00
Spaulding, Eugene	184.50
Stamps, Lois	1,075.00
Standberry, Shirley	838.50
Stanton, Sharon	1,365.00
Starks, Bertha	4,730.00
Stinson, Essie	1,600.00
Stokes, Diane	3,266.50
Strother, Ruthie	1,440.00
Stroube, Carol J.	1,380.00

Sullen, Amanda	483.75	
Sutherland, Nancy	3,710.00	
Swington, Sharon	1,440.00	
Tate, Shirley	2,915.00	
Taylor, Janice Lockhart	2,408.00	
Taylor, Jermaine (Dorothy)	1,368.00	
Taylor, Joyce Denice	710.00	
Taylor, Minnie	250.00	
Taylor, Pamela	900.00	
Taylor, Sharnese	330.00	
Taylor-Goodman, Shelene	301.00	
Terrell, Pamela	750.00	
Theard, Marie	1,600.00	
Thomas, Diane	1,450.00	
Thomas, Karla Nadi	1,440.00	
Thomas, Paulette Moss	462.50	
Thompson, Mallie	1,956.50	
Thompson, Sharon	480.00	
Thnrmond, Letitia	840.00	
Tibbs, Sherial	1,239.25	
Titus, Sandra	1,182.50	
Townsend, Alfreda	390.00	
Trippel, Rosine Andre	1,152.00	
Turner, Edythe L.	65 00	
Turner, Ora Lee	400 00	
Turner, Yolanda	640.00	
Valentine, Diane	344.00	
<b>Vancleve, Beth Liechty</b>	494.58	
Vanlandingham, Clara	384.00	
Vega, Iris	240.00	
Virzint, Sandra	636.00	
Wagner, Juli	450.00	
Wakeman, Judy Lynn	600 00	
Waligoski, Cheryl	709.50	
Walker, Edna	2,459.38	
Ward, Delia	1,649.00	
Ward, Mamie C.	1,354.50	
Wardlow, Leslie	160.00	
Ware, Rosie Mae	840.00	
Warlock, Pamela	1,920.00	
Washington, Deborah	2,100.00	
•Washington, Leona	1,860.00	—filed 8/15/83 as No. 84-CC-424, a separate claim
Watlers, Linda	420.00	
Watson, Charlotte	588.15	
Watson, Katie	1,320.00	
Watts, Janet	1,700.00	
Weathersby, Constance	903.00	
Weaver, Rebecca	1,440.50	

Weaver, Sherryl	189.20
Webster, Paulette	280.00
Welcher, Hattie	2,300.00
West, Fredricka	315.00
West, Rosemary	1,230.05
West, Sheila	450.00
White, Bernadette	1,080.00
White, Deborah	1,845.00
Whitehead, Marla	3,500.00
William, Hattie M.	3,612.00
Williams, Bertha	400.00
Williams, Bonnie	1,225.00
Williams, Brenda	350.00
Williams, Chlorine	1,100.00
Williams, Demper	280.00
Williams, Dorothy	1,520.00
Williams, Emma	2,362.50
Williams, Linda	300.00
Williams, Mae	320.00
Williams, Sandra	1,397.50
Williams, Sunday	322.50
Willingham, Lynette	650.00
Willis, Annette	150.00
Wilson, Deanna Sue	477.00
Wilson, Lucille	645.00
Wilson, Marie	1,835.00
Wilson, Mary	3,784.00
Winslow, Hope L.	208.00
Witcher, Gloria	1,120.00
Withers, Essie	1,450.00
Withrow, Elizabeth	54.00
Wooley, Cynthia	1,200.00
Wright, Mildred	1,000.00
Wright, Sharon	960.00
Yates, Josephine	<u>420.00</u>

Total of individual *Simpson*  
claims recommended for Court  
award and State payment in  
*Marilyn Harris et al. v. Ill. Depf.*  
of *Public Aid*, Court of Claims  
No. 83-CC-2586 **\$590,634.52**

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(No. 83-CC-2716—Claimant awarded \$675.00.)

G. BROS. ROOFING, Claimant, *v.* THE STATE OF ILLINOIS,  
Respondent.

Opinion filed September 6, 1983.

G. BROS. ROOFING, *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

**LAPSED APPROPRIATIONS—public aid—roof repairs for homestead property—claim allowed.** Lapsed appropriation claim for roof repairs for homestead property based on report forwarded by Department of Public Aid was granted, as the expenditure was properly authorized and there were funds available for transfer to pay the claim.

HOLDERMAN, J.

The record in this cause indicates that this is a lapsed appropriation claim to which the Attorney General has stipulated based upon a report forwarded to his office by the Department of Public Aid.

This Court finds that this was a properly authorized expenditure of which **\$675.00** remains unpaid. The purpose of the expenditure for which this claim was filed was for roof repairs for homestead property, IDPA case No. **06-226-07-279641**.

Although the balance remaining in the appropriation out of which this claim should have been paid was insufficient to pay this obligation, there were funds available for transfer to have paid the obligation as authorized by section **13.2** of "An Act in relation to State finance" (Ill. Rev. Stat. **1981**, ch. **127**, par. **149.2**) and *Hall v. State*, 78-CC-0895, unpublished.

Money was appropriated under line item **001-47801-4400-03-00**. ('81) Claimant's social security or Federal tax I.D. number is **319-32-4087**.

It is hereby ordered that the Claimant be awarded in full satisfaction of this claim the sum of **\$675.00.**

(No 83-CC-2737—Claimant awarded \$24,787 00.)

**BRITT OFFICE SYSTEMS, INC., Claimant, v. THE STATE OF ILLINOIS, Respondent.**

*Stipulation filed July 28, 1983*

*Order filed August 18, 1983.*

**BRITT OFFICE SYSTEMS, INC., pro se, for Claimant.**

**NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.**

*LAPSED APPROPRIATIONS—duplicating and microfilming—stipulation—claim allowed. Based on the stipulation of the parties, claim was allowed for duplicating and microfilming, as claim was standard lapsed appropriation claim which should be paid*

**STIPULATION**

**ROE, C.J.**

This is a lapsed appropriation claim. The State agrees to an entry of an award based on the report filed in this matter which provides the following information:

Agency: Department of Law Enforcement

Purpose: For duplicating and microfilming the card files for the Illinois Department of Law Enforcement, division of support services, at Joliet laboratory.

Fund No. **001-45402-1200-00** Fiscal Year: FY81

Amount: **\$24,787.00**

Claimant's social security or tax No. \_\_\_\_\_

Sufficient funds lapsed to cover this claim.

## ORDER

ROE, C.J.

The record in this cause indicates that this is a standard lapsed appropriation claim which should be paid in accordance with the above stipulation. It is so ordered.

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(No. 83-CC-2756—Claimant awarded \$65.50.)

LENA MCGLENNON, Claimant, *v.* THE STATE OF ILLINOIS,  
Respondent.

*Opinion filed October 24, 1983.*

LENA MCGLENNON, *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (SUE MUELLER,  
Assistant Attorney General, of counsel), for Respondent.

*STIPULATIONS—damaged clothing—State employee—claim allowed.* Claimant suffered damage to her clothing when she brushed against exposed electrical wires while working as employee of Department of Revenue, and claim was allowed based on joint stipulation of parties showing that State conceded liability and that Claimant was exercising due care at the time

HOLDERMAN, J.

This claim comes before the Court on a joint stipulation of the parties which states as follows:

Claimant's clothing was damaged when she brushed up against two exposed electrical wires while going about her duties as an employee of the Illinois Department of Revenue. Claimant was in due care for her clothing at the time the incident occurred. The Respondent has conceded liability for the damage of the property to the extent agreed upon in the joint stipulation. Both parties agree that the value of the Claimant's clothing amounts to **\$65.50.**

No other evidence, oral or written, was presented to the Court, and both parties waived briefs. Both parties agree to the granting of an award to the Claimant for \$65.50.

Furthermore, the Claimant and the Respondent agree that this award will constitute full and final satisfaction of the claim herein or any other claim arising from this same occurrence.

While this Court is not necessarily bound by a stipulation such as this, it has no desire to interpose a controversy where none appears to exist. The stipulation submitted by the parties appears to have been entered into freely and fairly, and its contents appear to be reasonable. The Court, therefore, finds no reason not to accept it and follow its recommendation of an award for \$65.50.

It is hereby ordered that the Claimant, Lena McGlenon, be awarded the amount of \$65.50 in full and final satisfaction of this claim.

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(No 83-CC-2770—Claim dismissed )

**LUTHERAN GENERAL & DEACONESS HOSPITALS SCHOOL OF NURSING, Claimant, u. THE STATE OF ILLINOIS, Respondent.**

*Order filed November 9, 1983*

**LUTHERAN GENERAL & DEACONESS HOSPITALS SCHOOL OF NURSING, pro se, for Claimant.**

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

**PRACTICE AND PROCEDURE—scholarship claim for tuition reimbursement—claim dismissed—leave to amend granted. State refused to make payment for tuition reimbursement from Illinois State Scholarship Commission where**

records show that strident was enrolled full-time at different school and claim was denied, and Claimant was granted leave to amend since complaint failed to clarify circumstances under which Claimant was seeking payment.

ROE, C.J.

This matter coming to be heard on the motion of the Respondent to dismiss the claim herein, due notice having been given and the Court being fully advised;

Claimant is seeking tuition reimbursement from the Illinois State Scholarship Commission for Donna Ferrari for the summer term(s) during the 1980-81 school year. The Respondent's motion is based upon a departmental report from the Illinois State Scholarship Commission. The report is *prima facie* evidence of the facts contained therein. However, the facts are not entirely clear to us.

It appears from the departmental report that the Respondent refused to make payment to the Claimant because according to Respondent's records the student, Ms. Ferrari, was enrolled full-time during the fall term at a different school, Concordia College. The report states that Concordia College is the appropriate entity to bring this claim and not the Claimant herein. Apparently someone was supposed to have submitted a transfer from Concordia College to the Claimant but that did not occur.

This version is somewhat corroborated by the letter from the Claimant's financial aid coordinator to the Respondent commission. The letter, dated October 4, 1980 (*i.e.* during the fall term), stated that the student was then enrolled full-time at Concordia College but as "a nursing student under the auspices of . . . (the Claimant)". We are unsure of what that means. The letter does note however that the student was instructed to transfer her award to the Claimant but that the transfer apparently did not occur. The letter goes on to state that the

director of financial aid at Concordia College had agreed to make the request for the fall term payment on behalf of the student.

Thus, it seems clear to us that both parties are in agreement that Concordia College would be the appropriate party to seek payment on behalf of the student for the fall term of the 1980-81 school year. This raises the question of why was this claim filed by this Claimant in the first place. The letter referred to above appears to have been written for the purpose of effecting a transfer of the student's tuition payments to the Claimant for the winter and spring terms of the school year. Are those the terms for which the claim was made? The complaint provides no indication. In addition to the letter referred to above, a "Notification of Status" form was attached to the complaint which further confuses the situation. It relates to the fall term.

Claimant has not responded to the motion to dismiss or sought leave to file an amended complaint or otherwise attempted to prosecute this claim. Therefore, we are of the opinion that the Respondent's position is correct and we will grant the motion at bar. However, we will allow the Claimant an opportunity to file an amended complaint.

Accordingly, it is hereby ordered:

1. That Respondent's motion be, and hereby is, granted;
  2. That Claimant is granted **21** days from the date of this order within which to file an amended complaint;
  3. That by this order, Claimant's complaint is hereby dismissed with prejudice if Claimant does not so file within the time set forth above.
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(No. 84-CC-0166—Claimant awarded \$1,000.00.)

**DAVID GOODRICH, Claimant, v. THE STATE OF ILLINOIS,  
Respondent.**

Opinion filed May 25, 1984.

**DAVID GOODRICH, *pro se***, for Claimant.

**NEIL F. HARTIGAN**, Attorney General (**ROBERT J. SKLAMBERG**, Assistant Attorney General, of counsel), for Respondent.

**PRISONERS AND INMATES**—*inmate* helping caterer—broken wrist—claim allowed. Claimant was an inmate of a correctional facility ordered to assist a private caterer serving food for the inmates at a picnic on the institution grounds, and an award was granted for the injuries Claimant sustained when he fell out of the caterer's truck and broke his wrist, as the evidence established that the caterer was the State's agent in controlling and directing Claimant's activities and the caterer negligently operated the truck thereby causing Claimant's injuries.

**POCH, J.**

This is a claim by David Goodrich, an inmate of Joliet Correctional Center, for injuries he sustained on Sunday, May 29, 1983, while riding on a truck, driven by an employee of Servomation Corporation, an independent contractor.

On Sunday, May 29, 1983, the inmates of the correction center had a picnic on the institution grounds.

The caterer, Servomation Corporation, used its own employees and also some inmates for catering food.

On Sunday, May 29, 1983, the Claimant and other inmates were assigned to the institution kitchen. When the picnic was over it was necessary for the inmates assigned to the kitchen to help return unused beverages, foodstuff, picnic tables, etc., to the kitchen.

At the direction of an employee of the caterer,

Claimant and other inmates loaded the excess food, etc., on the caterer's truck.

Six or seven persons, including an employee of the caterer, then got on the truck. Three persons including the caterer's employee sat on the tail gate, while Claimant sat on the spare tire inside the body of the truck holding a 55-gallon drum of ice with one hand and a table with the other. The driver, an employee of the caterer, had to drive about a block and a half on a black top road from the picnic site to the door of the kitchen. He slowed for a curve, let out the clutch, accelerated, and four people, including the Claimant, fell from the truck along with the **55-gallon drum of ice**, fracturing his right wrist. Claimant did not suffer any permanent injury to his wrist.

Prior to the accident, Claimant rode with the driver of the truck when deliveries were made to and from the picnic site to the kitchen.

At the time of the accident he was ordered to ride in the body of the truck to hold the stuff back there.

Claimant, an inmate, was required to take orders and carry them out. To refuse to do so would subject him to disciplinary action. Thus he did not occupy a position of independence which a person outside a penitentiary occupies. His choice of action being limited he kept silent and did as he was ordered. *Moore v. State* (1951), 21 Ill. Ct. Cl. 282.

When the State assigned the Claimant for kitchen duty under the direction and control of the State, the State made the truck driver its agent to the extent of its functions.

The Court finds from the evidence that the State through its agent was negligent and that Claimant is entitled to an award.

An award is, therefore, entered in favor of Claimant in the amount of one thousand (\$1,000.00) dollars,

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(No. 84-CC-0306—Claim dismissed.)

**LEON BLACKWELL, Claimant, v. THE STATE OF ILLINOIS, .**  
Respondent.

**LEON BLACKWELL, *pro se*, for Claimant.**

**NEIL F. HARTIGAN, Attorney General (GLEN P. LARNER, Assistant Attorney General, of counsel), for Respondent.**

**PRISONERS AND INMATES—*claim for conversion of inmate's property denied—administrative remedies not exhausted—complaint lacked details.*** Inmate of correctional facility filed claim for conversion of Claimant's property by Department of Corrections, but the claim was denied, as the record indicated that administrative remedies were not exhausted and the Claimant failed to supply sufficient details as to the specific nature of his claim.

**MONTANA, J.**

The commissioner having filed his report in this matter, and the Court being advised in the premises, this Court finds as follows:

In paragraph No. 1 of his complaint, Claimant states his cause of action as follows:

"1. This is a claim sounding in tort, is for the conversion of Claimant's property, monies received by the Illinois Department of Correction, and the unlawful Accounting Practices of the Stateville Correctional Center, inmate Trust Funds Business Office, of not documenting cash received between individual trust fund balances for inmates account and control account, and errors of \$1,340.00 for the fiscal years ending June 30, 1981 and 1982, and is filed pursuant to Ill. Rev. Stat., ch. 37, § 489.8(d)."

Claimant asks for an award in the amount of **\$4,020.00.**

On August 4, 1983, Respondent filed with the Court a motion for a 90-day continuance setting forth that prior to filing his claim in the Court of Claims, Claimant had failed to file a grievance with the Department of Corrections, and that, therefore, Claimant had failed to exhaust all of his remedies before filing his claim in this Court.

On September 2, 1983, Claimant filed a motion to strike Respondent's motion.

On December 17, 1983, the undersigned entered an order making no ruling on Respondent's motion or Claimant's motion to strike, but directing that Claimant within **30 days** from December 17, 1983, file a bill of particulars as required by Court of Claims Rule 5(A)9., stating in detail each item of Claimant's alleged damages, and the amount claimed on account thereof. Without such bill of particulars Claimant's complaint as drawn is unintelligible.

On reading the complaint it is not clear whether Claimant is grieving a specific personal loss of funds, or whether he is merely complaining about inmate trust fund accounting practices at Stateville Correctional Center in general. He does not allege specific errors with reference to his own account, and no errors appear on the face of the ledger sheets of his personal trust fund account which he has filed in the record. The complaint is totally lacking in details.

Moreover, Claimant has failed to supply these details by not filing his bill of particulars, pursuant to Rule 5(A)9 as directed by the commissioner.

Finally, it appears from the face of the record that Claimant did not exhaust his administrative remedies before filing his complaint.

It is hereby ordered that Claimant's complaint be and is hereby dismissed.

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(No. 84-CC-0407—Claimants awarded \$120,000.00.)

BERNADETTE PERHAM and TERRY YALE FEIERTAG, Claimants, *v.*  
THE STATE OF ILLINOIS, Respondent.

*Opinion filed May 9, 1984.*

MINSKY & FEIERTAG, P.C. (TERRY YALE FEIERTAG, *pro se*, of counsel), for Claimants.

DUNN, GOEBEL, ULBRICH, MOREL & HUNDMAN (RICHARD T. DUNN, of counsel), for Respondent.

**CIVIL RIGHTS—sex discrimination against university professor—stipulation—claim allowed.** Based on the joint stipulation of the parties, an award was granted to assistant professor at State university and her attorney for loss allegedly due to sex discrimination in violation of Federal statutory and constitutional rights and prohibitions, as the stipulation established that the matter culminated in a consent settlement order from the Federal district court providing for certain payments to Claimant and her attorney in return for release of her claims.

ROE, C.J.

This claim is before the Court of Claims following the filing of a joint stipulation whereby the parties agreed as follows:

1. Respondent Board of Governors of State Colleges and Universities is a body corporate and an agency of the State of Illinois. Ill. Rev. Stat. 1981, ch. 144, par. 1001 *et seq.*

2. The claim in this cause is made against Respondent in its capacity as an agency of the State of Illinois and is brought under sections 8(a) and (b) of the Court of Claims Act. Ill. Rev. Stat. 1981, ch. 127, pars. 439.8(a), (b).

3. The claim in this cause is not made under "An Act to Provide for Representation and Indemnification." Ill. Rev. Stat. **1981**, ch. **127**, par. **1301 et seq.**

4. Claimant Bernadette Perham was employed by the Board of Governors of State Colleges and Universities as an assistant professor in the mathematics department at Chicago State University.

5. Chicago State University is an institution of higher education established by the State of Illinois, and operated, managed, controlled and maintained by the Board of Governors of State Colleges and Universities, the Respondent. Ill. Rev. Stat. **1981**, ch. **144**, par. **1001 et seq.**

6. During her employment as an assistant professor in the mathematics department at Chicago State University, Claimant Bernadette Perham was allegedly discriminated against by reason of her sex in violation of Federal statutory and constitutional rights and prohibitions, *viz*: **42 U.S.C. secs. 1983, 1985(3), 1988**, and **2000(e) et seq.**, and the fourteenth amendment to the United States Constitution.

7. As a result of the alleged discrimination, Claimant Bernadette Perham filed charges with the Illinois Fair Employment Practices Commission and the United States Equal Employment Opportunity Commission. The Equal Employment Opportunity Commission having duly certified that it was unable to complete its investigation within **180** days from the date said charges were filed, the United States Department of Justice issued a right to sue letter to Claimant Bernadette Perham, who thereupon, individually and on behalf of all other persons similarly situated, filed her complaint for equitable, declaratory, monetary and other relief as a civil action in the United States District Court for the Northern District

of Illinois, Eastern Division, in Cause No. 75 C 259, naming the Respondent Board of Governors of State Colleges and Universities *et al.*, as defendants. Exhibit A to the claim in this cause is a true and correct copy of said complaint.

8. On April 6, 1978, said United States District Court granted Perham's motion for class certification and ordered that her complaint be maintained as a class action. Exhibit B to the claim in this cause is a true and correct copy of said court's memorandum opinion and the docket entry as to the granting of plaintiff's motion for class certification.

9. Following extensive discovery and the deposing of expert witnesses, the parties submitted a proposed consent settlement order to the United States District Court on November 1, 1982, after due notice to all persons concerned, and said court held a fairness hearing on the proposed order. Exhibit C to the claim in this cause is a true and correct copy of said consent settlement order.

10. On December 21, 1982, after careful consideration of the evidence, arguments, and pleadings submitted in support of and in opposition to the proposed settlement, the District Court entered the consent settlement order and its final approval of the class settlement. Exhibit D to the claim in this cause is a true and correct copy of said Court's approval of the consent settlement order and docket entry with respect thereto.

11. All periods within which any person could appeal from said consent settlement order have expired and no appeal has been filed. Said consent settlement order is final.

12. Throughout the proceedings hereinbefore de-

scribed Claimant Bernadette Perham was represented by her attorney, Claimant Terry Vale Feiertag, who appeared upon behalf of the certified class.

13. Among other things, said consent settlement order provided for:

(a) Payment of \$55,000.00 to Claimant Bernadette Perham, upon her execution of a release of her claims and those of said class;

(b) Payment of \$30,000.00 to Claimant Terry Yale Feiertag, as attorney for Claimant Perham and the class, as reasonable attorney fees, properly documented by contemporaneous time records which reflected at least 2,000 hours expended upon behalf of Perham and the class and properly allowed by said court.

(c) Payment of \$35,000.00 to Claimant Terry Yale Feiertag, as attorney for Claimant Perham and the class, for out-of-pocket litigation costs and expenses, properly documented by receipts for disbursements upon behalf of Perham and the class and properly allowed by the court.

14. The payments provided for in said consent settlement order and set forth in paragraph No. 13 above should be made and an award of said sums should be made by this Court.

We have reviewed the record. The stipulation is corroborated by the record. There is nothing more for us to consider. In matters such as the one at bar this Court is but a vehicle for payment. Actually, whether or not this Court concurs with the parties' stipulation and enters an award is immaterial because if the Federal court has jurisdiction to enter the order which is the subject of this claim (and it unquestionably does) the Federal court can

enforce its order and require the State to pay regardless of any action by this Court and/or any action by the legislature.

Accordingly, an award is hereby made to the Claimants according to the terms of the stipulation quoted hereinabove.

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(No. 84-CC-0696—Claim dismissed.)

**Laura Harrelson, Claimant, v. THE STATE OF ILLINOIS,**  
Respondent.

*Opinion filed January 11, 1984.*

**WILLIAM R. FORD**, for Claimant.

**NEIL F. HARTIGAN**, Attorney General (**ERIN O'CONNELL**, Assistant Attorney General, of counsel), for Respondent.

*NOTICE—personal injury—notice requirement not satisfied by notice given by other person in same accident.* Claimant's action for personal injuries was dismissed due to Claimant's failure to comply with notice requirements of Court of Claims Act, notwithstanding fact that notice was given by another individual who was involved in same accident, as proper notice by separate and distinct party does not relieve Claimant of filing notice as required by statute.

**HOLDERMAN, J.**

This matter comes before the Court upon motion of Respondent to dismiss, Claimant's response to Respondent's motion to dismiss, and Respondent's reply to said response.

On October 3, 1983, Claimant filed with the clerk and the Attorney General a document purporting to be a "Notice," a copy of which was attached to Respondent's motion to dismiss as Exhibit A.

Respondent's motion to dismiss sets forth that under section 22—1 of the Court of Claims Act (Ill. Rev. Stat. 1979, ch. 37, par. 439.22—1) the Claimant in a personal injury action is required to give notice. The contents of that notice as required by statute must include "the date and about the hour of the accident. . ." Respondent's motion states that Claimant has failed to comply with these requirements as required by the statute.

Respondent's motion further sets forth that section 22—2 of the Court of Claims Act (Ill. Rev. Stat. 1979, ch. 37, par. 439.22—2) states that:

"if the notice provided for by Section 22—1 is not filed as provided in that section, any such action. . . shall be dismissed and the person to whom any such cause of action accrued for any personal injury shall be forever barred from further action in the Court of Claims for such personal injury."

Claimant, in its answer to the motion to dismiss, sets forth that there was another personal injury action arising out of the same accident, that another individual filed suit in the Court of Claims, and proper notice having been given in that case, the State of Illinois had actual notice of the accident complained of.

It is the Court's opinion that a proper notice by another party entirely separate and distinct from the present cause of action did not relieve Claimant of filing a notice as required by the statute above set forth. To hold otherwise, the Court would impose upon Respondent in every personal injury case the burden of checking every personal injury case pending against Respondent to see whether proper notice had been filed in another case arising out of the same accident.

It is the Court's opinion that the statutory notice required was enacted to expedite the hearing of matters of this kind and not to impose any additional burdens upon Respondent.

Motion to dismiss is granted and this cause is dismissed.

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(No. 84-CC-0697—Claim dismissed.)

**RAYMOND VELA**, Claimant, *v.* **THE STATE OF ILLINOIS**,  
Respondent.

*Opinion filed January 11, 1984.*

**WILLIAM R. FORD**, for Claimant.

**NEIL F. HARTIGAN**, Attorney General (**ERIN O'CONNELL**, Assistant Attorney General, of counsel), for Respondent.

*NOTICE—notice required by Court of Claims Act.* Claim for personal injuries under Court of Claims Act may be dismissed if notice required by statute as to date and time of accident is not timely given.

*SAME—personal injury—notice requirement not satisfied by notice given by other person in same accident.* Claimant's action for personal injuries was dismissed due to Claimant's failure to comply with notice requirements of Court of Claims Act, notwithstanding fact that notice was given by another individual who was involved in same accident, as proper notice by separate and distinct party does not relieve Claimant of filing notice as required by statute.

**HOLDERMAN, J.** .

This matter comes before the Court upon motion of Respondent to dismiss, Claimant's response to Respondent's motion to dismiss, and Respondent's reply to said response.,

On October 3, 1982, Claimant filed with the clerk and the Attorney General a document purporting to be a "Notice," a copy of which was attached to Respondent's motion to dismiss as Exhibit A.

Respondent's motion to dismiss sets forth that under section 22—1 of the Court of Claims Act (Ill. Rev. Stat. 1979, ch. 37, par. 439.22—1) the Claimant in a personal

injury action is required to give notice. The contents of that notice as required by statute must include "the date and about the hour of the accident. . ." Respondent's motion states that Claimant has failed to comply with these requirements as required by the statute.

Respondent's motion further sets forth that section 22—2 of the Court of Claims Act (Ill. Rev. Stat. 1979, ch. 37, par. 439.22—2) states that:

"if the notice provided for by Section 22—1 is not filed as provided in that section, any such action. . . shall be dismissed and the person to whom any such cause of action accrued for any personal injury shall be forever barred from further action in the Court of Claims for such personal injury."

Claimant, in its answer to the motion to dismiss, sets forth that there was another personal injury action arising out of the same accident, that another individual filed suit in the Court of Claims, and proper notice having been given in that case, the State of Illinois had actual notice of the accident complained of.

It is the Court's opinion that a proper notice by another party entirely separate and distinct from the present cause of action did not relieve Claimant of filing a notice as required by the statute above set forth. To hold otherwise, the Court would impose upon Respondent in every personal injury case the burden of checking every personal injury case pending against Respondent to see whether proper notice had been filed in another case arising out of the same accident.

It is the Court's opinion that the statutory notice required was enacted to expedite the hearing of matters of this kind and not to impose any additional burdens upon Respondent.

Motion to dismiss is granted and this cause is dismissed.

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(No. 84-CC-1013—Claim dismissed.)

JAMES BARTON, Claimant, v. THE STATE OF ILLINOIS,  
Respondent.

*Order on motion to dismiss filed January 23, 1984.*

*Order filed March 6, 1984.*

CARPONELLI, DRUG, ADAMSKI & GOODSTEIN, for Claimant.

NEIL F. HARTIGAN, Attorney General (ERIN O'CONNELL, Assistant Attorney General, of counsel), for Respondent.

*NOTICE—statutory notice not given—claim dismissed.* Claim for personal injuries was dismissed due to lack of timely notice as required by Court of Claims Act, notwithstanding affidavit provided on Claimant's behalf to effect that notice was given via certified mail, return receipt requested, as affidavit was contradicted by affidavit filed on behalf of State, and Claimant failed to provide receipts which would have shown date notice was mailed at post office.

### ORDER ON MOTION TO DISMISS

HOLDERMAN, J.

This matter comes before the Court upon motion of Respondent to dismiss said cause filed November 18, 1983.

Respondent's motion sets forth that Claimant failed to file the necessary notice within the time set forth by statute. Sections 22—1 and 22—2 of the Court of Claims Act (Ill. Rev. Stat. 1979, ch. 37, pars. 439.22—1, 439.22—2), provide that Claimant shall file notice within six months from the date such injury was received or such cause of action accrued.

Claimant having failed to file notice as required by said statute, motion is granted and this cause is dismissed.

## ORDER

**HOLDERMAN, J.**

The Court entered an order of dismissal in this cause in January **1984**, which order stated that Claimant has failed to file notice as required by Section **22-1** of the Court of Claims Act (Ill. Rev. Stat. **1981**, ch. **37**, par. **439.22-1**).

On January **6, 1984**, Claimant filed his response to Respondent's motion to dismiss. Attached to said response was an affidavit of Richard B. Edelman, attorney for Claimant, to the effect that on April **30, 1982**, he attempted to hand deliver the notice of claim for personal injuries to the Secretary of State at **188 West Randolph, Suite 500, Chicago, Illinois**, at **4:25 p.m.** and that the doors were locked. Said affidavit further set forth that Richard B. Edelman then delivered the notice of claim for personal injuries to the post office located at Adams and Dearborn and mailed the same to the Secretary of State and the Attorney General via certified mail, return receipt requested. Copies of the receipts for certified mail were attached to said affidavit.

On January **24, 1984**, Respondent filed a reply to Claimant's response to motion to dismiss. Attached to said reply was an affidavit of Jane E. Schroeder, docket clerk of the Court of Claims, to the effect that the Secretary of State's Office at **188 W. Randolph, Suite 500, Chicago, Illinois**, was open until **5:00 p.m.** on April **30, 1982**.

The Court is therefore confronted with a situation of two affidavits, each in direct contradiction of the other. The statute in question made it incumbent **upon** Claimant to file notice as set forth in the statute and the Court

cannot find in the present record that this statute was complied with.

It is interesting to note that Claimant did not provide copies of the sender's receipts for certified mail which would have shown the date the notices of claim for personal injuries were mailed at the post office. The copies of the receipts attached to Claimant's response showed that the notice was delivered to the Attorney General's office on May 3, 1982, and the notice to the Secretary of State's Office was delivered on May 4, 1982.

The accident for which the notices were filed occurred on October 30, 1981, which meant that the last day for service was April 30, 1982. It is also interesting to note that the record is silent as to what efforts were made to file the proper notice with the Attorney General's office on April 30, 1982. The statute requires notice be served upon the Attorney General and the Court of Claims and that said notice should be filed within six months of the date of injury or the cause of action accrued.

The Court's granting of Respondent's motion to dismiss is affirmed and this cause remains dismissed.

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(No. 84-CC-1304—Claimant awarded \$24 00.)

BOARD OF TRUSTEES OF COMMUNITY COLLEGE DISTRICT No. 508,  
Claimant, v. THE STATE OF ILLINOIS, Respondent.

*Opinion filed May 25, 1984.*

F. ANNE ZEMEK, for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

LAPSED APPROPRIATIONS—MIA/POW scholarship claim—\$24 available—\$24 awarded. Claim was filed for reimbursement of an Illinois MIA/POW scholarship in the amount of \$204, but only \$24 remained in the appropriation to pay the claim which was not categorically commanded or expressly authorized by law, therefore an award was granted in the amount of \$24, the amount remaining in the appropriation.

ROE, C.J.

This claim has been brought by the Board of Trustees of Community College District No. 508 for reimbursement of an Illinois MIA/POW scholarship on behalf of one Angela Lockridge in the amount of **\$204.00**. The Claimant alleged that demand for payment from the Respondent's Department of Veterans' Affairs was made but that its demand was refused on the grounds that the appropriation from which payment was to have been made had lapsed.

The claim is before the Court on the Respondent's motion to dismiss and the Claimant's motion for summary judgment.

The motion to dismiss states that previous claims have exhausted the lapsed balance in the appropriation from which this claim should have been paid and that the Court of Claims has no authority to grant an award in cases where the balance of the appropriation remaining is insufficient to pay the claim. Attached to the motion as Exhibit A was a departmental report compiled by the Department of Veterans' Affairs which, pursuant to Rule 14 of the Rules of the Court of Claims, is *prima facie* evidence of the facts contained therein. The departmental report states that the claim was not paid because it was received by the department after the lapse period. It supports the Respondent's position that insufficient funds lapsed from which payment could have been made. Seventy-five dollars lapsed against which a prior claim for \$51.00 has been made. It does appear from the

report, and we so find, that \$24.00 of lapsed money could be applied toward payment of this claim.

The Claimant's 'motion for summary judgment asserted the following:

"3. POW/MIA Scholarships are granted to the eligible children of Illinois' Veterans pursuant to Chapter 122 Paragraph 30—14.2 of the Illinois Revised Statutes without regard to the amount appropriated for such purposes, because such scholarships are awarded according to eligibility and qualification. A qualified individual must begin using the scholarship prior to his or her twenty-sixth birthday, and then has a maximum period of twelve years after the first initial use to complete his or her education. Because POW/MIA scholarships remain open for such an extended period of time, the State is unable to anticipate the amount necessary to appropriate for this expense. Appropriations are therefore based on the amounts used over the previous fiscal year, with the consequence that occasionally insufficient funds are appropriated and a shortfall occurs.

4. The statute (Ill. Rev. Stat. ch. 122, par. 30—14.2) which awards MIA/POW scholarships states in part:

'Any (person) shall, upon application and proper proof, be awarded a POW/MIA scholarship. . . The holder of an MIA/POW Scholarship. . . shall not be required to pay any. . . fees. The amounts that become due to any state supported Illinois institution of higher learning shall be payable by the Comptroller to such institution. . .

5. The statute awarding MIA/POW Scholarships is a statute which categorically commands the performance of an act (i.e., the granting and payment of scholarships) because the scholarship holder cannot be held liable (Illinois Attorney General's Opinion S—1333 issued January 26, 1978) and the statute provides that the Comptroller must reimburse the school.

6. Where a statute 'categorically commands the performance of an act, so much money as is necessary to pay the command may be disbursed without explicit appropriation' *Tutle v. Tuchbreiter* (1953), 414 Ill. 571, 581

7. Illinois Court of Claims case law supports the proposition that where the state is unable to anticipate the amount necessary to appropriate for an expense, and such an expenditure is one required of the state by statute, the Court must make an award to Claimant even if the appropriation for the expenditure has already been expended. *Higgins v. Illinois* (1973), 28 Ill. Ct. Cl. 392, 393.

8. Claimant respectfully submits that because the statute awarding the scholarship is a categorical command for payment, Section 30 of the Act in Relation to State Finance (Ill. Rev. Stat. (1981), ch. 127, par. 166) as cited by Respondent is inapplicable.

9. There are no factual disputes with regard to matters contained in the complaint. The Department of Veterans' Affairs report indicated that were it not for the lapsed appropriation, Claimant would be paid in full.

10. The State Finance Act (Ill. Rev. Stat., ch. 127, par. 166) states in part: ‘§30 No officer, institution, department, board, or commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in an amount in excess of the money appropriated, **unless** expressly authorized by law.’

11. Claimant respectfully submits that its claim ~~is~~ one which is expressly authorized by law as **set** forth in Paragraphs 4 and 5 of this Motion, and should therefore be paid in full, regardless of the lapsed appropriation.”

We are of the opinion ,that section **30—14.2** of the School Code (Ill. Rev. Stat., ch. **122**, par. **30—14.2**) does not “categorically command” and “expressly authorize” the payment by the Respondent for the scholarships. The first sentence of the last paragraph of that section provides that “The benefits . . . (described in that section) . . . shall be administered by and paid for out of funds available to the Illinois Department of Veterans’ Affairs.” Thus the program is limited by law to the extent of funds available to the Department of Veterans’ Affairs. **As** previously pointed out, only **\$24.00** was available for payment of this claim.

Accordingly, it is hereby ordered that the Claimant be, and hereby is, awarded the sum of **\$24.00**.

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(No. 84-CC-1754—Claimant awarded \$320.58.)

FORETRAVEL, INC., Claimant, *v.* THE STATE OF ILLINOIS,  
Respondent.

Opinion filed *June 4, 1984*

FORETRAVEL, INC., *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (SUE MUELLER,  
Assistant Attorney General, of counsel), for Respondent.

**STIPULATIONS—damage due to snowplow—claim allowed.** Based on the joint stipulation of the parties, an award was granted to Claimant for the damage to property caused when a State employee backed a snowplow into

the property, as the State admitted liability and both parties agreed that the amount of the award would constitute full and final satisfaction of the claim.

**HOLDERMAN, J.**

This cause coming before the Court upon the joint stipulation of the parties and the Court being duly advised in the premises:

Finds, that the Claimant's property was damaged when an employee of the State of Illinois backed a snowplow into it. The amount of the damages was **\$320.58**. This information was supported by a motorist's report of Illinois vehicle accident, and several affidavits.

Respondent concedes liability for the damage of this property to the extent agreed upon in the joint stipulation.

Both parties agreed that the damage to the property was **\$320.58**. Both parties agree that this award would constitute full and final satisfaction of the claim herein or any other claim arising out of the same occurrence.

No other evidence oral or written was presented to the Court, and both parties waived briefs.

While the Court is not necessarily bound by a stipulation such as this, it has no desire to interpose a controversy where none appears to exist. The stipulation submitted by the parties appears to have been entered into freely and fairly, and its contents appear to be reasonable. The Court, therefore, finds no reason not to accept it and follow its recommendations for an award in the amount of \$320.58.

It is hereby ordered, that the Claimant be awarded the amount of \$320.58 in full and final satisfaction of the instant claim.

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(No. 84-CC-1949—Claimant awarded \$1,600.00.)

GEORGIA HALE, Claimant, v. THE STATE OF ILLINOIS,  
Respondent.

Order filed April 27, 1984.

BROWN, HAY & STEPHENS, for Claimant.

NEIL F. HARTIGAN, Attorney General (SUE MUELLER,  
Assistant Attorney General, of counsel), for Respondent.

TAXES—*improper seizure of automobile—award granted for costs of retrieving vehicle.* State stipulated to fact that Claimant's automobile was improperly seized by Department of Revenue and sold through its agents, and as there existed no procedure within the Department of Revenue by which Claimant could make a claim for refund of those monies, the Court of Claims granted Claimant an award in that amount.

RAUCCI, J.

This cause having come for consideration on the Respondent's stipulation and the Court being duly advised in the premises:

Finds, that a departmental report was issued by the Illinois Department of Revenue, State department or agency, on March 22, 1984, pursuant to Rule 14 of the Rules of the Court of Claims, and is considered *prima facie* evidence of the facts set forth therein. This departmental report establishes that the Department of Revenue concurs in the facts as set forth in the Claimant's complaint, to wit: that the Claimant's 1975 Lincoln automobile, license number 5Y82A—842400, was improperly seized and sold by the Department of Revenue through its agents, the Sangamon County Sheriff's Office. The Claimant, Georgia Hale, was required to expend \$1,600.00 in her own funds to retrieve this automobile.

The departmental report also informs that there exists within the department no procedure by which the

Claimant can make a claim for a refund of the monies she used to retrieve her automobile.

It appears to this 'Court that the Department of Revenue improperly seized and sold Georgia Hale's automobile and that she should be reimbursed for her cost for retrieving this automobile.

It is hereby ordered, that Georgia Hale be awarded in complete satisfaction of the above captioned claim and any other claim arising out of this occurrence, \$1,600.00.

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(No. 84-CC-2714—Claim dismissed.)

LENNY CROSBY, Claimant, v. **THE STATE OF ILLINOIS,**  
**Respondent.**

*Opinion filed June 28, 1984.*

LAND OF LINCOLN LEGAL ASSISTANCE FOUNDATION,  
INC. (GEORGE BELL, of counsel), for Claimant.

NEIL F. HARTIGAN, Attorney General (SUE MUELLER,  
Assistant Attorney General, of counsel), for Respondent.

REPRESENTATION AND INDEMNIFICATION *Am— judgment against directors of State agencies—violation of constitutional rights—claim denied.* Claim based on judgment obtained in Federal court against directors of Department of Public Aid and Department of Labor for violation of Claimant's constitutional and statutory rights was dismissed for failure to state cause of action, as Claimant failed to show that State **was** liable for alleged obligations of directors and the claim was not brought under the Representation and Indemnification Act.

ROE, C.J.

This claim is before the Court on the Respondent's stipulation of facts. The Respondent has stipulated that the facts as alleged in the Claimant's complaint are true and correct. Briefly, those facts are as follows. On June

**10, 1981**, judgment in the amount of **\$19,423.85** was entered for the Claimant and against the directors of the Illinois Department of Public Aid and the Illinois Department of Labor in their official capacities in a cause filed in the U.S. District Court, 'Central District of Illinois, No. **78—3067**. The nature of the complaint was that the Claimant's constitutional statutory rights were infringed by the directors, acting under color of State law in violation of **42 U.S.C. sec. 1983**. Pursuant to **28 U.S.C. sec. 1961** there is due and payable on that judgment interest at **14.000** percent compounded daily on this judgment. In addition to the aforesaid judgment amount and interest thereon, pursuant to **42 U.S.C. sec. 1988** the Claimant also is entitled to receive from the directors all reasonable attorney fees and expenses incurred subsequent to May **21, 1981**, in defending the judgment upon appeal and in enforcing the judgment. Through April **19, 1983**, those fees and expenses amounted to **\$3,920.68**. This claim has not been satisfied by either the Department of Public Aid or the Department of Labor. These facts were confirmed by an affidavit by the assistant attorney general of record in the Federal matter, which affidavit was attached to the stipulation and incorporated therein.

The Respondent asserts in the stipulation that this is a good and legitimate claim against the State of Illinois, and that the Court of Claims is the only recourse for payment available to the Claimant and her attorneys. The affidavit adds that because the action underlying this claim was filed against the directors of the Departments of Public Aid and Labor, and because the Court made no determination of respective liability for each, there was no single department having any budget or appropriation for the payment of this claim. Respondent observed that the obligations under this action do not

appear to rest with either individual department but seem to be an obligation of the State of Illinois generally.

We have reviewed the record and find that we do not concur with the Respondent. Upon careful examination we are of the opinion that the State of Illinois is not liable for the judgment, interest, fees, and expenses. The Federal action out of which this claim arose was brought pursuant to 42 U.S.C. sec. 1983, 42 U.S.C. sec. 1988, and 28 U.S.C. sec. 1961, and was against directors of two State agencies and not the State itself. The various states of this country are immune from liability for monetary damages under those statutes pursuant to the eleventh amendment of the United States Constitution. (*Edelman v. Jordan* (1974), 415 U.S. 651, 39 L. Ed. 2d 662, 94 S. Ct. 1347.) Contrary to the Respondent's observation, it seems clear to us that the alleged obligations here are not of the State of Illinois generally nor either of the departments but apparently those of the directors.

Claimant alleged in his complaint that jurisdiction of this Court lies pursuant to section 3(a) of the Court of Claims Act (Ill. Rev. Stat. 1981, ch. 37, par. 439.8(a)). Said statute reads as follows:

**"Sec. 8. The court shall have exclusive jurisdiction to hear and determine the following matters:**

**(a) All claims against the state founded upon any law of the State of Illinois, or upon any regulation thereunder by an executive or administrative officer or agency, other than claims arising under the Workers' Compensation Act or the Workers' Occupational Diseases Act, or claims for expenses in civil litigation."**

The Claimant in his complaint failed to allege any law or regulation of the State of Illinois upon which this claim is founded, and based on the pleadings we are unable to locate any. The facts alleged do not appear to bring this matter within the Court's jurisdiction because expenses in civil litigation are being claimed. (*Dewoskin v. State*

(1981), 35 Ill. Ct. Cl. 934.) The claim also does not appear to have to have been brought pursuant to “An Act to provide for representation and indemnification” (Ill. Rev. Stat. 1981, ch. 127, par. 1301 *et seq.*), for the claim was not made by a person covered by that Act and even if it were (brought by such a person) our decision in *Norman v. State* (1983), 35 Ill. Ct. Cl. 895, would seem to be controlling.

Accordingly, it is hereby ordered that this claim be, and hereby is, dismissed for failure to state a cause of action.

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## LAW ENFORCEMENT OFFICERS, CIVIL DEFENSE WORKERS, CIVIL AIR PATROL MEMBERS, PARAMEDICS AND FIREMEN COMPENSATION ACT

Where a claim for compensation filed pursuant to the Law Enforcement Officers, Civil Defense Workers, Civil Air Patrol Members, Paramedics and Firemen Compensation Act (Ill. Rev. Stat., ch. 48, par. 281 *et seq.*), within one year of the date of death of a person covered by said Act, is made and it is determined by investigation of the Attorney General of Illinois as affirmed by the Court of Claims, or by the Court of Claims following a hearing, that a person covered by the Act was killed in the line of duty, compensation in the amount of \$20,000.00 shall be paid to the designated beneficiary of said person or, if none was designated or surviving, then to such relative(s) as set forth in the Act. The following reported opinions include all such claims **resolved** during fiscal year 1984.

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### OPINIONS PUBLISHED IN FULL FY 1984

(No. 81-CC-2191—Claim denied.)

*In re* APPLICATION OF SANDRA GIDLEY.

*Opinion filed July 7, 1983.*

EUGENE F. KEEFE, for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT—"killed in line of duty" defined. Killed in line of duty means losing one's life as result of injury received in active performance of duties as law enforcement officer

or fireman if death occurs within one year from date the injury was received and if injury arose from violence or other accidental causes.

*SAME—police officer—heart attack—not “in line of duty”—claim denied.* Police officer who suffered heart attack and died while on duty as police dispatcher at emergency dispatch console did not die “in line of duty” and claim arising from his death was denied, as nothing unusual occurred to officer except stress that job normally produces.

ROE, C.J.

This is a claim based on the provision of the Law Enforcement Officers and Firemen Compensation Act (Ill. Rev. Stat. 1981, ch. 48, par. 281 et seq.), hereinafter referred to as the Act, by a widow of a Chicago police officer.

The question presented is whether the decedent was killed in the line of duty. The facts are undisputed. Claimant is the widow of Chicago police officer Vernon Gidley who died while on duty at 4:55 a.m., on March 26, 1981, of cardiac arrest.

Officer Gidley, at the time of his death, was on duty as a police dispatcher at a 911 emergency dispatch console. The job consisted of handling numerous emergency calls from the public and forwarding dispatch tickets to a fellow dispatcher for routing to officers or emergency personnel on the street. He was required to screen nuisance calls and to record every call.

The nature of the job is more stressful than would appear. Private citizens calling on emergencies require experienced police officers to respond. Many times the callers are argumentative. Some are screaming and some are crying. Sometimes one can hear gun shots in the background. The dispatcher must make decisions as to the proper emergency personnel to dispatch. The center or primary position of a three-man dispatch console is considered so stressful that the job is rotated so that no

one person stays at that position more than 1½ to 2 hours. Dispatchers are ranked as detectives.

Officer Gidley experienced chest pains approximately 18 months prior to his death. He was hospitalized on two occasions but no firm diagnosis of coronary artery disease was made. In March 1981 he began to note pain while at work but continued to work.

He started work on March 25, 1981, at about 11:00 p.m. During the course of his shift he worked for some unknown period at the primary position. At about 5:00 a.m. he collapsed. CPR was administered for about 45 minutes and thereafter he was removed to the hospital where he died.

Dr. Nathaniel Greenberg reviewed the records of Officer Gidley. It was his expert opinion that it was likely that Officer Gidley's sudden death was a direct consequence of his occupational tension.

The Act states:

“(e) Killed in line of duty means losing one's life as a result of injury received in the active performance of duties as a law enforcement officer or fireman if the death occurs within one year from the date the injury was received and if that injury arose from violence or other accidental causes.” Ill. Rev. Stat. 1981, ch. 48, par. 282(e).

There was no evidence produced of an injury arising from violence or other accidental cause. The cases of *Wierciak v. State* (1981), 34 Ill. Ct. Cl. 302, and *McInerney v. State* (1980), 34 Ill. Ct. Cl. 300, are dispositive of the issues in this case. Nothing unusual occurred to Officer Gidley except the stress that the job normally produces. Under the circumstances, the facts do not show compliance with the statutory definition of “killed in the line of duty” and it is the opinion of this Court that the claim is hereby denied.

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(No. 82-CC-0209—Claimant awarded \$20,000.00.)

*In re* APPLICATION OF PEGGY L. SPARLING.

*Opinion filed August 4, 1983.*

JOHN J. BLAKE, for Claimant.

NEIL F. HARTIGAN, Attorney General (EDWARD C. HURLEY, Assistant Attorney General, of counsel), for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT—*police officer—specific incidents—heart attack—claim allowed.* Claim was allowed for death of police officer who suffered heart attack and died while off duty, as evidence established that while decedent was on duty he had to lift a fire hydrant and had to track stolen vehicle suspects, and those two specific incidents, together with the job stress, constituted an “injury” within the meaning of the Law Enforcement Officers, Civil Defense Workers, Civil Air Patrol Members, Paramedics and Firemen Compensation Act.

ROE, C.J.

This is a claim brought by Peggy L. Sparling who seeks an award, pursuant to the provisions of the Law Enforcement Officers and Firemen Compensation Act (Ill. Rev. Stat. 1981, ch. 48, par. 281 *et seq.*), by reason of the death of her husband, Galesburg police Lt. Ralph E. Sparling. Lieutenant Sparling died while off duty on June 19, 1981, after suffering a heart attack. The parties have submitted the matter for determination upon the evidence depositions taken on October 13, 1982. All briefs have been submitted and the matter now comes on for the Court’s decision.

The decedent held the position of second watch commander in the Galesburg Police Department at the time of his death. He was a member of that department for over 20 years. For most of the one-year period preceding his death, Lt. Sparling was placed in charge of two eight-hour shifts due to a shortage of supervisory personnel. Because of the additional responsibilities he took on, as well as the additional time spent on the job,

Lt. Sparling had experienced considerable stress and anxiety.

On June 17, 1981, two days before the fatal heart attack, Lt. Sparling was in charge of the City's canine tracking operation as it attempted to track several stolen vehicle suspects. The operation took place sometime around 11:00 p.m., the time that Lt. Sparling was scheduled to get off duty. The operation lasted for over an hour, covered almost three miles of rough terrain at a brisk pace, and weather conditions were hot and humid.

On June 18, 1981, the day prior to the fatal heart attack, and on two occasions during his eight-hour shift, the decedent was required to lift and carry a fire hydrant with a weight somewhere between 200 and 300 pounds.

After his shift was over, Lt. Sparling arrived at his home sometime after midnight and immediately began complaining that he was not feeling well. The next morning, June 19, 1981, he continued to complain and at approximately 3:00 p.m., he went to the office of Dr. Jeffrey Hill, where he subsequently died due to myocardial infarction, secondary to coronary artery occlusion.

It was the opinion of Dr. Hill, who examined Lt. Sparling immediately prior to his death, that the overall work-related stress and anxiety as well as the hydrant and tracking incidents could have indeed caused Lt. Sparling's death. It was Dr. Hill's testimony that Lt. Sparling suffered from coronary artery disease and that the stress as well as the hydrant and tracking incidents could easily have precipitated the actual attack. It was clearly Dr. Hill's opinion that these items were causally connected to the heart attack.

The issue in this case is whether Lt. Sparling was

killed in the line of duty as stated in subsection 2(3) of the Act. (Ill. Rev. Stat. 1981, ch. 48, par. 282(e).) The test has been whether the decedent lost his life as a result of injury arising from an accidental cause received in the active performance of his duties. *In re Application of Woodworth* (1981), 34 Ill. Ct. Cl. 298.

The resolution of this case on its facts is a difficult one. The State cites several cases in its brief which, according to the State, require that this claim be denied. In *Wierciaku. State* (1981), 34 Ill. Ct. Cl. 302, (death due to a heart attack), and *McInerney v. State* (1981), 34 Ill. Ct. Cl. 300, (death due to cerebral hemorrhage), the Court denied benefits where there was evidence of general work-related stress and anxiety. In these two cases, however, there was no incident or combination of incidents occurring that could have been considered "an injury". Similarly, the facts in *In re Application of Rivers* (1983), 35 Ill. Ct. Cl. 921, and *In re Application of McNamara* (1982), 35 Ill. Ct. Cl. 932, indicate that, while the officers suffered from general stress in each case, there was no injury preceding the heart attack.

The facts of the case at bar include identifiable incidents, specifically the lifting of the fire hydrant and the tracking of the stolen vehicle suspects, which coupled with the ongoing general stress and anxiety, precipitated the fatal heart attack. The specific incidents, therefore, distinguish the facts of this case from the facts of those cases cited by the State. The question then is whether the facts and circumstances leading to the heart attack constitute physical activity, job related, and sufficient to be classified as an injury. *In re Application of Marousek* (1981), 34 Ill. Ct. Cl. 309.

The Court is of the opinion that the application for benefits should be allowed. While a compensable heart

attack must be triggered by an injury it is not required that the injury be one that is obvious and sudden. The Court has recognized that heart attacks can be the result of a single incident or a combination of many things. The cumulative effect of recent exigent circumstances contributing to a heart attack has been held to constitute injury. *In re Application of Feehan* (1981), 34 Ill. Ct. Cl. 293.

Dr. Hill's testimony is unrefuted. The series of job-related exigent circumstances preceding Lt. Sparling's death had the cumulative effect of causing or contributing to the heart attack. Taken together, the job stress, the long hours, and the fire hydrant and tracking incidents are an "injury" within the meaning of the Act. While it is true that Lt. Sparling suffered from underlying coronary artery disease, coverage under the Act is not limited to healthy persons. *In re Application of Parchert* (1980), 33 Ill. Ct. Cl. 312.

It is therefore ordered the application for benefits herein be granted and the applicant is hereby awarded the sum of **\$20,000.00**.

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(No. 82-CC-0987—Claimant awarded \$20,000.00.)

*In re* APPLICATION OF ALFRETТА ALFORD.

*Opinion filed January 5, 1984.*

STOBBS & SINCLAIR (JAMES S. SINCLAIR, of counsel),  
for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN  
O'BRIEN, Assistant Attorney General, of counsel), for  
Respondent.

**LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION Act—“killed in line of duty” defined.** Killed in line of duty means losing one’s life as result of injury received in active performance of duties as law enforcement officer or fireman if death occurs within one year from date the injury was received and if injury arose from violence or other accidental causes.

**SAME—fireman—heart attack—false alarm—claim allowed.** Evidence established that fireman suffered heart attack after he and other firemen responded to alarm at day care center which was determined to be false, and death benefits were granted his surviving wife and child, as fact that he was on duty at time he suffered the heart attack brought him within coverage of Law Enforcement Officers, Civil Defense Workers, Civil Air Patrol Members, Paramedics and Firemen Compensation Act.

ROE, C.J.

This claim arises out of the death of Myron A. Alford. The decedent’s widow, Alfretta Alford, seeks compensation on behalf of herself and her daughter, Susan E. Alford, as the designated beneficiaries of the decedent pursuant to the provisions of the Law Enforcement Officers and Firemen Compensation Act (Ill. Rev. Stat. 1981, ch. 48, par. 281 *et seq.*), hereinafter referred to as the Act.

This Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent’s supervising officer, a report of the Attorney General of Illinois, briefs filed by both parties, and evidence adduced at a hearing held before Commissioner Robert J. Hillebrand;

‘The issue in this case is whether the decedent was killed in the line of duty as defined in section 2(e) of the Act (Ill. Rev. Stat. (1981), ch. 48, par. 282(e)), which provides, in relevant part, that “killed in the line of duty means losing one’s life as a result of injury received in the active performance of duties as a law enforcement officer . . . or fireman if the death occurs within one year from the date the injury was received and if the injury arose from violence or other accidental cause”.

The record indicates that at the time of his death, Myron Alford was employed as a full-time fireman for the Godfrey Fire Protection District, Godfrey, Illinois. Alford had been a fireman for 22 years and held the rank of captain. At 7:00 a.m. on the morning of September 21, 1981, Alford began his regular 24-hour shift. At approximately 5:30 p.m., Alford and other members of the Godfrey Fire Department responded to a fire alarm at a children's day care center. Alford, in full firefighting paraphernalia, drove a fire truck from the station where he was on duty to the scene of the alarm. Upon their arrival at the scene, the members of the fire department determined that the call was a false alarm. Alford then returned to his truck and drove back to the fire station. Immediately upon his return to the fire station, the other firefighters noticed that Alford was pale, shaky, and sweating. Alford stated that he was having severe pains in his chest and around his shoulders. He was taken home and then to St. Joseph's Hospital in Alton, Illinois, where it was determined he had suffered a severe heart attack. He remained in the hospital from September 21 to October 2, 1981, when he died as a result of the heart attack suffered on September 21, 1981. Testimony indicated that Alford had no history of heart disease and that he had a normal checkup approximately one week before he suffered the heart attack. Further testimony by the firefighters indicated that any fire alarm creates a stressful situation, but that an alarm at a day care center is extremely stressful.

Although it is true that cases involving heart attacks do comprise the most difficult claims made, this Court has awarded compensation in cases where a fireman has died of a heart attack while he was on duty and engaged in the performance of activities that are unique to that

profession which could induce a heart attack. For example, in *In re Application of Klein* (1977), 32 Ill. Ct. Cl. 370, a case which is similar to the one at hand, a volunteer fireman answered an alarm from his home by driving his automobile to the location of a fire call, a distance of approximately one block. He then walked the remainder of the distance to the front door of the residence where he learned the call was a false alarm. The decedent thereafter alerted other firemen of this fact and returned to his automobile to drive to the fire station to file a report. As he was returning to the fire station, decedent was stricken with a heart attack, and his automobile crashed into the front of a building. This Court found that the decedent died of a heart attack in the line of duty and awarded benefits.

Similarly, in *In re Application of Dickey* (1980), 33 Ill. Ct. Cl. 341, a volunteer fireman sustained a heart attack after receiving a fire call, going to the fire station, unlocking the door, turning on the lights and sirens and starting toward the fire truck. He was found slumped over the driver's seat when other firemen arrived at the station. A later investigation determined that he had died of a heart attack. This Court determined that he had died of a heart attack in the line of duty and awarded benefits.

Finally, in *In re Application of Friddle* (1978), 32 Ill. Ct. Cl. 1050, this Court awarded compensation where the evidence established that the decedent, a volunteer fireman, suffered a fatal heart attack while driving the fire department ambulance to the scene of an automobile accident.

The Court therefore finds that, given the fact that Myron Alford was on duty and engaged in the activity of responding to a false alarm at a day care center at the

time he suffered the heart attack, he was within the coverage of the Act as intended by the legislature of the State of Illinois.

It is hereby ordered that \$20,000.00 be, and the same hereby is, awarded to the following persons in the amounts indicated pursuant to the Act and the expressed wishes of the decedent:

Alfretta Alford	\$10,000.00
Susan E. Alford	\$10,000.00
Total award	\$20,000.00

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(No. 82-CC-2352—Claimant awarded \$20,000.00.)

*In re* APPLICATION OF IRENE SOENS.

*Opinion filed August 4, 1983.*

IRENE SOENS, *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent...

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT—*“killed in line of duty” defined.* Killed in line of duty means losing one's life as result of injury received in active performance of duties as law enforcement officer or fireman if death occurs within one year from date the injury was received and if injury arose from violence or other accidental causes.

SAME—*firefighter—carbon monoxide poisoning—award granted.* Death benefits were awarded for death of firefighter due to carbon monoxide poisoning which occurred while firefighter was repairing truck at station, as preponderance of evidence established that death was accidental and within meaning of Law Enforcement Officers, Civil Defense Workers, Civil Air Patrol Members, Paramedics and Firemen Compensation Act.

ROE, C.J.

Irene Soens, Claimant, filed a timely application for benefits under the Law Enforcement Officers and Fire-

men Compensation Act (Ill. Rev. Stat. 1979, ch. 48, pars. 281-285) as a result of the death of her husband, Orville J. Soens, on January 20, 1982. An investigation was made by the Attorney General pursuant to section 4 of the Act (Ill. Rev. Stat. 1979, ch. 48, par. 284), and the Attorney General then filed his report stating that he was unable to determine whether the decedent was killed in the line of duty and requesting a hearing on that issue. All other requirements have been satisfied.

Decedent was a firefighter for the Olive Fire Protection District in Livingston, Illinois, which is a volunteer fire department. At the time of his death he held the rank of captain. His duties included maintenance of the department's trucks and the evidence indicated he was performing this duty at the time of his death.

Robert Pollett, a firefighter for the Olive Fire Protection District, testified that when he visited the fire station at 4:55 p.m., on January 20, 1982, decedent was working in the garage area of the station. There were two trucks in the station, a tanker and a pumper. Decedent was working on the engine of the tanker. The engine was idling, and the doors and windows of the station were closed. Pollett remained in the station conversing with decedent for about 10 minutes. He did not notice any accumulation of exhaust fumes, although there was no device attached to the truck to vent the fumes to the outside and no exhaust fan. There was no one else in the station.

Decedent's body was discovered about 6:10 p.m. by Loren Linn, who resides in Bridgeton, Missouri, and had stopped at the station to get directions to a residence in Livingston, Illinois. Linn entered the station by the front door and noticed the tanker's engine running. He smelled fumes and called out to see if anyone was present. He

saw decedent lying on his back under the pumper truck and left the station to summon help.

When the body was found, the hood to the tanker was still open, and the tools decedent had been using were lying around near the engine where Pollett had seen them earlier.

It was determined the decedent died as a result of carbon monoxide poisoning.

There was no indication that decedent had been depressed in any way or had suffered from any health problems. Decedent had in fact planned to meet his son, Terry Soens, at 4:30 that afternoon at home so that Terry could go with him to the station and help him with the work on the truck's engine. Terry had been unable to get home in time to meet his father, and decedent had gone to the station without him. The Act places the burden of proving wilful misconduct on the Attorney General. (Ill. Rev. Stat. 1979, ch. 48, par. 282(e).) No such evidence was offered.

The Act defines "killed in the line of duty" as "losing one's life as a result of injury received in the active performance of duties as a . . . fireman if the death occurs within one year from the date the injury was received and if that injury arose from . . . accidental cause". (Ill. Rev. Stat. 1979, ch. 48, par. 282(e).) It is the opinion of this Court that the preponderance of evidence indicates that Orville Soens' death was accidental and within the meaning of the Act. The Court therefore orders that compensation under the Act be paid to Claimant in the amount of \$20,000.00.

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(No. 83-CC-1779—Claimant awarded \$20,000.00.)

*In re* **APPLICATION OF BEVERLY BLUNT.**

*Opinion filed October 31, 1983.*

BEVERLY BLUNT, *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (JAMES A. KOCH, Assistant Attorney General, of counsel), for Respondent.

**LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT—*law enforcement officer defined.*** Law enforcement officer means any person employed by State or local governmental entity as a policeman, police officer, auxiliary policeman or in some like position involving the enforcement of the law and protection of the public interest at the risk of that person's life.

***SAME—Secretary of State investigator—traffic emergency—death—claim allowed.*** Investigator for Secretary of State was "law enforcement officer" for purposes of Law Enforcement Officers, Civil Defense Workers, Civil Air Patrol Members, Paramedics and Firemen Compensation Act at time he stopped his car while driving to work to assist other motorists who had gone off highway, and death benefits were awarded his surviving spouse, as evidence established that decedent was charged with enforcing the Illinois Vehicle Code and was bound to respond immediately, at any time, to any emergency, on notice his services were needed, and he was struck and killed by an oncoming car while responding to what he perceived as the emergency involving the other motorists.

ROE,, C.J.

This claim arises out of the death of Kenneth L. Blunt, an internal investigator in the Office of the Secretary of State. The decedent's widow seeks compensation pursuant to the provisions of the Law Enforcement Officers and Firemen Compensation Act (Ill. Rev. Stat. 1981, ch. 48, par. 281, *et seq.*), hereinafter referred to as the Act. The verified application for benefits shows that Beverly Blunt was the wife and designated beneficiary of the decedent at the time of his death.

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General, a written statement of the decedent's supervising officer, and a report by the

Illinois Attorney General's office which substantiates matters set forth in the application.

Based upon the record in this matter we find the circumstances surrounding the death to have been as follows. On January **31, 1983**, the decedent was driving to work in Springfield, Illinois, from Vandalia, Illinois, on Interstate 55 when he stopped near the Divernon exit to assist motorists whose car had slipped off the roadway onto the grass median area. While standing near the disabled vehicle, the decedent was struck by another car which slid off the roadway onto the median. He died instantly due to brain hemorrhage as a consequence of fractures of the base of the skull.

The Attorney General's investigation report states that the issue in this claim is whether the decedent was a law enforcement officer as contemplated by the Act. However, the report does not indicate what position the Attorney General takes concerning the issue.

The Act states:

**"Section 2(a). 'Law Enforcement officer' or 'officer' means any person employed by the State or a local governmental entity as a policeman, peace officer, auxiliary policeman or in some like position involving the enforcement of the law and protection of the public interest at the risk of that person's life."**

The record indicates that the decedent was an investigator for the Secretary of State who had achieved the rank of deputy director of internal affairs. He was sworn pursuant to the Illinois Vehicle Code and charged with enforcing the Vehicle Code in his capacity as an internal investigator at all times. His duties as an investigator included being subject to call to duty 24 hours of the day, every day of the year, and being bound to respond immediately, day or night, in any emergency, whether on or off duty, on notice that his services were needed.

In this case it appears that the decedent perceived what he thought to be an emergency when he saw the motorists and their car which had slipped onto the grass median. He responded on notice that his services were needed. While performing his duty to respond to an emergency he was exposed to the risk which caused him to lose his life.

By reason of the foregoing, this Court finds that the decedent was a law enforcement officer within the meaning of the Act.

It is hereby ordered that the sum of \$20,000.00 (twenty thousand dollars and no cents) be, and hereby is, awarded to Beverly Blunt, the surviving spouse and designated beneficiary of Kenneth L. Blunt.

(No. 84-CC-0445—Claimant awarded \$20,000.00.)

*In re* APPLICATION OF BARBARA KLACZA.

*Opinion filed November 9, 1983:*

BARBARA KLACZA, *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (HANS G. FLADUNG, Assistant Attorney General, of counsel), for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION Act—“*killed in line of duty*” defined. Killed in line of duty means losing one’s life as result of injury received in active performance of duties as law enforcement officer or fireman if death occurs within one year from date the injury was received and if injury arose from violence or other accidental causes.

SAME — *police officer—killed by hit-and-run driver—claim allowed.* Death benefits were granted to surviving spouse of police officer who was struck and killed by hit-and-run driver while walking to his police vehicle, as death arose from “other accidental cause” within meaning of being “killed in the line of duty” for purposes of Law Enforcement Officers, Civil Defense Workers, Civil Air Patrol Members, Paramedics and Firemen Compensation Act.

ROE, C.J.

This claim is before this Court by reason of the death of Wayne Klacza, a police officer for the city of Chicago. Barbara Klacza, the widow and sole designated beneficiary of the decedent, seeks compensation pursuant to the provisions of the Law Enforcement Officers and Firemen Compensation Act (Ill. Rev. Stat. 1981, ch. 48, par. 281 *et seq.*), hereinafter referred to as the Act.

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General, a written statement of the decedent's supervising officer along with documents submitted with that statement, and a report prepared by the Illinois Attorney General's office.

The record indicates that on June 28, 1983, the decedent reported for duty at the Area Center 4 Headquarters in Chicago at 5:00 p.m. At approximately 5:55 p.m. he was walking toward his assigned police vehicle from the south curb at 3148 W. Harrison Street to the north curb when an eastbound vehicle traveling at a high rate of speed suddenly swerved from the eastbound lane and struck the decedent in the westbound lane. After striking the decedent, the vehicle continued eastbound and struck parked vehicles further down the street. The decedent was taken to Mt. Sinai Hospital where he was pronounced dead at 6:56 p.m. The medical examiner's certificate of death lists the immediate cause of death as multiple injuries due to blunt trauma. The driver of the vehicle which struck the decedent was apprehended and charged with reckless homicide, possession of a controlled substance, and possession of marijuana.

The report by the Attorney General's office states that the Attorney General is unable to determine whether

the decedent's death meets the requisite of being killed in the line of duty as defined in the Act.

Section 2(e) of the Act (Ill. Rev. Stat. 1981, ch. 48, par. 282(e)), provides, in relevant part, that “ ‘killed in the line of duty’ means losing one’s life as a result of injury received in the active performance of duties as a law enforcement officer . . . if the death occurs within one year from the date the injury was received and if that injury arose from violence or *other accidental cause.*” (Emphasis added.)

This Court has previously dealt with that part of section 2(e) concerning the phrase “other accidental cause” and its applicability to cases involving traffic accidents which result in the deaths of law enforcement officers while on duty. In *Carr v. State* (1974), 29 Ill. Ct. Cl. 540, and *Allen v. State* (1947), 29 Ill. Ct. Cl. 540, we found that “other accidental cause” included the situation where two game wardens on patrol duty were killed when the car in which they were riding collided with a car driven by a civilian which crossed over the center line.

Although the decedent was not riding in a car when the fatal accident occurred, his situation is substantially similar to that of the officers in the cases cited above. We find, therefore, that Officer Klacza's death arose from an accidental cause covered by section 2(e) of the Act and that his death meets the requisite of being “killed in the line of duty” as defined in the Act.

It is hereby ordered that the sum of \$20,000.00 be, and hereby is, awarded to Barbara Klacza, as the widow and sole designated beneficiary of Wayne Klacza.

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(No. 84-CC-0517—Claim denied.)

*In re* APPLICATION OF MERCEDES C. O'BRIEN.

Opinion filed November 9, 1983.

MERCEDES C. O'BRIEN, *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (ROBERT J. SKLAMBERG, Assistant Attorney General, of counsel), for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT—"killed in line of duty" defined. Killed in line of duty means losing one's life as result of injury received in active performance of duties as law enforcement officer or fireman if death occurs within one year from date the injury was received and if injury arose from violence or other accidental causes.

SAME—Department of Law Enforcement officer—fatal heart *attack*—claim denied. Claim for death benefits filed by surviving spouse of captain in Department of Law Enforcement was denied, as evidence established that decedent suffered fatal heart attack while travelling to conference of police association, and there was nothing in record to indicate that death arose from violence or other accidental cause within meaning of being "killed in line of duty" for purposes of Law Enforcement Officers, Civil Defense Workers, Civil Air Patrol Members, Paramedics and Firemen Compensation Act.

**ROE, C.J.**

This claim is before this Court by reason of the death of William Patrick O'Brien, a captain in the State of Illinois Department of Law Enforcement. The decedent's widow seeks compensation pursuant to the provisions of the Law Enforcement Officers and Firemen Compensation Act, (Ill. Rev. Stat. 1981, ch. 48, par. 281 *et seq.*), hereinafter referred to as the Act.

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General, a written statement of the decedent's supervising officer, and a report by the Illinois Attorney General's office.

The record shows that on November 13, 1982, the decedent suffered a fatal heart attack while en route to represent the State of Illinois Department of Law En-

forcement at the International Association of Chiefs of Police Conference in Atlanta, Georgia. The attack occurred while the decedent was preparing to leave Murfreesboro, Tennessee, for Atlanta after a night's lodging. The certificate of death issued by the Department of Public Health of Rutherford County, Tennessee, states that the cause of death was cardiac arrest due to coronary artery disease.

Section 2(e) of the Act (Ill. Rev. Stat. 1981, ch. 48, par. 282(e)) provides, in relevant part, that “ ‘killed in the line of duty’ means losing one’s life as a result of injury received in the active performance of duties as a law enforcement officer . . . if the death occurs within one year from the date the injury was received and if that injury arose from violence or other accidental cause”.

There is nothing in the record indicating that the decedent’s death arose from violence or other accidental cause. No injury, or other unusual force, has been shown which might have caused the heart attack.

We find therefore: (a) that Captain O’Brien was not killed in the line of duty as defined by section 2(e) of the Act; and (b) that the proof submitted in support of this claim does not satisfy the requirements of the Act, and the claim is therefore not compensable thereunder.

It is hereby ordered that the claim of Mercedes C. O’Brien, as widow of William Patrick O’Brien, be, and hereby is, denied.

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(No. 84-CC-1384—Claim denied.)

*In re* APPLICATION OF LANA BERG.

Opinion filed March 8, 1984.

FREW & GILBERT, LTD., for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

**LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION Act—“killed in line of duty” defined.** Killed in line of duty means losing one's life as result of injury received in active performance of duties as law enforcement officer or fireman if death occurs within one year from date the injury was received and if injury arose from violence or other accidental causes.

**SAME—firefighter—accidental injury—death more than one year later—claim denied.** Firefighter's widow was denied death benefits pursuant to Law Enforcement Officers, Civil Defense Workers, Civil Air Patrol Members, Paramedics and Firemen Compensation Act even though firefighter was initially injured in traffic accident while responding to fire alarm, as his death due to those injuries occurred more than one year after the injury was received.

ROE, C.J.

Claimant seeks an award as the widow and statutory beneficiary of firefighter Terry K. Berg, pursuant to the provisions of the Law Enforcement Officers and Firemen Compensation Act (hereinafter, the Act). Ill. Rev. Stat. 1981, ch. 48, par. 281 *et seq.*

The Court has reviewed the Claimant's application for benefits together with the written statement of the decedent's supervising officer, the police reports, the coroner's certificate of death and the report of the Attorney General. From its consideration of these documents, the Court finds:

Firefighter Terry K. Berg was involved in a traffic accident while responding to a fire alarm on July 14, 1981. He never recovered from the injuries received and

subsequently died on June 3, 1983, due to a coronary arrest as a consequence of brain damage.

In order for an award to be granted pursuant to the Act it must be shown that the law enforcement officer or fireman was killed in the line of duty as defined in the Act. Section 2(e) of the Act (Ill. Rev. Stat. 1981, ch. 48, par. 282(e)) provides, in relevant part, that “ ‘killed in the line of duty’ means losing one's life as a result of injury received in the active performance of duties as a law enforcement officer . . . or fireman if the death occurs within one year from the date the injury was received and if that injury arose from violence or other accidental cause.”

While it has been shown that the decedent's death was accidentally caused by an injury received in the active performance of his duties as a fireman, the record indicates that his death did not occur within one year after the date the injury was received as required by the Act. Therefore, we find, regretfully, that this claim must be denied.

Based on the foregoing, it is hereby ordered that this claim be, and hereby is, denied.

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**LAW ENFORCEMENT OFFICERS, CIVIL  
DEFENSE WORKERS, CIVIL AIR PATROL  
MEMBERS, PARAMEDICS, AND  
FIREMEN COMPENSATION ACT  
OPINIONS NOT PUBLISHED IN FULL  
FY 1984**

Where the Attorney General's investigation determines that claim is within the scope of Act claim will be allowed.

84-CC-0604	Mayer, Ami M.	\$50,000.00
84-CC-0900	Creed, Gerri E.	50,000.00
84-CC-1350	Finney, Ruth	Dismissed
84-CC-1604	Elsen, Patty Ann	50,000.00
84-CC-1643	Brown, Ephria Ashanti & Brown, Juanda	50,000.00
84-CC-1812	Reiman, Robert C.	50,000.00
84-CC-1818	Kearns, Larry D.	Denied
84-CC-2581	Baron, Marion J.	50,000.00

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**CASES IN WHICH ORDERS OF AWARDS  
WERE ENTERED WITHOUT OPINIONS  
FY 1984**

82-CC-0315	Feutz, Frank C., Co.	\$ 532.76
82-CC-0926	Kenny-Jay Dee, Lake Cook	7,500.00
82-CC-2116	Herman, Christopher A., a minor by his father & next friend, Ronald G. Herman	45,000.00
82-CC-2117	Herman, Ronald G.	750.00
82-CC-2118	Herman, Sharon M.	9,000.00
83-CC-0481	Habiger, Richard and Taseff, George, Prison Legal Aid	7,076.90
83-CC-2118	Neitzel, Rosalyn	160.00
83-CC-2185	NcNeil, Charles S.	7,000.00
83-CC-2191	Elson, B. John	49.31
83-CC-2766	Prendergast, Bradley E.	30.00
84-CC-0397	CIPS	2,122.81
84-CC-2807	McEllin, Edward Brian	10.74

**CASES IN WHICH ORDERS OF  
DISMISSAL WERE ENTERED  
WITHOUT OPINIONS  
FY 1984**

- 76-CC-0394 Vojta, Greg John, a minor by N.C. Vojta, his  
father & next friend
- 77-CC-1364 Heritage Manor Nursing Home
- 77-CC-1365 Heritage Manor Nursing Home
- 77-CC-1369 Three Oaks Nursing Home
- 77-CC-1376 Martin Avenue Corp. D/B/A Americana  
Healthcare Center of Naperville
- 77-CC-1380 Rockford Americana, Inc. D/B/A Americana  
Healthcare Center of Rockford
- 77-CC-1383 Simpson House, Ltd. D/B/A Americana  
Healthcare Center of Elgin
- 77-CC-1389 Arlington Heights Americana, Inc. D/B/A Americana  
Healthcare Center of Arlington Heights
- 77-CC-1439** Care Management, Inc. D/B/A Roosevelt Square—  
Batavia Nursing Home
- 77-CC-1450 Care Management, Inc. D/B/A Roosevelt Square—  
Rockford Nursing Home
- 77-CC-1463 Care Management, Inc. D/B/A Roosevelt Square—  
Sandwich Nursing Home
- 77-CC-1532 Four Seasons Nursing Center of Westmont
- 77-CC-1534 Four Seasons Nursing Center of Wheaton
- 77-CC-1547 Four Seasons Nursing Center of Aurora
- 77-CC-1614 Jones, Paul
- 77-CC-1764 Parrino, Frank M., Regional Superintendent of  
Schools, Boone & Winnebago Counties
- 77-CC-2030 Valenti, Kenneth J.
- 78-CC-0201 Big Three Movers, Inc.
- 78-CC-0285 Campanella, Lisa
- 78-CC-0350 Hudson, Samuel R.
- 78-CC-0514 Walker, Tyree, minor by his mother, Clara Mae Walker
- 78-CC-1115 Starnawski, Henry; Administrator of the Estate of  
Richard Starnawski
- 78-CC-1235 Knox County
- 78-CC-1273 Larson, Philip
- 78-CC-1330 Lake, County of
- 78-CC-1488 Stephenson County

- 78-CC-2110 Scott, Johnnie Fay  
78-CC-2129 Coker, Jeffrey  
79-CC-0100 Ownby, Teddy, & as father & next friend of Donald  
Ownby, minor  
79-CC-0670 Brown, Garrett  
79-CC-0674 Evans, Chester  
79-CC-0974 Martin, Stephanie P.  
80-CC-0258 Brinkmann, Paul G. & Marilou  
80-CC-0323 Bockstahler, Katherine E.  
80-CC-0324 Richards, Wayne  
80-CC-0809 Gusewelle, Terry A.  
80-CC-0899 Law Enforcement Equipment Co.  
80-CC-0903 Smith, Terry B.  
80-CC-1047 Biscaglio, Rocco  
80-CC-1063 Catalano, George, Florence & Joel  
80-CC-1436 Novak, Rita  
80-CC-1759 Rohrkaste, Patrick P.  
80-CC-2052 Benavides, Enedelia C.  
81-CC-0670 Loretto Hospital  
81-CC-0676 Valentine, Ralph & Oren  
81-CC-1075 Joutras, Donald L.  
81-CC-1092 Akins, Vernon  
81-CC-1495 Walkowski, Lisa; Abate, Renee, a minor by Heide Abate,  
her mother & next friend  
81-CC-1526 Craven, Henry  
81-CC-1980 Stark, Byron  
81-CC-1982 Smith, Johnny  
81-CC-2070 Coleman, Ira J., Jr.  
81-CC-2076 Kahn, Daniel & Michele  
81-CC-2141 Wallace, Maurice  
81-CC-2276 Karoll's, Inc.  
81-CC-2450 Oberholtzer; James  
81-CC-2800 Wallace, Marie  
81-CC-2233 Pendzinski, Sandra  
82-CC-0144 Camillo, Denise  
82-CC-0331 First National Bank of Evergreen Park, as Executor etc.  
82-CC-0397 Moran, F.E., Inc.  
82-CC-0428 Shields, Richard  
82-CC-0463 Rock Island Franciscan Hospital  
82-CC-0464 Rock Island Franciscan Hospital  
82-CC-0465 Mendez, Rafael

- 82-CC-0470 Keller, Harry, Sr.
- 82-CC-0482 Rock Island Franciscan Hospital
- 82-CC-0590 Hilst, Wesley H. & Dixie G.
- 82-CC-0591 Gambara, Ewaar S.
- 82-CC-0592 Belcher, William M. & AAA Ambulance &  
Hospital Supply
- 82-CC-0629 Hale, Floyd W.
- 82-CC-0670 Abdelkoui, Michael, a minor by Sakina Abdelkoui, his  
mother & next friend .
- 82-CC-0672 Robinson, Alan
- 82-CC-0696 Catholic Social Service :
- 82-CC-0734 Mc Gaw, Foster G., of Loyola University
- 82-CC-0735 Mc Caw, Foster G., of Loyola University
- 82-CC-0736 Mc Gaw, Foster G., of Loyola University
- 82-CC-0737 Mc Gaw, Foster G., of Loyola University
- 82-CC-0738 Mc Gaw, Foster G., of Loyola University
- 82-CC-0739 Mc Gaw, Foster G., of Loyola University
- 82-CC-0740 Mc Gaw, Foster G., of Loyola University
- 82-CC-0741 Mc Gaw, Foster G., of Loyola University
- 82-CC-0742 Mc Gaw, Foster G., **of** Loyola University
- 82-CC-0743 Mc Gaw, Foster G., of Loyola University
- 82-CC-0744 Mc Gaw, Foster G., of Loyola University
- 82-CC-0745 Mc Gaw, Foster G., of Loyola University
- 82-CC-0746 Mc Gaw, Foster G., of Loyola University
- 82-CC-0747 Mc Caw, Foster G., of Loyola University
- 82-CC-0748 Mc Gaw, Foster G., of Loyola University
- 82-CC-0749 Mc Gaw, Foster G., of Loyola University
- 82-CC-0750 Mc Gaw, Foster G., of Loyola University
- 82-CC-0751 Mc Gaw, Foster G., of Loyola University
- 82-CC-0752 Mc Gaw, Foster G., of Loyola University
- 82-CC-0753 Mc Gaw, Foster G., of Loyola University
- 82-CC-0754 Mc Gaw, Foster G., of Loyola University
- 82-CC-0755 Mc Gaw, Foster G., of Loyola University
- 82-CC-0756 Mc Gaw, Foster G., of Loyola University
- 82-CC-0757 Mc Gaw, Foster G., *of* Loyola University
- 82-CC-0758 Mc Gaw, Foster G., of Loyola University
- 82-CC-0759 Mc Gaw, Foster G., of Loyola University
- 82-CC-0760 Mc Gaw, Foster G.; of Loyola University
- 82-CC-0784 Nelson, Bennie
- 82-CC-0897 Rock Island Franciscan Hospital
- 82-CC-0898 Rock Island Franciscan Hospital

- 82-CC-0899 Rock Island Franciscan Hospital  
82-CC-0927 Gudas, Charles J., Dr.  
82-CC-1053 Schuefield, Leroy  
82-CC-1196 Joliet-Will County Community Action Agency  
82-CC-1515 Deaconess Hospital, Inc.  
82-CC-1516 Deaconess Hospital, Inc.  
82-CC-1517 Deaconess Hospital, Inc.  
82-CC-1518 Deaconess Hospital, Inc.  
82-CC-1519 Deaconess Hospital, Inc.  
82-CC-1520 Deaconess Hospital, Inc.  
82-CC-1521 Deaconess Hospital, Inc.  
82-CC-1522 Deaconess Hospital, Inc.  
82-CC-1523 Deaconess Hospital, Inc.  
82-CC-1524 Deaconess Hospital, Inc.  
82-CC-1565 Johnson, Ronald  
**82-CC-1590** Almarc Manufacturing, Inc.  
82-CC-1618 Steinmetz, John  
82-CC-1726 Gamboa, Arcelia Vargas; Administrator of the Estate of  
Hector Gamboa, dec'd. ..  
82-CC-1755 Daniels, Michael D.  
82-CC-1784 Anchor Office Supply Co. .  
82-CC-1810 Maltzahn, Walter  
82-CC-1854 Edwards, Mark David  
82-CC-1881 Tejack, Dennis  
82-CC-1925 Lawson, James  
82-CC-1929 Sipes, Sammie  
82-CC-1973 Battin, Gregory Scott  
82-CC-2018 Adams, Donald R.  
82-CC-2037 Lucien, Rudolph  
82-CC-2040 Tejack, Dennis  
82-CC-2060 Bertrand Goldberg Associates; Schmidt, Garden, &  
Erickson; & Epstein Sons, Inc. etc.  
82-CC-2077 Central Du Page Hospital.  
82-CC-2127 St. Elizabeth Hospital  
82-CC-2155 Buss, Richard Thomas, Jr. . .  
82-CC-2212 Wilson, Clarence Eugene  
82-CC-2245 Hall, Raymond  
82-CC-2273 Contemporary Pre-Cast Products, Inc. &  
Hartford Insurance Co.  
82-CC-2326 MacNeal Memorial Hospital  
82-CC-2438 Bradley, Roby Mason

- 82-CC-2528 Charles, Andrew V.  
82-CC-2546 Hall, Raymond  
82-CC-2568 Waters Construction Co., Inc.  
82-CC-2618 Methodist Medical Center of Illinois  
82-CC-2670 Bartlett, H. T., Builders  
82-CC-2689 Darling, Tommie  
83-CC-0048 Johnson, Louis A.  
83-CC-0058 St. Francis Hospital  
83-CC-0078 Johnson, Gregory  
83-CC-0129 Pesavento, Robert  
83-CC-0137 Santy, Donna; Administrator of the Estate of Scott Santy, dec'd.  
83-CC-0138 Obermiller, Joyce; Administrator of the Estate of Cathy S. Santy, dec'd., etc.  
83-CC-0144 Klein Construction Co.  
83-CC-0183 Johnson, Mary  
83-CC-0199 Delhaye, Constance Ann Volkel  
83-CC-0246 Harris, Anthony  
83-CC-0267 Jones, Jacqueline  
83-CC-0280 Weiss, Louis A., Memorial Hospital  
83-CC-0292 Joyner, Terence K.  
83-CC-0319 Jackson Park Hospital Foundation  
83-CC-0381 Blanchard, Brett, a minor, by Ruth Blanchard, his mother and next friend  
83-CC-0385 Jackson Park Hospital  
83-CC-0392 Woo & Associates, Ltd.  
83-CC-0393 Woo & Associates, Ltd.  
83-CC-0394 Woo & Associates, Ltd.  
83-CC-0395 Minnesota Mining & Manufacturing Co.  
83-CC-0428 Osborne, John H.  
83-CC-0430 Sisters of the Third Order of St. Francis  
83-CC-0454 St. Joseph Hospital  
83-CC-0509 Calhoun, Kevin  
83-CC-0534 Jackson Park Hospital  
83-CC-0535 Sasser, Scott  
83-CC-0541 Walker, Javan E., Jr.  
83-CC-0542 Catholic Social Service  
83-CC-0545 Continental Telephone Co. of Illinois  
83-CC-0569 Blake, Javet M., Sr.  
83-CC-0581 Daniels, Michael E.  
83-CC-0585 Lavoy, Samuel

- 83-CC-0604 Catholic Social Service  
83-CC-0646 Brokaw Hospital, Inc.  
83-CC-0648 Woodland Home for Orphans & Friendless  
83-CC-0661 Cramer Agri Center, Inc.  
83-CC-0669 Krupa, Joseph  
83-CC-0688 St. Clair Associated Vocational Enterprises, Inc.  
(S A V E)  
83-CC-0692 Korte, Ralph, Construction., Inc.  
83-CC-0697 Illinois Bell Telephone Co.  
83-CC-0706 Williams, Willie  
83-CC-0801 Rodriguez, Jose C.  
83-CC-0843 Sumer, Emel A., M.D.  
83-CC-0844 American Journal of Nursing Co.  
83-CC-0849 Moore, Richard A., O.D.  
83-CC-0881 Easter Seal Rehabilitation Center  
83-CC-0890 Complete Reading Electric Co.  
83-CC-0913 Buschart Brothers, Inc..  
83-CC-0938 McLean County Sheriff's Department  
83-CC-1025 McClain, William  
83-CC-1062 Golub, Gary  
83-CC-1137 Chicago, University of  
83-CC-1140 Ravenswood Hospital  
83-CC-1141 Ravenswood Hospital  
83-CC-1142 Ravenswood Hospital  
83-CC-1143 Ravenswood Hospital  
83-CC-1172 West Suburban Hospital Medical Center  
83-CC-1180 Pellegrino, Lenin, M.D.  
83-CC-1198 Roseland Community Hospital  
83-CC-1224 Catholic Social Service  
83-CC-1225 Catholic Social Service  
83-CC-1234 Consolidated Engineering Div.; Azzarelli  
Construction Co.  
83-CC-1256 IBM Corp.  
83-CC-1264 Misericordia Home-South  
83-CC-1290 Percic, John  
83-CC-1299 Percic, John  
83-CC-1301 Stamps, William  
83-CC-1317 Jackson, Larry  
83-CC-1337 Swedish Covenant Hospital  
83-CC-1352 Sinai Kosher Foods Corp.  
83-CC-1381 Mars, Willie J.

- 83-CC-1382 Mars, Willie J.  
83-CC-1383 Mars, Willie J.  
83-CC-1401 Central X Rays  
83-CC-1436 Callaghan, James  
83-CC-1439 Havana, State Bank of  
83-CC-1454 Duvall, Dorothy L.  
83-CC-1455 Hardin County School District  
83-CC-1532 Catholic Social Service  
83-CC-1538 Rock Island Franciscan Hospital  
83-CC-1540 Rock Island Franciscan Hospital  
83-CC-1541 Rock Island Franciscan Hospital  
83-CC-1553 Sullivan House  
83-CC-1593 Moore Business Forms, Inc.  
83-CC-1595 Moore Business Forms, Inc.  
83-CC-1607 MacNeal Memorial Hospital  
83-CC-1608 Roseland Community Hospital  
83-CC-1611 Trulock, Charles & Jeremy, by their father & next friend  
Charles Trulock  
83-CC-1638 Ravenswood Hospital Medical Center  
83-CC-1694 South Town Refrigeration Corp.  
83-CC-1702 Gregoire, Diana Clarke  
83-CC-1725 Chicago Child Care Society  
83-CC-1729 Schindler Haughton Elevator Corp.  
83-CC-1755 Modern Business Systems, Inc.  
83-CC-1758 Modern Business Systems, Inc.  
83-CC-1759 Modern Business Systems, Inc.  
83-CC-1762 Schindler Haughton Elevator Corp.  
83-CC-1763 Schindler Haughton Elevator Corp.  
83-CC-1764 Schindler Haughton Elevator Corp.  
83-CC-1767 Huntington, George R.  
83-CC-1770 Jacquest, Francis P., Ind. & as Administrator of the Estate  
of Deanne Jacquest, dec'd., et al.  
83-CC-1786 Jacob, Thomas N.  
83-CC-1814 Lutheran Social Services of Illinois  
83-CC-1827 Linux Co.  
83-CC-1828 Linux Co.  
83-CC-1870 Pawelek, Anne  
83-CC-1883 Perez, Anthony; et al.  
83-CC-1890 Lagorio, George L., M.D.  
83-CC-1891 Mitchell, Ned  
83-CC-1911 State House Inn

- 83-CC-1915 Mac of Wisconsin & Great West Casualty Co.  
83-CC-1919 Razdan, Avtar K., M.D., S.C.  
83-CC-1920 Polk, R. L., & Co.  
83-CC-1921 Ravenswood Hospital .  
83-CC-1932 Associated Anesthesiologists  
83-CC-1942 Novak, Thomas, Mrs.  
83-CC-1960 Baske, Richard  
83-CC-2003 Martin, Walter T.  
83-CC-2017 Englewood, Hospital of  
83-CC-2018 Heathman, Ann  
83-CC-2038 Brockway, Michael  
83-CC-2043 Rock Island Franciscan Hospital  
83-CC-2045 Rock Island Franciscan Hospital  
83-CC-2064 Service Dynamics, Inc.  
83-CC-2066 Hemphill, John  
83-CC-2070 Associates in Adolescent Psychiatry, S.C.  
83-CC-2079 Sadowski, L. E., M.D.  
83-CC-2114 Rock Island Franciscan Hospital  
83-CC-2119 Halberg, Max, Jr., & Halberg, Linda  
83-CC-2121 Sherman Hospital Assn.  
83-CC-2122 Sherman Hospital Assn.  
83-CC-2124 Xerox Corp.  
83-CC-2131 Rock Island Franciscan Hospital  
83-CC-2132 Rock Island Franciscan Hospital  
83-CC-2144 Treister Orthopaedic Services, Ltd.  
83-CC-2146 Treister Orthopaedic Services, Ltd.  
83-CC-2148 Treister Orthopaedic Services, Ltd.  
83-CC-2173 Treister Orthopaedic Services, Ltd.  
83-CC-2174 Treister Orthopaedic Services, Ltd.  
83-CC-2206 Haley, Robert H., D.D.S.  
83-CC-2208 Haley, Robert H., D.D.S.  
83-CC-2209 Haley, Robert H., D.D.S.  
83-CC-2210 Haley, Robert H., D.D.S.  
83-CC-2216 Hilton, Robert  
83-CC-2220 St. John's Hospital  
83-CC-2239 Anesthesiology, Department of, Washington  
University  
83-CC-2247 Centel of Illinois  
83-CC-2252 Drueck, Charles, III, M.D.  
83-CC-2269 St. Mary of Nazareth Hospital Center  
83-CC-2270 De Kalb Clinic Chartered

- 83-CC-2297 Dotson, Linda M.  
 83-CC-2301 Goodyear Tire & Rubber Co.  
 83-CC-2317 Beno, Ferdinand & Jana  
 83-CC-2346 White, Leah C. & Charles  
 83-CC-2356 Flynn, John R.  
 83-CC-2357 Sonnenberg, John D., M.D.  
 83-CC-2372 Northeastern Illinois University  
 83-CC-2387 Smith, Jack  
 83-CC-2412 Glenkirk Association for Retarded Citizens  
 83-CC-2481 Co-op Medical Systems  
 83-CC-2482 Co-op Medical Systems  
 83-CC-2487 Harcourt Brace Jovanovich, Inc.  
 83-CC-2520 Dixon, Robert D. & Betty L.  
 83-CC-2521 Smith, David  
 83-CC-2547 Glenkirk Association for Retarded Citizens  
 83-CC-2560 Robertshaw Controls Co.  
 83-CC-2597 Lieberman, Robert, D.D.  
 83-CC-2606 Hoskins, David  
**83-CC-2670 Barrow, Warren C., M.D.**  
 83-CC-2676 Aaron, Donald E.  
 83-CC-2692 Co-op Medical Systems  
 83-CC-2693 Co-op Medical Systems  
 83-CC-2694 Co-op Medical Systems  
 83-CC-2708 Baner, Terrill M., M.D.  
 83-CC-2720 Cresswell, James  
 83-CC-2765 Perdue, Gwendolyn  
 83-CC-2810 Edwards, Blanche  
 84-CC-0103 Xerox Corp.  
 84-CC-0104 Xerox Corp.  
 84-CC-0105 Xerox Corp.  
 84-CC-0145 Weiss, Louis A., Memorial Hospital  
 84-CC-0164 Jones, Howard  
 84-CC-0246 Wang Laboratories, Inc.  
 84-CC-0263 Hyde, Mayre Kay  
 84-CC-0264 Jones, Kenneth D., & Jenner & Block  
 84-CC-0268 Spruell, Dempsey M.  
 84-CC-0292 Bridgeview Bank & Trust Co., & Bee Jays  
     Truck Stop, Inc.  
 84-CC-0304 Belinson, Michael A., M.D.  
 84-CC-0310 Copley Memorial Hospital  
 84-CC-0323 Lee, Hwang

- 84-CC-0327 General Electric Co,  
84-CC-0330 Roseland Community Hospital  
84-CC-0333 Woods, Joe  
84-CC-0351 Victory Memorial Hospital'  
84-CC-0352 Thompson, Mary, Hospital  
84-CC-0354 Victory Memorial Hospital  
84-CC-0360 Rock Island Franciscan Hospital  
84-CC-0369 Jolly Fun House Playschools, Inc.  
84-CC-0375 Hutton, Arnold  
84-CC-0426 Naperville Pediatrics Assoc.  
84-CC-0441 Lexington Hospital  
84-CC-0444 MacNeal Memorial Hospital  
84-cc-0451 Pettis, Larry Lee  
84-CC-0470 Talley, Randall C.  
84-CC-0503 Savin Corp.  
84-CC-0516 Schultheis, Elsie  
84-CC-0521 Kanzler, David  
84-CC-0530 Northeastern Illinois University  
84-CC-0536 Sampson, Joseph E., First Granite City National Bank,  
guardian  
84-CC-0584 Sergeant, Wm. Eli & Mary  
84-CC-0593 Thompson, Odell, for the use of Allstate  
Insurance Co.  
84-CC-0606 Feaster, Morris  
84-CC-0610 Garcia, Felipe C.  
84-CC-0642 Bell, Loretta C.  
84-cc-0643 Johnson, Johnnie M. & Greer, Marion C.  
84-CC-0644 Mannery, Jerry B.  
84-CC-0654 Chicago, University of, Hospital  
84-CC-0661 Peterson, Ernest M.  
84-CC-0666 Kostner, Laura & James  
84-CC-0670 Akrami, Cyrus, M.D.  
84-CC-0671 Akrami, Cyrus, M.D.  
84-CC-0672 Akrami, Cyrus, M.D.  
84-CC-0686 Vinson, Gary L.  
84-CC-0698 Antonacci, Norman C.  
84-CC-0701 Augustana Hospital  
84-CC-0708 Powell, Darryl  
84-CC-0722 Northeastern Illinois University  
84-CC-0728 Nielsen, S. N., Co.  
84-CC-0740 Ward, Sara Lee

- 84-CC-0743 Savin Corp.  
84-CC-0760 Tipton, James  
84-CC-0769 Smith, Shirley M.  
84-CC-0796 Cifelli, John L., Trustee of Metro Trust  
84-CC-0806 Taylor, Minnie  
84-CC-0832 Lachona, Nick  
84-CC-0841 Lawrence, William Alan  
84-CC-0845 Chicago, City of  
84-CC-0891 Perkins, Michael  
84-CC-0897 Evanston Hospital  
84-CC-0903 Holy Family Hospital  
84-CC-0908 Duran, Rafael  
84-CC-0929 Kneebone, Tom  
84-CC-0930 Potts, Roy Lee  
84-CC-0936 General Electric  
84-CC-0970 Illinois State University  
84-CC-0973 Illinois State University  
84-CC-0974 Chicago Steel Tape Co.  
84-CC-0977 Chicago Steel **Tape** Co  
84-CC-0984 Frazier, Denise Hicks  
84-CC-0987 Illinois Bell Telephone Co.  
84-CC-0989 Wehking-Wilson Corp.  
84-CC-1003 Central Management Services  
84-CC-1005 Tinkham, **Dora** Lee  
84-CC-1009 Terminix International  
84-CC-1019 Copley Memorial Hospital  
84-CC-1046 Pannebaker, David  
84-CC-1061 Catholic Social Service  
84-CC-1082 Production Supplies, Inc.  
84-CC-1086 Peyton, Barbara J.  
84-CC-1098 Hermon, Manorama, M.D.  
84-CC-1156 Spevak, Roger **E.** & Marsha J.  
84-CC-1183 Pilcher, David Lee  
84-CC-1186 Frank, Wm. G. & Doris  
84-CC-1203 Busiel, George J., Ph.D.  
84-CC-1218 Community College Dist. 508  
84-CC-1250 Children's Memorial Hospital  
84-CC-1256 Moraine Valley Community College  
84-CC-1262 Wang Laboratories, Inc.  
84-CC-1287 Johnson, Harold  
84-CC-1352 Pora Construction Co.

- 84-CC-1356 Chicago University Medical Center  
84-CC-1415 Payne, Maurice T.  
84-CC-1420 Benson, Christina  
84-CC-1483 Gorahm, Gregory A.  
84-CC-1512 Quad Cities Training Center  
84-CC-1546 Kendall Family & Youth Services  
84-CC-1575 Flynn, Thomas T.  
84-CC-1583 Willowglen Academy  
84-CC-1584 Willowglen Academy  
84-CC-1585 Willowglen Academy  
84-CC-1630 Blount, Mary Ann  
84-CC-1663 Gampl, Franz X., M.D.  
84-CC-1674 Howell, Steven  
84-CC-1687 Quaas, Robert L., M.D.  
84-CC-1692 Community Care Systems  
84-CC-1709 Capitol Plumbing & Heating  
84-CC-1711 Capitol Plumbing & Heating  
84-CC-1712 Capitol Plumbing & Heating  
84-CC-1713 Capitol Plumbing & Heating  
84-CC-1738 Fullermer, Elsbeth, d/b/a Buffalo Rock Shooters Supply  
84-CC-1772 Turnoy, Celia  
84-CC-1820 Northern Illinois University  
84-CC-1821 Northern Illinois University  
84-CC-1847 Sass, Olga  
84-CC-1852 Smetters, Carol  
84-CC-1886 Chicago, University of, Prof. Serv.  
84-CC-1908 General Electric  
84-CC-1911 Chicago Pneumatic  
84-CC-1926 Christian Construction  
84-CC-1972 Illinois, University of, Hospital  
84-CC-1990 Iroquois Memorial Hospital  
84-CC-2118 General Electric  
84-CC-2119 Illinois State University  
84-CC-2137 Zaidi, Abrar  
84-CC-2150 First National Bank of Spfld., Guardian Est. of King V.  
Hostick  
84-CC-2167 Illinois State University  
84-CC-2173 O. J. Photo Supply  
84-CC-2189 Medical Practice Plan  
84-CC-2481 Moore Business Forms, Inc.

- 84-CC-2485 Medical Practice Plan
  - 84-CC-2511 Medical Practice Plan
  - 84-CC-2512 Medical Practice Plan
  - 84-CC-2517 DeYoung, Herbert C. & Virginia W.
  - 84-CC-2559 Family Care Services
  - 84-CC-2663 Robinson, Jeffrey A.
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**CASES IN WHICH ORDERS AND OPINIONS  
OF DENIAL WERE ENTERED WITHOUT  
OPINIONS  
FY 1984**

82-CC-1142	United Medical Laboratory .
83-CC-0618	Hood, Ronald
83-CC-0621	Smith, Tony O.
83-CC-1086	Barber, Billy
83-CC-1700	West, Freddy
83-CC-1918	Jones, Kevin
83-CC-2531	Texaco, Inc.
84-CC-0146	Mayner, Jerald D. & Phyllis J.
84-CC-0248	Wang Laboratories, Inc
84-CC-0249	Wang Laboratories, <b>Inc</b>
84-CC-0282	Wang Laboratories, <b>Inc</b>
<del>84</del> C-0283	Wang Laboratories, Inc

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## CONTRACTS—LAPSED APPROPRIATIONS FY 1984

When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due Claimant.

81-CC-2419	Carbonaro Construction Co.	\$26,476.17
81-CC-2945	Xerox Corp.	195.00
81-CC-2949	Xerox Corp.	169.75
82-CC-0014	Catholic Social Service	347.55
82-CC-0260	Catholic Social Service	6,810.44
82-CC-0700	Catholic Social Service	7,130.00
82-CC-0702	Catholic Social Service	19,579.00
82-CC-0890	Commonwealth Edison Co.	13,748.06
82-CC-1184	Xerox Corp.	500.00
82-CC-1185	Xerox Corp. (Paid under claim 82-CC-1184)	
82-CC-1191	Xerox Corp.	266.57
82-CC-1363	First Republic Investment & Development Corp.	1,272.35
82-CC-1380	Catholic Social Service	2,912.40
82-CC-1678	Buddy Bear's Food Center	3,611.18
82-CC-1777	Anchor Office Supply Co.	625.72
82-CC-1795	Xerox Corp.	50.50
82-CC-1804	Xerox Corp.	335.27
82-CC-1909	General Electric Co.	363.00
82-CC-2048	Charoonratana, S., M.D.	20.00
82-CC-2205	Catholic Social Service	519.98
82-CC-2327	MacNeal Memorial Hospital	2,918.61
82-CC-2426	Buddy Bear's Food Center (Paid under claim 82-CC-1678)	
82-CC-2441	Thomas, Carolyn	258.00
82-CC-2451	Xerox Corp.	1,220.00
82-CC-2508	Springfield, City of	27.00
82-CC-2622	Plummer, Lee J.	750.03
82-CC-2765	Clow, David P.	413.87
83-CC-0060	Artlip & Sons, Inc.	210.56
83-CC-0077	Illinois Bell Telephone Co.	2,623.30
83-CC-0088	Chicago Foundation for Medical Care	58,696.53
83-CC-0131	Carle Clinic Association	144.15
83-CC-0132	Carle Clinic Association	99.15

83-CC-0187	Illinois State University	293.50
83-CC-0188	Illinois State University	72.00
83-CC-0220	Anchor Office Supply Co.	79.70
83-CC-0311	Information Associates, A Service of Westinghouse Learning Corp.	13,546.80
83-CC-0322	Howard University	11,075.75
83-CC-0344	Xerox Corp.	192.24
83-CC-0397	La Salle County, Ill. & Kenneth L. Washkowiak, Sheriff of La Salle Co.	4,256.99
83-CC-0398	Family Care Services' of Metropolitan Chicago	11,382.31
83-CC-0441	Commonwealth Edison	69,648.20
83-CC-0445	Misericordia Home North	7,758.86
83-CC-0446	Franciscan Sisters Health Care Corp., d/b/a/ St. Elizabeth Hospital of Danville, Illinois	3,320.27
83-CC-0461	Baim, Howard, M.D.	646.00
83-CC-0482	Industrial <b>Door</b> Co. of Chicago, Inc.	1,312.00
83-CC-0507	Orthopedic' & Spine Surgery Assoc.	2,095.00
83-CC-0508	State Employees' Retirement System	2,558.97
83-CC-0524	AM International	1,123.47
83-CC-0611	Southern Illinois University, Board of Trustees of	15,588.34
83-CC-0644	Associates in Adolescent Psychiatry, S.C.	240.68
83-CC-0647	Springfield Public School District #186	174.00
83-CC-0657	Frisina Co.	4,450.06
83-CC-0664	Hug, Steve	390.00
83-CC-0666	Castles Business Equipment	44.82
83-CC-0739	Kattany, Albert J.	7,063.16
83-CC-0743	Visionquest National, Ltd.	3,822.00
83-CC-0759	Central Office Equipment Co.	940.00
83-CC-0760	Central Office Equipment Co.	3,492.00
83-CC-0893	St. Mary's Hospital	10.00
83-CC-0903	Rolm of Illinois	2,152.45
83-CC-0906	Riverside Medical Center	3,428.25
83-CC-0932	Alton Sheet Metal Corp.	12,002.65
83-CC-0936	IBM Corp.	6,452.32
83-CC-0969	Merkel's, Inc.	260.00
83-CC-1031	Chicago Toro Turf-Irrigation, Inc.	257.06
83-CC-1034	Karoll's, Inc.	5,740.00
83-CC-1149	Thapedi, Isaac M., M.D., S.C.	36.00
83-CC-1173	Attinello, Eleanor	510.00

83-CC-1211	Muscatine General Hospital	40.00
83-CC-1280	Wieboldt Stores, Inc.	235.66
83-CC-1331	Hill, Janice M.	8.52
83-CC-1336	St. Therese Hospital	145.00
83-CC-1343	University Anesthesiologists	799.50
83-CC-1384	Maninfior Court Reporting Service; P.C.	90.40
83-CC-1404	Phillips Brothers, Inc.	10,646.60
83-CC-1409	Amoco Oil Co.	1,154.86
83-CC-1410	Amoco Oil Co.	1,071.36
83-CC-1414	Amoco Oil Co.	178.23
83-CC-1416	Amoco Oil Co.	81.87
83-CC-1423	Northeastern Illinois University	227.43
83-CC-1432	IBM Corp.	962.14
83-CC-1465	Harris Corp.	1,214.70
83-CC-1474	General Electric Co.	3,997.84
83-CC-1513	Southern Illinois University	1,548.13
83-CC-1529	MacNeal Memorial Hospital	991.81
83-CC-1530	MacNeal Memorial Hospital	991.81
<b>83-CC-1531</b>	<b>Waynesboro Hospital</b>	<b>46.00</b>
83-CC-1536	De Paul University	777.00
83-CC-1545	GTE Business Communication Systems, Inc.	630.45
83-CC-1563	Shepard's/McGraw-Hill	761.50
83-CC-1564	Shepard's/McGraw-Hill	(Paid under claim 83-CC-1563)
83-CC-1582	General Electric Co.	16,998.80
83-CC-1606	Marquis, Robert W., M.D.	225.00
83-CC-1659	Children's Home & Aid Society of Illinois	52,255.27
83-CC-1663	Volunteers of America	2,163.69
83-CC-1669	Stripe, Doris M.	225.42
83-CC-1672	Wood River Township Hospital	539.40
83-CC-1675	Wallace, Lawrence, D.D.S.	36.00
83-CC-1696	Brooks Rosemont Pharmacy	21.79
83-CC-1697	McGaw, Foster G., Hospital	300.96
83-CC-1714	Copley Memorial Hospital	953.42
83-CC-1715	Copley Memorial Hospital	(Paid under claim 83-CC-1714)
83-CC-1716	Copley Memorial Hospital	(Paid under claim 83-CC-1714)
83-CC-1717	Copley Memorial Hospital	(Paid under claim 83-CC-1714)

83-CC-1718	Copley Memorial Hospital (Paid under claim 83-CC-1714)	
83-CC-1719	Copley Memorial Hospital (Paid under claim 83-CC-1714)	
83-CC-1723	Whitaker, Walter M., M.D.	160.00
83-CC-1724	Chicago Child Care Society	2,384.00
83-CC-1738	Wabash-Harrison, Inc.	75.00
83-CC-1743	Modern Business Systems, Inc.	442.87
83-CC-1744	Modern Business Systems, Inc.	373.60
83-CC-1750	Modern Business Systems, Inc.	31.55
83-CC-1752	Modern Business Systems, Inc.	31.55
83-CC-1765	Schindler Haughton Elevator Corp.	103.76
83-CC-1766	Schindler Haughton Elevator Corp.	103.16
83-CC-1777	Sangamon State University	3,000.00
83-CC-1787	McGaw, Foster G., Hospital	859.00
83-CC-1802	Boyer, Donald D.	30.00
83-CC-1805	Lutheran Social Services of Illinois	13,469.89
83-CC-1806	Lutheran Social Services of Illinois	4,554.01
83-CC-1807	Lutheran Social Services of Illinois	1,885.15
83-CC-1808	Lutheran Social Services of Illinois	2,909.20
83-CC-1809	Lutheran Social Services of Illinois	2,560.88
83-CC-1810	Lutheran Social Services of Illinois	2,374.06
83-CC-1811	Lutheran Social Services of Illinois	820.08
83-CC-1812	Lutheran Social Services of Illinois	913.47
83-CC-1813	Lutheran Social Services of Illinois	454.24
83-CC-1820	Betts, Louis, Jr.	2,200.00
83-CC-1841	Midwest Security Agency, Inc.	15,000.00
83-CC-1844	O'Donnell, Daniel, d/b/a Armitage Hardware & Building Supply, Inc.	441.27
83-CC-1848	Wolff, Bruce L.	87.00
83-CC-1849	Wolff, Bruce L.	66.00
83-CC-1850	Wolff, Bruce L.	59.00
83-CC-1859	Wolff, Bruce L.	11.00
83-CC-1860	Wolff, Bruce L.	11.00
83-CC-1862	Wolff, Bruce L.	17.00
83-CC-1863	Wolff, Bruce L.	17.00
83-CC-1881	Saxon Business Products, Div. of Saxon Industries	161.64
83-CC-1888	McDonough, Robert E.	32.32
83-CC-1889	Central Baptist Children's Home	9,794.39

83-CC-1894	Beltran, Violeta, Dr.	464.00
83-CC-1895	Beltran, Violeta, Dr.	25.00
83-CC-1905	Kirkpatrick, Robinson P., M.D.	171.00
83-CC-1913	DeVryer, Pieter, M.D.	280.00
83-CC-1926	Springfield Dodge Sales, Inc.	373.48
83-CC-1930	Cain, Wayne, & Sons Roofing and Sheet Metal	3,039.00
83-CC-1935	Fullilove, Mary	189.20
83-CC-1943	Association for Individual Development	116.90
83-CC-1949	V. W. R. Scientific, Inc.	1,010.05
83-CC-1950	Enloe, A. Sam	319.20
83-CC-1954	Senno, Aref, M.D.	125.00
83-CC-1955	Danbury Hospital	266.00
83-CC-1958	Tsatsos, George C., M.D., S.C.	100.00
83-CC-1962	Seidenburg, Eleanor J.	97.00
83-CC-1963	Christian Church in Illinois & Wisconsin	180.00
83-CC-2000	Willowglen Academy	1,534.08
83-CC-2001	Siksna, Ludmilla, M.D.	156.00
83-CC-2002	McLary, Regina S.	200.00
83-CC-2025	Near North Parents & Friends of the Retarded, Inc.	613.12
83-CC-2041	Southeastern Illinois College	176.00
83-CC-2046	Leila Hospital & Health Center	258.44
83-CC-2047	St. Francis Hospital	236.00
83-CC-2050	Goodyear Tire & Rubber Co., The	870.55
83-CC-2056	Will County Ford Tractor, Inc.	633.15
83-CC-2057	Holiday Inn Mart Plaza Chicago	41.46
83-CC-2062	Herschberger Trucks	2,981.06
83-CC-2063	Service Dynamics, Inc.	1,223.05
83-CC-2072	Wiley, Bessie E.	149.00
83-CC-2073	St. Francis Medical Center	48.38
83-CC-2075	Trupin, Lewis, M.D.	78.00
83-CC-2076	Saxon Business Products	74.78
83-CC-2078	General Electric Co.	11,164.00
83-CC-2081	Aid Ambulance	4,335.10
83-CC-2082	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2083	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2084	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)

83-CC-2085	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2086	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2087	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2088	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2089	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2090	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2091	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2092	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2093	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2094	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2095	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2096	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2097	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2098	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2099	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2100	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2101	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2102	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2103	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)
83-CC-2104	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)

83-CC-2105	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)	
83-CC-2106	Aid Ambulance	(Paid & vouchered under case 83-CC-2081)	
83-CC-2107	Illinois Consolidated Telephone Co.		350.00
83-CC-2113	IBM Corp.		996.40
83-CC-2120	Sherman Hospital Assn.		15.72
83-CC-2129	Davenport, Richard, M.D.		463.00
83-CC-2133	Jesani, Mirza, M.D.		91.50
83-CC-2139	Henry, Harvey M., M.D.		11.00
83-CC-2143	Treister Orthopaedic Services, Ltd.		115.00
83-CC-2145	Treister Orthopaedic Services, Ltd.		109.00
83-CC-2147	Treister Orthopaedic Services, Ltd.		90.00
83-CC-2153	Suburban Heights Medical Center		81.00
83-CC-2162	Anderson International Trucks, Inc.		2,947.82
83-CC-2166	Kaleidoscope, Inc.		4,712.33
83-CC-2167	Kaleidoscope, Inc.		770.70
83-CC-2168	Treister Orthopaedic Services, Ltd.		127.00
83-CC-2169	Treister Orthopaedic Services, Ltd.		<b>128.50</b>
83-CC-2170	Treister Orthopaedic Services, Ltd.		91.00
83-CC-2171	Treister Orthopaedic Services, Ltd.		91.00
83-CC-2172	Treister Orthopaedic Services, Ltd.		73.00
83-CC-2176	Modern Plumbing & Heating Supply Co., Inc.		1,813.00
83-CC-2179	Reese, Michael, Hospital & Medical Center		320.00
83-CC-2180	Dooley, Patrick J.		45.98
83-CC-2186	Kellner, Donald		59.00
83-CC-2187	Films, Inc.		290.97
83-CC-2192	Kar Products, Inc.		46.78
83-CC-2193	Kilton, Lary J., M.D.		264.00
83-CC-2194	Complete Reading Electric Co.		520.00
83-CC-2196	Mobil Oil Credit Corp.		152.54
83-CC-2197	Mobil Oil Credit Corp.		49.08
83-CC-2198	Joliet Herald-News		76.23
83-CC-2200	Schafer, Michael E., M.D.		66.00
83-CC-2202	Baptist Children's Home		550.00
83-CC-2203	St. Elizabeth Medical Center		3,568.80
83-CC-2207	Haley, Robert H., D.D.S.		37.00
83-CC-2217	A.A. Store Fixture Co., Inc.		6,950.00
83-CC-2224	Bardings Garage		210.42
83-CC-2225	Bethea, Katherine Shaw, Hospital		160.66
83-CC-2226	Carpentville, Inc.		321.00

83-CC-2234	Kuhn, Velma J.	103.52
83-CC-2235	Brandolino, William R.	95.76
83-CC-2240	Reese, Michael, Hospital & Medical Center	1,250.00
83-CC-2241	Reese, Michael, Hospital & Medical Center	325.15
83-CC-2242	General Electric Co.	9,949.39
83-CC-2243	Buller Fixture Co.	284.56
83-CC-2245	Farne, Rey F., M.D.	26.00
83-CC-2249	Hadler Int., Inc.	196.26
83-CC-2251	Service Supply Co., Inc	14,625.09
83-CC-2253	Mac's Plumbing & Heating, Inc.	2,623.81
83-CC-2260	Stephenson, Jeanne	662.39
83-CC-2263	Mercy Hospital	5,715.35
83-CC-2264	Mercy Hospital (Paid under claim 83-CC-2263)	
83-CC-2265	Weiss, Susan; Maroa Star Market	75.00
83-CC-2266	Hillier Storage & Moving Co	75.00
83-CC-2271	Council of State Governments	7,310.00
83-CC-2296	Riverdale, Village of	2,970.00
83-CC-2300	Mt. Sinai Medical Center	151.34
83-CC-2303	Aid Ambulance Service, Inc.	60.00
83-CC-2306	Wertz, Robert A., D.D.S., M.S.	100.00
83-CC-2307	Illinois Road Contractors, Inc.	532.32
83-CC-2308	Epilepsy Foundation of America, North Shore/Lake County Chapter	488.00
83-CC-2309	Zayre 352	375.56
83-CC-2310	Community Consolidated District #65	437.30
83-CC-2314	S.I.U. School of Medicine	730.00
83-CC-2315	Rosecrance Memorial Homes for Children	5,765.79
83-CC-2316	Cass, Margaret E.	684.00
83-CC-2320	Alvarez, Luis	67.55
83-CC-2328	Compton, Irma Jean (Paid under claim 83-CC-2586)	
83-CC-2329	Hribar, Fran	312.58
83-CC-2331	Chicago, University of	14,812.00
83-CC-2332	Chicago, University of	3,076.40
83-CC-2333	Bingham, Rochelle (Paid under claim 83-CC-2586)	
83-CC-2335	McGaw, Foster F., Hospital	4,652.17
83-CC-2340	McGary, Janet D. (Paid under claim 83-CC-2586)	
83-CC-2341	Zeisler, Claire	5,000.00
83-CC-2344	Norsom Med. Lab	12.00
83-CC-2347	Federal Express Corp.	30.88
83-CC-2359	Northeastern Illinois University	771.12
83-CC-2371	Economics Laboratory, Inc.	492.00

83-CC-2375	Motorola, Inc.	1,473.46
83-CC-2376	Motorola, Inc.	508.93
83-CC-2377	Motorola, Inc.	285.61
83-CC-2378	Motorola, Inc.	202.70
83-CC-2379	Malooof, Mitchell J., d/b/a Malooof Real Estate Co.	145.00
83-CC-2381	Hensley, Richard, Mr. & Mrs.	12.00
83-CC-2383	McCullough, Patricia (Paid under claim 83-CC-2586)	
83-CC-2385	Bell & Howell Education Group, Inc.	417.37
83-CC-2386	Gerhard, Margaret	2,250.00
83-CC-2388	Page, Stephanie (Paid under claim 83-CC-2586)	
83-CC-2398	Willowglen Academy	3,048.39
83-CC-2399	Knight, Peggy (Paid under claim 83-CC-2586)	
83-CC-2400	Miller, Susanna (Paid under claim 83-CC-2586)	
83-CC-2401	Sandifer, Beverly (Paid under claim 83-CC-2586)	
83-CC-2402	Accurate Reporting Service Co., Inc.	145.60
83-CC-2403	Accurate Reporting Service Co., Inc.	140.65
83-CC-2404	Accurate Reporting Service Co., Inc.	37.05
83-CC-2410	Glenkirk Association for Retarded Citizens	787.37
83-CC-2411	Glenkirk Association for Retarded Citizens	300.00
83-CC-2414	Bruchert, Mary J. (Paid under claim 83-CC-2586)	
83-CC-2416	New Hope Living & Learning Center, Inc.	1,200.00
83-CC-2417	New Hope Living & Learning Center, Inc.	234.70
83-CC-2424	Union County Hospital Dist.	3,650.70
83-CC-2426	Sertoma Job Training Center	210.00
83-CC-2438	Public Aid, Illinois Department of	82.00
83-CC-2441	Hatzenbuhler, Myrna	493.50
83-CC-2442	Stearns, Keith E.	359.35
83-CC-2443	Southern Illinois University, Board of Trustees of	1,031.00
83-CC-2448	Wolff, Bruce L.	80.00
83-CC-2449	Wolff, Bruce L.	80.00
83-CC-2451	Wolff, Bruce L.	33.00
83-CC-2452	Wolff, Bruce L.	28.00
83-CC-2453	Wolff, Bruce L.	17.00
83-CC-2454	Wolff, Bruce L.	20.00
83-CC-2455	Wolff, Bruce L.	24.00
83-CC-2456	Wolff, Bruce L.	17.00
83-CC-2457	Wolff, Bruce L.	17.00
83-CC-2458	Wolff, Bruce L.	17.00
83-CC-2459	Wolff, Bruce L.	17.00

83-CC-2464	Connors, Donna	(Paid under claim 83-CC-2586)	
83-CC-2472	Glenkirk Association for Retarded Citizens		768.00
83-CC-2473	Esis, Inc.		25,134.02
83-CC-2474	Cutler, Donna	(Paid under claim 83-CC-2586)	
83-CC-2477	Moore, Robert P., d/b/a Moore & Associates		3,821.21
83-CC-2478	Moore, Robert P., d/b/a Moore & Associates		972.74
83-CC-2485	Immke, Keith H.		100.00
83-CC-2489	Gallaudet College		3,008.95
83-CC-2491	Goodyear Tire & Rubber Co., The		4,814.07
83-CC-2499	Roseland Community Hospital		1,995.20
83-CC-2504	Jackson Counseling Center, The		355.00
83-CC-2505	Alton Memorial Hospital		215.00
83-CC-2526	University Educational Publishing Corp.		24.95
83-CC-2528	Texaco, Inc.		737.68
83-CC-2529	Texaco, Inc.		38.56
83-CC-2530	Texaco, Inc.		36.02
83-CC-2532	Texaco, Inc.		25.23
83-CC-2533	Texaco, Inc.		43.75
83-CC-2534	Texaco, Inc.		23.75
83-CC-2535	Texaco, Inc.		28.02
83-CC-2536	Texaco, Inc.		47.67
83-CC-2537	Texaco, Inc.		59.04
83-CC-2538	Texaco, Inc.		107.46
83-CC-2539	Texaco, Inc.		34.31
83-CC-2540	Texaco, Inc.		138.71
83-CC-2541	Texaco, Inc.		67.25
83-CC-2542	Texaco, Inc.		17.45
83-CC-2543	Illinois, University of, Board of Trustees of the		992.50
83-CC-2544	Illinois, University of, Board of Trustees of the		2,591.40
83-CC-2546	Glenkirk Association for Retarded Citizens		5,391.20
83-CC-2548	Glenkirk Association for Retarded Citizens		519.38
83-CC-2549	Connor, Jennifer L.	(Paid under claim 83-CC-2586)	
83-CC-2551	Vallarta Reporting Service, Inc.		95.65
83-CC-2552	Hardin, County of		1,702.65
83-CC-2553	Vega International Travel Service, Inc.		252.00
83-CC-2559	King, Lee, & Partners		419.00
83-CC-2564	Bullock, William L.		126.65

83-CC-2565	Simplex Time Recorder Co.	154.11
83-CC-2566	McGaw, Foster G., Hospital	11,001.35
83-CC-2567	McGaw, Foster G., Hospital	2,750.00
83-CC-2568	McGaw, Foster G., Hospital	6,505.38
83-CC-2569	General Electric Co.	3,044.00
83-CC-2572	Chicago Steel Tape Co.	32.50
83-CC-2575	Copenny, Lavern, (Bridges)	(Paid under claim 83-CC-2586)
83-CC-2576	Modern Industries, Div. of Hoffman Glass Service, Inc.	6,522.00
83-CC-2584	Murphy & Miller, Inc.	626.25
83-CC-2588	Glass, Constance Hope	1,300.00
83-CC-2589	Lies, Belinda Konrad	960.00
83-CC-2590	Dhand, Seema	650.00
83-CC-2591	Kempik, Barbara	650.00
83-CC-2592	Halloran, Martin	650.00
83-CC-2593	Rogers, Twanderlyne	650.00
83-CC-2594	Baudouin, Paul	520.00
83-cc-2595	Cowell, Carol	<b>325.00</b>
83-CC-2596	Lieberman, Robert, D.D.	16.00
83-CC-2598	Lieberman, Robert, D.D.	16.00
83-CC-2599	Trujillo, Guadalupe	463.10
83-CC-2602	Sandoval, Deborah	(Paid under claim 83-66-2586)
83-CC-2603	Shaffer, Angela E.	150.00
83-CC-2610	National Mine Service Co.	212.85
83-CC-2613	Northern Illinois Gas Co.	3,459.40
83-CC-2614	K Mart, 7168	41.38
83-CC-2615	Williams, Chlorine	(Paid under claim 83-CC-2586)
83-CC-2616	Puro Filter Corp. of Illinois	120.00
83-CC-2619	Hannin Roofing & Sheet Metal Co., Inc.	28,640.19
83-CC-2622	Suburban Medical Center	58.04
83-CC-2633	Anchor Office Supply Co.	634.80
83-CC-2641	Del Rey Machine Shop	250.00
83-CC-2645	Watson, Charlotte	(Paid under claim 83-CC-2586)
83-CC-2647	OSP Management (formerly Horder Management)	41.23
83-CC-2651	Community College Dist. #508	110.77
83-CC-2652	Community College Dist. #508	110.77
83-CC-2653	Community College Dist. #508	102.25
83-CC-2654	Community College Dist. #508	102.25
83-CC-2655	Community College Dist. #508	102.25

83-CC-2656	Community College Dist. #508	187.00
83-CC-2657	Community College Dist. #508	180.00
83-CC-2658	Community College Dist. #508	180.00
83-CC-2659	Community College Dist. #508	70.00
83-CC-2660	Community College Dist. #508	76.69
83-CC-2661	Community College Dist. #508	51.12
83-CC-2662	Community College Dist. #508	51.12
83-CC-2663	Community College Dist. #508	25.56
83-CC-2664	Community College Dist. #508	51.12
83-CC-2665	Community College Dist. #508	51.12
83-CC-2666	Community College Dist. #508	51.12
83-CC-2667	Community College Dist. #508	25.56
83-CC-2668	Community College Dist. #508	51.00
83-CC-2669	Community College Dist. #508	17.04
83-CC-2672	Schiller, W., & Co.	570.00
83-CC-2673	Schiller, W., & Co.	300.00
83-CC-2674	Hicksgas-Lake Villa, Inc.	51.90
83-CC-2680	Community General Hospital	1,167.20
83-CC-2683	Xerox Corp.	2,090.15
83-CC-2685	Xerox Corp.	840.00
83-CC-2686	Xerox Corp.	367.47
83-CC-2687	Xerox Corp.	278.50
83-CC-2688	Xerox Corp.	124.25
83-CC-2691	Fern, Raymond	50.00
83-CC-2696	IBM Corp.	3,948.00
83-CC-2698	K Mart Corp.	147.61
83-CC-2701	Daugherty, Felicia	195.00
83-CC-2702	Davidson, Carolyn	200.00
83-CC-2703	Wilson, Willard, Jr.	153.29
83-CC-2706	Harrison, Bret W.	16.00
83-CC-2712	McGee, Mary	1,306.19
83-CC-2715	Central Office Equipment Co.	486.00
83-CC-2721	Reese, Michael, Hospital	168.28
83-CC-2722	Illinois Bell Telephone Co.	187.32
83-CC-2730	Daily Courier News	107.23
83-CC-2731	Community College District #508	417.02
83-CC-2732	Community College District #508	119.29
83-CC-2733	Community College District #508	170.00
83-CC-2734	Community College District #508	135.75
83-CC-2735	Community College District #508	51.12
83-CC-2736	Community College District #508	25.56

83-CC-2739	Miller-Krueger, Inc.	19.17
83-CC-2740	Carle Clinic Association	497.00
83-CC-2741	Wallace, Scott	750.00
83-CC-2743	Thompson, Joli	985.00
83-CC-2750	Powertron, Engine Division	75.92
83-CC-2761	Air Institute & Service	30.00
83-CC-2762	Illinois State University	483.50
83-CC-2763	Illinois State University	72.25
83-CC-2764	Healthco Ascher Dental Supply	150.00
83-CC-2767	West Publishing Co.	427.00
83-CC-2771	Lutheran General & Deaconess Hospitals School of Nursing	600.00
83-CC-2773	Sieg Rockford Co.	31.99
83-CC-2778	Berry, Valerie (Paid under claim 83-CC-2586)	
83-CC-2780	Melam, Donald L., M.D.	78.00
83-CC-2786	National Technical Information Service	55.50
83-CC-2787	Monroe Truck Equipment, Inc.	750.01
83-CC-2790	Western Union Telegraph Co.	332.95
83-CC-2799	Willis, Annette (Paid under claim 83-CC-2586)	
83-CC-2800	Purdum Electric, Inc.	4,084.93
83-CC-2801	Recognition Equipment, Inc.	413.00
83-CC-2803	Cook County, Illinois, Thomas P. Beck, Comptroller	36,754.10
83-CC-2808	Graves-Gilbert Clinic, P.S.C.	78.50
83-CC-2812	Howell Tractor & Equipment	118.65
83-CC-2813	IBM Corp.	144.55
83-CC-2823	Johnson County Mental Health Center	395.00
83-CC-2824	Auburn-Gresham Preschool, Inc.	5,838.24
83-CC-2826	Xerox Corp.	1,066.63
83-CC-2827	Xerox Corp.	742.00
83-CC-2828	Xerox Corp.	565.70
83-CC-2829	Xerox Corp.	387.64
83-CC-2830	Xerox Corp.	299.88
83-CC-2832	Xerox Corp.	265.00
83-CC-2835	Xerox Corp.	117.00
84-cc-0002	Cardiovascular Medicine, S.C.	36.00
84-CC-0003	Legal Division/Pantagraph Printing	23.00
84-CC-0004	Award Company of America	24.95
84-CC-0013	McGaw, Foster G., Hospital	6,634.25
84-CC-0016	McGaw, Foster G., Hospital	4,426.25
84-CC-0018	McGaw, Foster G., Hospital	3,875.12

84-CC-0019	McGaw, Foster G., Hospital	5,287.02
84-cc-0021	McGaw, Foster G., Hospital	6,414.53
84-CC-0084	Precision Laboratories, Inc.	86.00
84-CC-0086	Dailey, Rrithie (Paid under claim 83-CC-2586)	
84-CC-0095	McGaw, Foster G., Hospital	13,886.90
84-CC-0099	McGaw, Foster G., Hospital	3,313.22
84-CC-0109	Chicago Tribune	167.36
84-cc-0110	Carriers Traffic Service, Inc., Agent for Jim Green, Trustee for Inman Freight Systems	20.98
84-CC-0113	Crockett, Carmen L.	816.44
84-CC-0116	Illinois State University	1,000.00
84-CC-0121	Hadler Int., Inc.	209.22
84-cc-0122	Morrison-Rooney Assoc., Ltd.	1,000.00
84-CC-0150	Thunderbird Travel	617.00
84-CC-0151	Peters, Violet I.	448.00
<b>84-CC-0152</b>	DePaul University	6,439.00
<b>84-CC-0159</b>	Corrections, Dept. of, State of Illinois	42.62
84-CC-0160	Jones, Joanne G.	85.89
84-CC-0161	Castro, Daniel	295.00
84-CC-0162	Krause, Elaine	50.00
84-CC-0196	McGaw, Foster G., Hospital	14,835.26
84-CC-0217	Swenson Spreader Co.	3,037.38
84-cc-0220	Harris Corp.	1,560.00
84-CC-0221	Harris Corp.	992.29
84-CC-0223	Harris Corp.	1,560.00
84-CC-0225	Bell & Howell Education Group	1,063.35
84-CC-0231	Pomeranz, Jacob; Cornfield & Feldman	6,258.42
84-CC-0240	Commercial Lovelace Motor Freight, Inc.	31.97
84-CC-0241	Illinois, University of, Board of Trustees of the	14,602.41
84-CC-0242	Olive Electronics, Inc.	247.20
84-CC-0247	Wang Laboratories, Inc.	427.00
84-CC-0250	Wang Laboratories, Inc.	259.00
84-CC-0251	Wang Laboratories, Inc.	259.00
84-CC-0254	Wang Laboratories, Inc.	233.10
84-CC-0255	Wang Laboratories, Inc.	233.10
84-CC-0256	Wang Laboratories, Inc.	233.10
84-CC-0258	Berl, Melvin	41.00
84-CC-0259	Howe, Stephen	2,762.52
84-CC-0260	Winnebago, County of	5,239.74
84-CC-0261	Stierlin, Otto, Jr.	75.00

84-CC-0262	Burnham City Hospital	41.08
84-CC-0266	Storage Technology Corp.	1,056.00
84-CC-0272	Rodriguez, Jose C.	147.00
84-CC-0273	Rodriguez, Jose C.	69.50
84-CC-0274	Rodriguez, Jose C.	19.00
84-CC-0275	Rodriguez, Jose C.	12.00
84-CC-0276	Rodriguez, Jose C.	12.00
84-CC-0277	Rodriguez, Jose C.	10.50
84-CC-0278	Rodriguez, Jose C.	10.50
84-cc-0285	Community College Dist. 508	30.00
84-CC-0293	Henson Plumbing & Heating	119.12
84-CC-0301	O'Connor, Dawn	258.24
84-CC-0303	Reese, Michael, Hospital	325.15
84-CC-0305	Gambino, Lou	30.00
84-CC-0324	Keegan, Harold R., M.D., Ltd.	775.00
84-CC-0326	Smith, Dan, Co.	500.00
84-CC-0335	Coyne, Jacqueline	800.00
84-CC-0341	United Airlines	418.00
84-CC-0342	United Airlines	420.00
84-CC-0343	United Airlines	130.00
84-CC-0344	United Airlines	45.00
84-CC-0346	Community College Dist. 508	3,069.13
84-CC-0348	<b>Nardulli, Steven</b>	130.00
84-CC-0358	Bethea, Katherine Shaw, Hospital	31.50
84-CC-0364	Baxter, Edna (Paid under claim 83-CC-2586)	
84-CC-0365	Maxie, Wendy (Paid under claim 83-CC-2586)	
84-CC-0368	Sims, Charles	600.00
84-CC-0373	Beckman Instruments	730.83
84-CC-0388	McCullough, Edward	4,200.00
84-cc-0400	Vaughan-Jacklin Corp.	56.81
84-CC-0406	Royal Business Machines	529.00
84-CC-0408	Dunn, Richard A.	50.00
84-CC-0413	West Suburban Hospital Medical Center	5,248.32
84-CC-0414	Dun's Marketing Services	165.00
84-CC-0417	Northwest Community Hospital	3,528.03
84-CC-0421	Corbridge, Lloyd	45.00
84-CC-0422	Purdum Electric, Inc.	4,460.39
84-CC-0424	Washington, Leona (Paid under claim 83-CC-2586)	
84-CC-0425	Gustavson, Dennis M.	1,600.00
84-CC-0435	Shepard's/McGraw-Hill	95.50
84-CC-0437	Sample, Robin (Paid under claim 83-CC-2586)	

84-CC-0438	Shalgos, Edward, M.D.	250.00
84-CC-0442	Brown & Lambrecht Earthmovers, Inc.	12,387.22
84-CC-0453	Najera, Mary (Paid under claim 83-CC-2586)	
84-CC-0455	Kostecka, Robin K. (Paid under claim 83-CC-2586)	
84-CC-0457	Barnes, Fletcher	214.73
84-CC-0458	Smith Kline & French	448.13
84-CC-0459	Motorola, Inc.	5,688.00
84-CC-0462	Gampl, Franz X., M.D., S.C.	10.00
84-CC-0463	Gampl, Franz X., M.D., S.C.	12.00
84-CC-0472	Northwest Community Hospital	3,040.35
84-CC-0473	Dodson Plumbing, Heating & Air Conditioning, Inc.	438.46
84-CC-0475	Burroughs Corp.	240.00
84-CC-0477	Hopkins Road Equipment Co.	125.00
84-CC-0487	Illinois Masonic Medical Center	1,849.87
84-CC-0502	Stasiulus, Rimas	650.00
84-CC-0506	Beres Motor Co.	64.40
84-CC-0509	Schaumburg Dodge, Inc.	1,046.36
84-CC-0511	Eastern Airlines #19127	454.00
84-CC-0512	Eastern Airlines #17475	336.00
84-CC-0513	Eastern Airlines #17533	617.00
84-CC-0515	United Specialists, Inc.	194.32
84-CC-0518	Dugan's Office Supply & Equipment	13.25
84-CC-0519	Germino, Thomas P., D.D.S.	229.00
84-CC-0520	Community Memorial Hospital, Monmouth, City of	11.07
84-CC-0523	Midtown Brake & Electric	94.77
84-CC-0524	David, Enrique, Dr.; Morris T. Friedell, M.D. & Assoc., Ltd.	345.00
84-CC-0529	Nordstrom, Paul R.	<b>25.00</b>
84-CC-0534	Eastman Kodak Co.	304.80
84-CC-0541	Reader's Digest Services, Inc.	808.50
84-CC-0544	CETA Petty Cash Fund	141.06
84-CC-0551	Harrison, Brenda (Paid under claim 83-CC-2586)	
84-CC-0561	Sullivan Reporting Co.	785.05
84-CC-0566	St. Mary's Hospital, Decatur	2,517.00
84-CC-0567	St. Mary's Hospital, Decatur	1,908.75
84-CC-0568	St. Mary's Hospital, Decatur	1,871.25
84-CC-0569	St. Mary's Hospital, Decatur	1,744.25
84-CC-0570	St. Mary's Hospital, Decatur	961.75
84-CC-0571	St. Mary's Hospital, Decatur	913.65

84-CC-0575	Hagerty Catering Co.	1,278.70
84-CC-0579	Follett Publishing Co.	171.17
84-CC-0587	Lacey, Minnie	104.00
84-CC-0589	Co-op Medical Systems	12.36
84-CC-0590	Wilrae, Inc.	3,467.00
84-CC-0591	Coville, Walter, Estate of	30.00
84-CC-0597	Svaniga, Lora J.	166.89
84-CC-0598	Svaniga, Lora J.	98.35
84-CC-0602	St. John's Hospital	3,112.72
84-CC-0603	Brokaw Hospital, Inc.	71,272.35
84-CC-0605	Industrial Coatings Corp.	2,900.00
84-CC-0617	Chapman, Robert E., M.D.	780.00
84-CC-0618	Chapman, Robert E., M.D.	460.00
84-CC-0619	Chapman, Robert E., M.D.	500.00
84-CC-0620	Excelsior Youth Centers, Inc.	1,179.63
84-CC-0621	Excelsior Youth Centers, Inc.	963.75
84-CC-0622	Excelsior Youth Centers, Inc.	454.89
84-CC-0627	Swedish American Hospital	16,621.87
84-CC-0628	Swedish American Hospital	(Paid under claim 84-CC-0627)
84-CC-0629	Swedish American Hospital	(Paid under claim 84-CC-062'1)
84-CC-0630	Swedish American Hospital	(Paid under claim 84-CC-0627)
84-CC-0631	Swedish American Hospital	(Paid under claim 84-CC-0627)
84-CC-0632	Swedish American Hospital	(Paid under claim 84-CC-0627)
84-CC-0633	Swedish American Hospital	(Paid under claim 84-CC-0627)
84-CC-0634	Swedish American Hospital	(Paid under claim 84-CC-0627)
84-CC-0635	Swedish American Hospital	(Paid under claim 84-CC-0627)
84-CC-0636	Swedish American Hospital	(Paid under claim 84-CC-0627)
84-CC-0637	Swedish American Hospital	(Paid under claim 84-CC-0627)
84-CC-0638	Swedish American Hospital	(Paid under claim 84-CC-0627)
84-CC-0639	Hayes, Minnie Pearl	750.00

84-cc-0641	Grove School, The	21,657.81
84-CC-0647	Lacey, Mattie A.	142.50
84-CC-0648	Passavant Area Hospital	1,077.93
84-CC-0649	Passavant Area Hospital .	736.40
84-CC-0650	Orthopedic Associates of Kankakee	194.17
84-CC-0651	Orthopedic Associates of Kankakee	28.32
84-CC-0652	Bryant, Sharon Mae	1,150.00
84-CC-0653	Coreville Concrete Products	1,520.93
84-CC-0662	Quincy, City of	33,895.94
84-CC-0664	Grant's Spring, Inc.	5,280.68
84-CC-0669	Wang Laboratories, Inc.	71.36
84-CC-0678	Tigwell, David C., d/b/a D.C. Tigwell & Assoc.	6,471.90
84-CC-0682	St. Bernard Hospital	771.08
84-CC-0693	Kutty, Ahamed, V.P., M.D.	934.00
84-CC-0694	Kutty, Ahamed, V.P., M.D.	30.00
84-CC-0695	Power/Mate Co.	71.24
84-CC-0702	Roytype Div. Royal Business Machines	1,038.00
84-CC-0705	Swedish American Hospital	1,611.74
84-CC-0713	Esquire Hotel	1,578.00
84-CC-0721	Consolidated Steel & Supply Co.	3,597.49
84-CC-0723	Coronado Publishers, inc.	1,992.27
84-CC-0725	Otters, Norman Ross	6,734.50
84-CC-0726	Donovan, Francis M.	86.05
84-CC-0741	Carreira, R., M.D.	50.00
84-CC-0744	Savin Corp.	125.00
84-CC-0745	Capitol Plumbing & Heating Supply Co.	5,157.40
84-CC-0754	Harris Corp.	513.77
84-CC-0755	Hathaway, Bonnie J.	229.50
84-CC-0756	Class, William L.	15.00
84-CC-0757	Chicago Metropolitan Sanitary Dist.	1,678.49
84-CC-0762	Gallagher, J. Richard, M.D.	451.50
84-CC-0766	Aims Media	423.00
84-CC-0767	Springfield Electric Supply Co.	1,861.00
84-CC-0773	Chulengarian, Jack R., D.P.M.	940.50
84-CC-0774	Adams, Doris	101.10
84-CC-0776	Roseland Community Hospital	3,933.82
84-CC-0784	Freeport Clinic	305.00
84-CC-0785	Freeport Clinic	277.00
84-CC-0786	Freeport Clinic	92.00
84-CC-0787	Visiting Nurse Assn. of Chicago	480.00

84-CC-0788	Visiting Nurse Assn. of Chicago	420.00
84-CC-0789	Visiting Nurse Assn. of Chicago	120.00
84-CC-0790	Visiting Nurse Assn. of Chicago	60.00
84-CC-0791	Brown Schools Pharmacy	198.87
84-CC-0797	Kelley-Williamson Co.	265.55
84-CC-0799	Northeastern Illinois University	60.00
84-CC-0800	Mandler, Phyllis	1,250.00
84-CC-0801	Xerox	294.00
84-CC-0802	Opportunity Center S.L.A.	86.22
84-CC-0803	General Electric Co.	1,380.00
84-CC-0810	Shaikun, Gerald, M.D.	116.00
84-CC-0811	Loitman, Bernard S., M.D.	37.00
84-CC-0812	Loitman, Bernard S., M.D.	11.00
84-CC-0813	Chicago Steel Tape Co.	374.00
84-CC-0814	Johnson, Sheryl	11.05
84-CC-0815	Metro Reporting Service, Ltd.	382.80
84-CC-0816	Metro Reporting Service, Ltd.	182.40
84-CC-0818	Metro Reporting Service, Ltd.	39.90
84-CC-0819	Metro Reporting Service, Ltd.	95.60
84-CC-0820	Metro Reporting Service, Ltd.	94.80
84-CC-0821	Counseling & Family Service	1,448.00
84-CC-0822	Beling Consultants, Inc.	2,969.06
84-CC-0823	Illinois State University	19,241.07
84-CC-0824	Hilbing Autobody	3,011.61
84-CC-0825	Gates, Dorothy M.	234.39
84-CC-0826	Community Contacts, Inc.	723.00
84-CC-0827	Mason Clinic	177.10
84-CC-0828	Savin Corp.	6,927.69
84-CC-0829	Savin Corp.	2,453.88
84-CC-0830	Savin Corp.	1,283.54
84-CC-0831	Savin Corp.	210.00
84-CC-0834	Durica, Thomas F.	214.13
84-CC-0836	Central Illinois Agency on Aging, Inc	6,194.00
84-CC-0837	Chicago Sanitary Dist.	343.53
84-CC-0838	Chicago Sanitary Dist.	115.88
84-CC-0839	Orchard Village	1,315.16
84-CC-0844	St. Mary of Providence School	3,180.88
84-CC-0846	Rimland School	2,856.60
84-CC-0847	Chicago Steel Tape Co.	315.00
83-CC-0854	St. Joseph Hospital	24.98
84-CC-0855	Hyatt Lodge	184.85

84-CC-0856	Martin, Oscar	30.00
84-CC-0857	Efengee Electrical Supply Co., Inc.	2,978.72
84-CC-0861	Washington University Opthamology	160.00
84-CC-0867	UNIMED/Joel H. Levine, M.D.	15.00
84-CC-0868	Trunnel, Hazel	10.30
84-CC-0869	Vega International Travel Service	180.00
84-CC-0870	Landmark Ford, Inc.	9,134.56
84-CC-0871	Landmark Ford, Inc.	9,134.56
84-CC-0872	Landmark Ford, Inc.	9,134.56
84-CC-0873	Landmark Ford, Inc.	9,134.56
84-CC-0874	Landmark Ford, Inc.	9,134.56
84-CC-0876	St. Bernard Hospital	3,945.60
84-CC-0877	Northwest Community Hospital	65.16
84-CC-0878	V.H.M.I., Inc.	6,233.92
84-CC-0879	Hromeks, Diane, Court Reporters, Inc.	66.00
84-CC-0881	Suburban Cook County Area Agency on Aging	1,143.24
84-CC-0882	Vega International Travel Service	311.00
84-CC-0883	Governors State University	19,301.99
84-CC-0884	Fowler, W. Gerald, M.D.	310.00
84-CC-0886	Electric Metering Co.	67.60
84-CC-0887	Howell Tractor	63.47
84-CC-0888	Ashley, Paul, M.D.	16.50
84-CC-0895	Children's Home, The	2,589.48
84-CC-0896	Moos, Vasudevan C.	95.00
84-cc-0901	Holiday Inn, Mt. Vernon, IL	52.50
84-CC-0902	Moore Business Forms, Inc.	28,287.02
84-CC-0904	Troyer, Beatrice	268.00
84-CC-0905	Sears, Roebuck & Co.	902.78
84-CC-0906	PRC Consoer Townsend, Inc.	4,641.77
84-CC-0907	Municipal Finance Officers Assn.	24.00
84-CC-0909	Hutton, Arnold	318.00
84-CC-0910	Franklin Steel Co.	4,512.00
84-CC-0911	Franklin Steel Co.	564.00
84-CC-0921	Chicago Steel Tape Co.	295.98
84-CC-0922	Vega International Travel Service	331.00
84-CC-0923	Brulin & Co., Inc.	710.00
84-CC-0924	Smagala, Christine	229.16
84-CC-0926	Cooley, .Craig	103.62
84-CC-0927	Britton, Joyce S.	525.00
84-CC-0928	Britton, Joyce S.	495.00

84-CC-0933	General Electric	1,980.00
84-CC-0934	General Electric	12,114.00
84-CC-0935	General Electric	7,950.00
84-CC-0937	General Electric	965.00
84-CC-0938	General Electric	1,151.00
84-CC-0939	General Electric	5,057.00
84-CC-0941	Conroy, John T.	300.00
84-CC-0942	Shah, Indira	10.50
84-CC-0943	Bay, Webster E.	47.24
84-CC-0944	Today's Relating Youths Center, Inc.	807.02
84-CC-0945	Herschberger Truck & Equipment	1,385.63
84-CC-0946	Round Lake Schools	350.00
84-CC-0947	Essex Inn, Inc.	1,455.59
84-CC-0948	Osorio, Pablo, M.D.	110.00
84-CC-0949	Martin Implement Sales	103.84
84-CC-0951	HI VU, Inc.	61.42
84-CC-0953	Midwest Medical Services	911.00
84-CC-0954	Griffin, Kevin	696.00
84-CC-0955	General Electric Information Services	1,592.36
84-CC-0956	Continental Insurance	17,494.39
84-CC-0957	Efengee Electrical Supply	2,170.20
84-CC-0960	Donoghue, Robert J.	1,247.88
84-CC-0962	Sears-Anderson	170.00
84-CC-0963	Lipps, Inc.	211.60
84-CC-0965	Zee Medical Service	484.50
84-CC-0966	Career Development Center	1,560.00
84-CC-0967	Miller-Krueger, Inc.	465.55
84-CC-0968	Illinois State University	3,397.50
84-CC-0969	Illinois State University	967.00
84-CC-0971	Illinois State University	231.28
84-CC-0972	Illinois State University	484.00
84-CC-0975	Chicago Steel Tape Co.	190.00
84-CC-0976	Chicago Steel Tape Co.	160.49
84-CC-0978	Highland Remodeling	1,376.00
84-CC-0979	Instrument Sales Corp.	949.00
84-CC-0980	Instrument Sales Corp.	410.00
84-CC-0982	Barbercheck, Catherine H.	200.00
84-CC-0983	Hagedorn, C. W., Inc.	2,026.00
84-CC-0985	Bethpage Community Services, Inc., d/b/a Bethpage at Macomb	2,260.28
84-CC-0986	Jose Enterprises	3,380.14

84-CC-0988	Illinois Bell Telephone Co.	
84-CC-0992	Lewis, Jonathan D., M.D.	140.00
84-CC-0993	Lewis, Jonathan D., M.D.	35.00
84-CC-0994	Lewis, Jonathan D., M.D.	
84-CC-0995	Lewis, Jonathan D., M.D.	
84-CC-0996	Lewis, Jonathan D., M.D.	
84-CC-0997	Lewis, Jonathan D., M.D.	
84-CC-0999	Carlson, Lester	
84-CC-1000	Neenah Foundry Co.	
84-CC-1001	TRI (Tape Research Inc.)	
84-CC-1002	Sriratana, Pramern, M.D.	
84-CC-1008	Terrace Supply Co.	
84-CC-1010	Rochelle Enrichment Center	
84-CC-1011	FABCO Manufacturing, Inc.	
84-cc-1012	Anderson, J. Emil, & Son, Inc.	
84-CC-1014	Air Institute & Service	
84-CC-1015	Northeastern Illinois University Print Shop	
84-CC-1016	K's Merchandise Mart	
84-CC-1017	Uniroyal, Inc.	
84-CC-1021	Machinery, Inc.	
84-CC-1023	Touhy, Daniel K.	
84-CC-1024	Matug, Alexander P., P.C.	
84-CC-1025	Millard, Harrington	
84-CC-1026	Indecon, Inc.	
84-CC-1027	Aitken, Regina C.	
84-CC-1028	Barry-Cassata GMC, Inc.	
84-CC-1029	Engle & Co.	
84-CC-1030	Greyhound Lines, Inc.	
84-CC-1031	Quality Inn Airport	
84-CC-1032	Baker, Anna	
84-CC-1033	Kennedy, Lt. Joseph P., Jr., School	
84-CC-1034	Burford, Sheila L.	
84-CC-1035	Rothstein, Stephen B., O.D.	
84-CC-1036	Hinckley & Schmitt	
84-CC-1041	Chibe, Edward James	
84-CC-1049	Bender, Matthew, & Co.	
84-CC-1050	Springfield Public Schools	
84-CC-1056	System Seating, Inc.	
84-CC-1062	C. W. Transport	
84-CC-1063	Scherrer Instruments	
84-CC-1064	Adams County Mental Health Center	

84-CC-1066	Styrest Nursing Home	5,380.50
84-CC-1067	Karoll's, Inc.	917.28
84-CC-1068	Medical Arts Associates	25.00
84-CC-1071	North Shore Sanitary District	27.91
84-CC-1072	Zayre 369	96.05
84-CC-1074	Heninger, Jeffrey M.	36.00
84-CC-1075	Sullivan's Law Directory	120.00
84-CC-1076	Franklin Steel	2,820.00
84-CC-1077	Franklin Steel	493.50
84-CC-1078	Franklin Steel	141.00
84-CC-1079	Cold Plate Program of Perry Co.	196.80
84-CC-1080	Production Supplies, Inc.	102.06
84-CC-1081	Production Supplies, Inc.	49.60
84-cc-1083	Production Supplies, Inc.	7.80
84-cc-1084	Buschart Bros.	216.00
84-CC-1085	Buschart Bros.	118.62
84-cc-1090	IBM	24,067.06
84-cc-1091	General Electric	1,094.00
84-CC-1093	Fechheimer Bros.	10,391.25
84-CC-1094	Meyer, H. C., Jr.	30.00
84-CC-1095	Seneca Petroleum	19,404.14
84-CC-1096	Britton, Joyce S.	800.00
84-CC-1097	Pilapil, Virgilio R., M.D.	11.00
84-CC-1100	Bell, Carrie M.	40.00
84-cc-1101	Taber Metals	1,620.00
84-cc-1102	Banner/Western Disposal	37.00
84-CC-1103	Informatics General Corp.	11,760.00
84-CC-1105	Riverside Radiologists	9.50
84-CC-1106	SRGF, Inc.	150.00
84-CC-1107	OK Electric	1,770.00
84-CC-1108	Chicago, University of, Professional Service	569.00
84-cc-1110	Atchison, Elsie	340.00
84-CC-1111	Decatur Ambulance Service	186.00
84-CC-1113	Mayer, Brown & Platt	3,120.20
84-CC-1114	Little City Foundation	16,907.34
84-CC-1115	Little City Foundation	320.92
84-CC-1116	Quaas, Robert L., M.D.	411.00
84-CC-1117	American Freight Systems	31.78
84-CC-1119	Wilson, Charles S., M.D.	151.00
84-CC-1120	IBM Instruments	175.00
84-cc-1121	St. Elizabeth Hospital	15,230.07

84-cc-1122	Vega International Travel Service	331.00
84-cc-1123	Portable Tool Sales & Service	13.00
84-cc-1124	Vandalia Electric Motor	477.64
84-cc-1125	Vandalia Electric Motor	12.69
84-cc-1126	Lake County Fair Assn.	1,200.00
84-CC-1127	Costell, Long & Young	2,637.50
84-cc-1128	Globe Glass & Mirror	48.52
84-CC-1129	Portable Tool Sales & Service	880.00
84-CC-1132	St. Joseph's Hospital	794.28
84-cc-1133	Days Inn of Springfield	702.00
84-cc-1135	Johnson, Annie	108.29
84-CC-1136	Chicago Tribune	423.92
84-CC-1137	Howard Johnson's Motor Lodge	174.72
84-CC-1138	Quality Inn	54.00
84-CC-1140	Grants Spring, Inc.	3,210.58
84-CC-1142	Meade Electric	411.00
84-CC-1145	Children at Risk	1,040.00
84-CC-1147	De Kalb County Health Dept.	775.00
84-CC-1148	Domtar Industries	623.90
84-CC-1150	Ibbotson Heating Co.	90.00
84-CC-1151	United Specialists	80.00
84-CC-1154	Force, Gilbert A., Co., Inc.	260.60
84-CC-1155	Sheary, Evelyn	92.00
84-CC-1157	Illinois Bell	30.55
84-CC-1158	Chicago Sanitary Dist.	115.88
84-CC-1160	Carey's Furniture Co.	1,836.00
84-CC-1161	Ace Hose & Rubber Co.	984.00
84-CC-1166	Colonial Towne (Amber Ridge School)	4,223.65
84-CC-1174	Keck, Mahin & Cate	2,770.85
84-CC-1176	Huffman Oil Co.	2,109.47
84-CC-1177	General Electric	10,162.00
84-CC-1179	General Electric	2,348.00
84-CC-1180	General Electric	5,267.00
84-CC-1181	General Electric	1,618.00
84-CC-1187	Law Enforcement Equipment Co.	4,272.20
84-CC-1188	Contractors Supply Co.	2,486.25
84-CC-1189	Killion, James C.	58.63
84-cc-1190	Eastman Kodak	7,394.40
84-cc-1191	Region Fence Sales, Inc.	400.00
84-CC-1192	Damera, B. R., M.D.	5,240.00
84-CC-1193	Howard Johnson Motor Lodge	47.52

84-CC-1194	Buchheit, Inc.	548.24
84-CC-1195	Chicago Steel Tape	316.62
84-CC-1196	Chicago Steel Tape	21.71
84-CC-1197	Chicago Steel Tape	204.00
84-CC-1198	Chicago Steel Tape	121.71
84-CC-1199	Palmer House Hotel	65.77
84-CC-1202	Savin	220.00
84-CC-1207	Key Buick-Pontiac-AMC	618.08
84-CC-1208	Montgomery Ward	100.95
84-CC-1209	Multi-Media Educational Center	165.00
84-cc-1211	Owl Biomedical	7,484.00
84-CC-1212	Lacey, Mattie	231.15
84-CC-1214	St. Francis Medical Center	89.50
84-CC-1215	St. Francis Medical Center	134.25
84-CC-1216	American Scientific Products	1,257.13
84-CC-1217	Best Inns of America	56.34
84-CC-1219	Elliott, Robert W.	13.23
84-CC-1220	Woodford County Treasurer	367.50
84-CC-1221	Way-Ken Contractors Supply	2,204.30
84-CC-1222	Causes	4,644.85
84-CC-1223	Cino Tire Co.	79.00
84-CC-1224	Globe Glass & Mirror	641.43
84-CC-1227	Roosevelt University	500.00
84-CC-1228	Lanier Business Products	905.50
84-cc-1229	Public Aid, Department of	729.00
84-cc-1230	Illinois Consolidated Telephone	75.93
84-cc-1232	Jones, Erma	1,395.72
84-cc-1233	Younes, Susan, M.D.	242.00
84-cc-1234	Saslow, D. L., Co.	2,304.14
84-CC-1252	Big Shop	902.75
84-CC-1253	Tony's Truck Service, Inc.	706.24
84-cc-1254	Wilbur, Paul, M.D.	56.00
84-CC-1255	Hillcrest Child Care Center	560.00
84-CC-1257	Moraine Valley Community College	384.15
84-cc-1263	Elgin Lumber & Supply Co., Inc.	8,294.70
84-CC-1278	Henry County Health Department	125.44
84-CC-1279	Leslie, Carolene L.	58.00
84-CC-1280	Sherwin Stenn Engineers, Inc.	5,171.99
84-CC-1281	Salem Associates	608.00
84-cc-1283	Corrections, Department of, Illinois Correctional Industries	25.00

84-CC-1285	Hamer, Glenys C	270.00
84-CC-1286	B & D 66 Station	112.13
84-CC-1288	Gummerson, R. Mark	182.00
84-CC-1289	Gummerson, R. Mark	392.00
84-CC-1290	Gummerson, R. Mark	167.00
84-CC-1298	Community College Dist. No. 508, Board of Trustees of;	90.00
84-CC-1299	Community College Dist. No. 508, Board of Trustees of,	102.00
84-CC-1307	Community College Dist. No. 508, Board of Trustees of;	102.00
84-CC-1309	Community College Dist. No. 508, Board of Trustees of;	102.00
84-CC-1310	Community College Dist. No. 508, Board of Trustees of;	240.00
84-CC-1312	Community College Dist. No. 508, Board of Trustees of;	300.00
84-CC-1313	Community College Dist. No. 508, Board of Trustees of;	135.00
84-CC-1320	Community College Dist. No. 508, Board of Trustees of;	221.00
84-CC-1321	Community College Dist. No. 508, Board of Trustees of;	204.00
84-CC-1322	Community College Dist. No. 508, Board of Trustees of;	200.00
84-CC-1323	Atherton, Robert B.	13.20
84-CC-1324	Glenkirk Association for Retarded Citizens	680.62
84-CC-1326	North Vermillion Community School Corp.	1,219.82
84-CC-1327	Springfield Dodge Sales	7,340.91
84-CC-1332	Trinity Christian College	1,516.00
84-CC-1338	Clay County Health Department	301.88
84-CC-1339	Irvington Mental Health	617.00
84-CC-1340	Marathon Petroleum Co	14.00
84-CC-1341	Princeton Christian Academy	54.50
84-CC-1343	Helix, Ltd.	135.00
84-CC-1344	Globe Glass & Mirror	176.98
84-CC-1345	Globe Glass & Mirror	306.28
84-CC-1347	Misericordia Home North	209.77
84-CC-1351	Larkin Home For Children	1,176.69
84-CC-1353	Moore & Assoc.	7,944.63
84-CC-1354	Buller Fixture Co.	7,338.00

84-CC-1358	TMF Construction	179.65
84-CC-1359	Twin-Rivers Reporting Services	138.75
84-CC-1360	McGuire's Reporting	165.30
84-CC-1362	Pundy, Joseph	81.00
84-CC-1364	City Lighting Products	181.08
84-CC-1365	Boardman, Clark, Co.	180.50
84-CC-1366	Johnson, Lars	170.00
84-CC-1367	Brown Co. Public Health Dept.	<b>754.00</b>
84-CC-1378	State Employees' Retirement	700.61
84-CC-1379	Griffith, David M., & Assoc.	15,000.00
84-CC-1380	Vandenberg Ambulance	85.00
84-CC-1382	Irvington Mental Health	340.00
84-CC-1383	Henry's Business Machines	32.35
84-CC-1385	Townsend, Willie	288.10
84-CC-1387	Xerox Corp.	1,170.00
84-CC-1388	Uniroyal	1,607.05
84-CC-1389	McAuliff, Lynn	202.02
84-CC-1390	Translift	77.95
84-CC-1391	Gallanis, Thomas C., M.D.	42.00
84-CC-1392	Lipschutz, Harold, M.D.	19.00
84-CC-1395	Council on Problems of the Aged	327.08
84-CC-1396	Council on Problems of the Aged	1,025.72
84-CC-1397	Council on Problems of the Aged	266.84
84-CC-1398	Council on Problems of the Aged	442.52
84-CC-1399	Council on Problems of the Aged	269.36
84-CC-1402	Eastman Kodak	<b>3,261.68</b>
84-CC-1404	Alco Sales & Service	13,034.30
84-CC-1405	Mt. Vernon Glass Co	6,889.00
84-CC-1406	American Decal & Mfg.	2,601.60
84-CC-1408	St. Mary's Hospital of Kankakee	30.88
84-CC-1409	Constanzo, Diane	297.17
84-CC-1410	Bethea, Katherine Shaw, Hospital	68.60
84-CC-1411	Montgomery County Health Dept.	170.00
84-CC-1412	Cook County Corrections Dept.	1,129.40
84-CC-1423	Kennedy, Lt. Joseph P., Jr., School	3,674.97
84-CC-1424	American Scientific Products	779.48
84-CC-1425	Machinery, Inc.	59.77
84-CC-1426	General Electric	4,143.00
84-CC-1427	General Electric	2,586.00
84-CC-1428	Suburban Adult Day Center	186.97
84-CC-1432	Schwab Rehabilitation Hospital	858.00

84-CC-1433	Schwab Rehabilitation Hospital	696.00
84-CC-1434	Schwab Rehabilitation Hospital	405.00
84-CC-1436	Elim Christian School	1,379.52
84-CC-1437	Monogram/Fasteners	208.20
84-CC-1447	Family Alliance	622.44
84-cc-1449	Coal Belt Fire Equipment	7,650.00
84-CC-1450	Anina Travel Service	218.00
84-CC-1451	McCann Construction Specialties Co.	58.30
84-CC-1452	Neuchiller, B.B., M.D.	53.00
84-CC-1454	Willowglen Academy	2,686.44
84-CC-1455	IBM	327.89
84-CC-1456	Wilson, Janet	472.00
84-CC-1457	Miller, Bonny J.	342.81
84-CC-1458	Pallella's Auto Body	366.48
84-CC-1459	Kellner, M.J., Co.	489.29
84-CC-1460	Clinton Co. Rehabilitation Center	177.23
84-CC-1463	Friel, Sharon L.	345.00
84-CC-1464	Production Supplies, Inc.	25.04
84-CC-1465	Production Supplies, Inc.	14.88
84-CC-1466	Peoria Tractor & Equipment	24.05
84-CC-1467	Kessenich's, Ltd.	4,037.00
84-CC-1470	Vulcan Materials	9,882.54
84-CC-1473	Vulcan Materials	74.16
84-CC-1476	People Cas-Light & Coke	100.94
84-CC-1477	Gibson Electric	9,667.21
84-CC-1478	Don, Edward, & Co.	18,464.00
84-CC-1479	Young Folks	7,138.20
84-CC-1481	Commonwealth Edison	9,870.55
84-CC-1484	Visiting Nurses Assn. of Sangamon Co.	233.00
84-CC-1485	Christiansen, R. T. & Tinucci, S., Architects	146,209.80
84-CC-1488	Abbey Medical Equipment	1,648.50
84-CC-1491	Rexnord	1,639.01
84-CC-1492	First National Bank, Trust No. 560	900.48
84-CC-1493	Riverside Radiologists	13.50
84-CC-1494	Springfield Hilton	178.20
84-CC-1495	Cserny, H. Andrew, M.D.	25.00
84-CC-1496	St. Coletta School	89.78
84-CC-1497	Yezek, Bill, Co.	9,690.00
84-CC-1498	Kewanee Motor Inn	28.88
84-CC-1500	Champaign County Nursing Home	110.27

84-CC-1503	McLean County Disposal Service	700.00
84-CC-1504	National Fire Protection Assn.	207.97
84-CC-1505	Lee, County of	799.76
84-CC-1507	Bob's Auto Repair	93.28
84-CC-1511	Ampco, Inc.	40.10
84-CC-1513	Community Contacts, Inc.	246.00
84-CC-1518	Simpson Construction Co.	456.15
84-CC-1519	Temple Univ. Press	35.59
84-CC-1520	Pienkowski, Alma G.	78.00
84-CC-1522	Pienkowski, Alma G.	77.00
84-CC-1523	Pienkowski, Alma G.	40.00
84-CC-1524	Hinsdale Sanitarium	4,027.30
84-CC-1526	Clenkirk Association for Retarded Citizens	709.99
84-CC-1527	Redwo'od Medical Lab	30.00
84-CC-1533	Ill-Mo Welding	127.36
84-CC-1534	Bethea, Katherine Shaw, Hospital	169.00
84-CC-1535	Eastman Kodak	3,104.52
84-CC-1539	Abbey Medical	112.00
84-CC-1540	St. Mary of Providence School	851.85
84-CC-1542	Dyna Systems	125.13
84-CC-1543	GMC Truck & Coach	27,903.00
84-CC-1545	Kendall Family & Youth Services	168.75
84-CC-1547	Maclin, Melvin, Dr.	135.10
84-CC-1551	Dowling, William F.	620.16
84-CC-1552	Small, Ailene	95.52
84-CC-1557	Floberg, Coldie B., Center for Children	761.13
84-CC-1558	Anina Travel Service	219.00
84-CC-1559	Association for Retarded Citizens of Henry & Stark Counties	1,969.11
84-CC-1560	Boss Manufacturing	597.04
84-CC-1561	Industrial Roofing Co.	1,890.24
84-CC-1563	Plows Council on Aging	511.25
84-CC-1569	Pantagraph Printing	6,806.84
84-CC-1571	Hinsdale Sanitarium & Hospital	2,609.90
84-CC-1574	Miller, Charles J.	618.78
84-CC-1576	Center for the Rehabilitation & Training of the Disabled	4,467.00
84-CC-1577	Institute for the Natural Person	820.00
84-CC-1578	Sharp Electronics Corp.	341.14
84-CC-1581	Horizon South Living Center	574.70
84-CC-1587	Carroll County Dept. of Public Aid	4.36

84-CC-1588	Institute of Logopedics, Inc	12,010.01
84-CC-1589	Medical Practice Plan & Dekker, Anthony H., D.O.	59.00
84-CC-1590	Medical Practice Plan & White, Henry, D.O.	291.00
84-CC-1591	Medical Practice Plan & Multack, Richard	36.00
84-CC-1592	Medical Practice Plan & Ringewald, Richard	26.00
84-CC-1593	Medical Practice Plan & Bertrand, V Paul	35.00
84-CC-1594	Medical Practice Plan & Dekker, Anthony H., D.O.	25.00
84-CC-1595	Medical Practice Plan & Krejsa, Richard	10.50
84-CC-1596	Medical Practice Plan & Kovachevich, Martin	10.50
84-CC-1598	Goodyear Service Store No. 4628	85.25
84-CC-1599	Industrial Engineering College	1,666.65
84-CC-1601	Cafco Business Systems	3,095.00
84-CC-1603	Beck, Judy	236.40
84-CC-1606	North Suburban Pediatrics, S.C.	23.00
84-CC-1607	Star Courier, The	18.76
84-CC-1608	Ramada Inn	126.25
84-CC-1609	Community Support Services, Inc.	81.30
84-CC-1612	Mercy Hospital	4,240.65
84-CC-1613	Schwass, Leslie C.	509.20
84-CC-1616	Goodyear Tire & Rubber Co.	112.96
84-CC-1617	Wiscarz, Thomas J.	352.56
84-CC-1618	National Council of Architectural Registration Boards	1,937.50
84-CC-1619	Community Care Systems, Inc.	299.16
84-CC-1620	Community Care Systems, Inc.,	227.14
84-CC-1621	Community Care Systems, Inc.	69.25
84-CC-1622	Community Care Systems, Inc.	31.00
84-CC-1623	Community Care Systems, Inc.	33.24
84-CC-1624	Community Care Systems, Inc.	33.24
84-CC-1625	Community Care Systems, Inc.	26.00
84-CC-1626	Community Care Systems, Inc.	5.08
84-CC-1627	Community Care Systems, Inc.	243.76
84-CC-1632	Johnson, David B.	272.00

84-CC-1633	Medical Practice Plan & Danielson, Michael S.	10.50
84-CC-1634	Medical Practice Plan & Reither, Randall	27.00
84-CC-1635	Medical Practice Plan & Strnad, Richard A.	10.50
84-CC-1636	Medical Practice Plan & Marsh, Ella	48.00
84-CC-1637	Medical Practice Plan & Davies, Graham O.	18.00
84-CC-1638	O'Herron, Ray, Co.	450.00
84-CC-1639	Shoss, M., M.D.	95.00
84-CC-1640	Peoria Radiology Assoc.	25.60
84-CC-1641	Schiller, W., & Co.	99.00
84-CC-1642	AAA Auto Radio	29.00
84-CC-1648	Carroll Seating Co.	1,304.10
84-CC-1649	Medical Practice Plan & Schwartz, Jerrold	31.00
84-CC-1650	Medical Practice Plan & Castillo, Thomas	36.00
84-CC-1651	Medical Practice Plan & Ringewald, Richard	10.50
84-CC-1652	Medical Practice Plan & Sudbrack, Luis	10.50
84-CC-1653	Medical Practice Plan & Esmail, Zulfikar	10.50
84-CC-1655	WGN Flag & Decorating Co.	202.56
84-CC-1656	Illinois Power Co.	21,106.02
84-CC-1657	Perkin-Elmer Corp.	1,080.00
84-CC-1658	St. Therese Hospital	64.22
84-CC-1662	Gampl, Franz X., M.D.	45.00
84-CC-1665	Community College Dist. 508	470.00
84-CC-1666	Community College Dist. 508	180.00
84-CC-1668	Community College Dist. 508	238.00
84-CC-1679	Usher, Wesley G.	125.70
84-CC-1680	St. Francis Hospital	527.80
84-CC-1681	St. Francis Hospital	16.50
84-CC-1685	Shear, Steven J., D.D.S.	29.00
84-CC-1686	Livingston County Public Health Dept.	69.16
84-CC-1688	Hoteko, Phyllis A.	99.22
84-CC-1691	Sexton Ford Sales	93.42
84-CC-1694	Touhy, Daniel K.	169.46
84-CC-1695	Corrections Dept.	15,075.00
84-CC-1699	Homelite	1,088.55
84-CC-1700	Misericordia Home North	1,942.37
84-CC-1701	Commonwealth Edison	789.08
84-CC-1703	Englewood, Hospital of	7,087.00
84-CC-1705	Vargas, Edgar, M.D.	25.00
84-CC-1707	Capitol Plumbing & Heating	1,094.10
84-CC-1714	Federation of State Medical Boards	215.00
84-CC-1718	Johnston Properties	331.94

84-CC-1719	Rockford, City of	2,588.94
84-CC-1721	Jose Enterprises	3,673.40
84-CC-1722	Quality Metals, Inc.	19,700.00
84-CC-1723	Office for Family Practice	15.00
84-CC-1724	Kerry's Auto Body	1,071.98
84-CC-1728	Community School Dist. 205	765.45
84-CC-1729	Anina Travel Service	449.79
84-CC-1731	Bureau County Home Health SVC	50.00
84-CC-1732	Bureau County Home Health SVC	10.68
84-CC-1734	Elgin Orthopaedic Assoc.	450.00
84-CC-1737	Buds Motor Sales	229.79
84-CC-1739	Soiltest, Inc.	4,050.00
84-CC-1741	Loughnane, Laurel	16.00
84-CC-1743	Barber-Colman Co.	360.00
84-CC-1744	Victoria Court Reporting	108.10
84-CC-1748	Elim Christian School	3,496.70
84-CC-1750	Grainger, W. W., Inc.	443.98
84-CC-1751	Don's Machine & Welding	138.70
84-CC-1752	Jatala, Ijaz A., M.D.	158.00
84-CC-1755	Shoss, M., M.D.	161.00
84-CC-1756	North Suburban Pediatrics	23.00
84-CC-1760	Medical Practice Plan & Luis Sudbrack	10.50
84-CC-1761	Medical Practice Plan & David Malen	10.50
84-CC-1763	Jackson Community Workshop	13,852.70
84-CC-1764	Northwest Automotive Equipment	68.57
84-CC-1771	Stickney Township Office on Aging	25.00
84-CC-1773	Service Engine Co.	955.94
84-CC-1777	Xerox	401.30
84-CC-1779	Xerox	138.79
84-CC-1780	Springfield Electric Supply	1,500.00
84-CC-1781	Des Plaines Chrysler Plymouth	1,099.51
84-CC-1783	St. Francis Hospital	809.08
84-CC-1794	Harrison, Sidney, Co.	9,140.00
84-CC-1797	Burroughs Corp.	283.65
84-CC-1799	Domagall, Mary	107.20
84-CC-1800	Blitz Corp.	4,858.27
84-CC-1801	Northeastern Illinois University	117.25
84-CC-1803	Kennedy, Lt. Joseph P., Jr., School	1,408.20
84-CC-1805	Community College Dist. 508	190.00
84-CC-1806	Community College Dist. 508	180.00
84-CC-1807	Community College Dist. 508	90.00
84-CC-1808	Community College Dist. 508	68.00

84-CC-1808	Community College Dist. 508	68.00
84-CC-1811	Brooks Rosemont Pharmacy	89.53
84-CC-1813	Pitney Bowes	105.00
84-CC-1817	Community Home Environmental Learning Project	426.36
84-CC-1819	Medical Examiners, National Board	50.00
84-CC-1822	K-Mart	99.54
84-CC-1823	K-Mart	99.02
84-CC-1828	Sonntag Reporting Service	1,179.85
84-CC-1830	Basak, Philip W.	310.51
84-CC-1834	Ingalls Memorial Hospital	260.00
84-CC-1835	Glover, Wesley	30.00
84-CC-1837	Township High School Dist. 113	522.40
84-CC-1839	U. S. Standard Sign Co.	49,934.54
84-CC-1842	Bruln & Co.	404.80
84-CC-1843	Warren, Derl D., M D.	10.00
84-CC-1846	Public Stenographic Service	125.84
84-CC-1848	Colonial Chwrolet	275.50
84-CC-1850	Medical Practice Plan	25.00
84-CC-1855	Audio Graphic Systems	674.65
84-CC-1856	General Electric Co.	16,268.00
84-CC-1857	Peterson, Annie	52.40
84-CC-1883	General Electric	2,884.00
84-CC-1884	Pesola, Anthony	26.00
84-CC-1885	Northwest Community Hospital	45.26
84-CC-1892	Marshall, Thomas A.	279.00
84-CC-1896	Hopkins, Harold V.	53.75
84-CC-1897	M-B Co.	86,672.00
84-CC-1899	Charrette Corp.	48.60
84-CC-1900	Chicago Pneumatic	764.18
84-CC-1901	Chicago Pneumatic	382.09
84-CC-1904	General Electric	12,935.00
84-CC-1905	General Electric	7,319.00
84-CC-1906	General Electric	4,854.00
84-CC-1907	General Electric	3,174.00
84-CC-1909	Houston, Agnes W.	39.00
84-CC-1910	Chicago Pneumatic	1,146.27
84-CC-1912	Land, Marsden L.	24.00
84-cc-1918	Illinois Bell	491.28
84-CC-1918	Henry County Health Department	180.32
84-CC-1925	Bethea, Katherine Shaw, Hospital	35.00

84-CC-1927	Leahy & Leahy	1,910.65
84-CC-1930	Glenkirk Association	100.00
84-CC-1931	Glenkirk Association	123.31
84-CC-1933	Liberty Auto Parts	48.50
84-CC-1937	Baumfolder Corp.	453.93
84-CC-1939	Illinois Bell	1,427.33
84-CC-1945	Derby Refining	355.38
84-CC-1947	Could Media	35.00
84-CC-1948	Weiss, Alan N., M.D.	830.00
84-CC-1950	Loseff, Herbert S., M.D.	52.00
84-CC-1953	St. Charles County, Missouri Sheriff's Department	5.00
84-CC-1954	Nassau Research	117.45
84-CC-1956	Sassan, Dennis D.	300.00
84-CC-1960	<b>Bismarck</b> Hotel	178.95
84-CC-1963	Binks Manufacturing	138.75
84-CC-1964	Berg Christian Enterprises	33.62
84-CC-1969	Medical Practice Plan	10.50
84-CC-1973	Sachs, Joshua	150.00
84-CC-1975	Svaniga, Lora J.	163.40
84-CC-1977	National Bank of Aledo	20.50
84-CC-1978	Gillono, Mary E.	265.50
84-CC-1980	Skyles, Russel L.	155.00
84-CC-1981	Riverside Medical Center	2,146.30
84-CC-1982	Southern Illinois University	279.46
84-CC-1987	Gregory, Mildred, Executrix of the Estate of Dorothy Casetta, d/b/a Don's Machine & Welding	473.99
84-CC-1994	Avila, Aura A.	340.00
84-CC-1995	Zeal's Service Garage	158.25
84-CC-1996	Belleville Travel	102.00
84-CC-1998	Christensen Mining Products	1,858.23
84-CC-2001	St. Francis Hospital	55.00
84-CC-2004	Laskero, James	318.00
84-CC-2006	Meade Electric	340.12
84-CC-2011	IBM	148.00
84-CC-2013	IBM	148.00
84-CC-2014	Ashworth Hotel	667.68
84-CC-2015	Dellwood Tire & Auto	305.41
84-CC-2016	Rail, Donald	1,221.36
84-CC-2017	Southern Illinois Optical	292.00

84-cc-2021	Catholic Bishop of Chicago/ St. Callistus Church	5,169.81
84-CC-2023	Instrument Sales Corp.	277.20
84-cc-20%	Uarco, Inc.	433.00
84-CC-2026	Williams, Darlene	1,494.00
84-CC-2031	Northern Illinois University	504.75
84-CC-2034	CGA Computer, Inc.	9,196.00
84-CC-2038	Production Supplies, Inc.	785.55
84-CC-2039	Production Supplies, Inc.	267.26
84-cc-2040	George Alarm Co.	63.10
84-CC-2041	Roosevelt University	500.00
84-CC-2044	AM Multigraphics	169.20
84-CC-2046	McMaster-Carr	121.18
84-CC-2049	Illinois, University of	1,360.52
84-CC-2055	Midwest Medical Service	269.00
84-CC-2056	Groot, C., Automatic Disposal	280.00
84-CC-2060	Texaco	123.09
84-CC-2061	Texaco	66.14
84-CC-2064	Texaco	63.93
84-CC-2065	Fulton, Gladys	289.08
84-CC-2066	Glasco Electric	6,673.35
84-CC-2067	Glasco Electric	2,689.60
84-CC-2071	Utica Elevator	598.29
84-CC-2072	Alarm Detection Systems	105.00
84-CC-2075	Northwestern Illinois Association	14,996.71
84-CC-2076	CIPS	386.68
84-CC-2078	Newark Electronics	54.21
84-CC-2079	Honeywell	1,960.00
84-CC-2082	Educational Directories	73.00
84-CC-2083	Glass Specialty System	257.18
84-cc-2084	Central Mine Equipment	476.20
84-CC-2087	Sherrill, Leland L.	602.75
84-CC-2093	Allen Memorial Hospital	467.35
84-CC-2095	Scherer Hardware & Supply	2,300.00
84-cc-2102	Films, Inc.	222.00
84-CC-2106	Grimes Motor Sales	75.80
84-CC-2114	Hicksomatic Stations	28.92
84-CC-2115	Meyer Medical Group	50.00
84-CC-2116	Santa Fe Terminal Services	7,623.00
84-CC-2117	General Electric	1,140.00
84-cc-2121	Riverside Medical Center	305.50

84-cc-2122	Riverside Medical Center	236.30
84-cc-2124	Passon's Sports Center	309.52
84-CC-2125	Bethea, Katherine Shaw, Hospital	172.72
84-CC-2127	Misericordia Home North	5,475.21
84-cc-2130	Hagerty Catering Co.	4,253.50
84-CC-2131	Rodriquez, Arthur A., M.D.	438.00
84-cc-2136	Appraisal Research Counselors	1,502.00
84-CC-2141	Best Western Fox Valley Inn	61.96
84-CC-2142	Southeast Missouri Hospital	1,161.50
84-CC-2143	Chicago Hospital Supply	320.85
84-CC-2154	Misericordia Home North	380.80
84-CC-2156	Brown, Anthony L., M.D.	762.75
84-CC-2157	South Suburban Healthcare	400.10
84-CC-2160	Galena Print Center	30.00
<b>84-CC-2162</b>	<b>Floberg, Goldie B., Center</b>	1,464.69
84-CC-2165	IBM	17,274.10
84-CC-2171	Maiorano, Suzanne	400.00
84-CC-2172	Gojkovich, Dusan, M.D.	180.00
84-CC-2175	Misericordia Home North	661.23
84-CC-2176	Lipschutz, Harold, M.D.	189.50
84-CC-2177	Sullivan's Law Directory	131.10
84-CC-2178	Sullivan's Law Directory	174.80
84-CC-2181	Globe Lumber Co.	275.00
84-CC-2206	Illinois Bell Telephone Co.	42.00
84-CC-2213	Associated Allergists, Ltd.	76.00
84-CC-2215	Chicago Steel Tape Co.	292.50
84-CC-2216	Illinois Valley Community College	135.00
84-CC-2220	Data Accessories, Inc.	145.52
84-CC-2224	Razmus, C. J., Construction Co.	9,938.00
84-CC-2229	Schrenpf, Richard E.	305.51
84-CC-2240	Holiday Inn of Carbondale	32.70
84-CC-2243	Institute of Logopedics, Inc.	2,073.94
84-CC-2246	Production Supplies, Inc.	1,864.12
84-CC-2248	Production Supplies, Inc.	1,116.01
84-CC-2471	Award Security Services, Inc.	691.53
84-CC-2473	Illinois Bell Telephone Co.	82.91
84-CC-2478	Kravicik, Harold F.	15.00
84-CC-2497	Silver Cross Hospital	2,842.68
84-CC-2501	Sargent-Welch Scientific Co.	756.22
84-CC-2505	VWR Scientific	222.95
84-CC-2507	Hinsdale Sanitarium	10,813.20

84-CC-2510	Deloitte Haskins & Sells	3,200.00
84-CC-2516	Cummins Allison Corp.	114.00
84-CC-2524	S.P.E.C. Sales	1,260.00
84-CC-2527	Abbey Medical	3,918.29
84-CC-2532	H & R Refuse Disposal	31.00
84-CC-2536	Means Services	107.25
84-CC-2577	Ruff, Bud, Electric	391.65
84-CC-2580	Wang Laboratories	1,056.00
84-CC-2600	Bethea, Katherine Shaw, Hospital	40.00
84-CC-2609	St. Francis School	601.76
84-CC-2610	St. Francis School	152.64
84-CC-2611	St. Francis School	140.50
84-CC-2617	Lewis, Walter H.	150.00
84-CC-2629	Science Accessories	175.00
84-CC-2637	St. James Hospital	276.17
84-CC-2638	St. James Hospital	944.55
84-CC-2639	Rogers, Carl H.	203.50
84-CC-2648	Hoover, H. Robert	211.97
84-CC-2653	Rendel's Inc.	<b>40.00</b>
84-CC-2687	Marsch, Louis, Inc.	2,651.04
84-CC-2700	Community College District No. 508, Board of Trustees of	129.34
84-CC-2794	White. Preston E.	6.01

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**PRISONERS AND INMATES  
MISSING PROPERTY CLAIMS  
FY 1984**

The following list of cases consists of claims brought by prisoners and inmates of State correctional facilities against the State to recover the value of certain items of personal property of which they were allegedly possessed while incarcerated, but which were allegedly lost while the State was in possession thereof or for which the State was allegedly otherwise responsible. Consistent with the cases involving the same subject matter appearing in full in previous Court of Claims Reports, these claims were all decided based upon the theories of bailments, conversion, or negligence. **Because** of the volume, length, and general similarity of the opinions the full texts of the opinions were not published, except for those claims which may have some precedential value.

79-CC-0097	Pierce, Ernest	\$312.85
79-CC-0338	Matthews, Dwight David	67.95
80-CC-0089	Moore, James W.	85.00
80-CC-1771	Lonzo, Barney	664.15
80-CC-2251	Griffin, Lawrence	150.00
81-CC-2295	Kloiber, Rudy	60.00
82-CC-1567	Wilson, Jeffrey A.	150.00
83-CC-0310	Lomack, Willie	100.00
83-CC-0583	Espinoza, Miguel	40.00
83-CC-0798	Ortiz, Estaban	131.25
83-CC-0818	Crespo, Louis	150.00
83-CC-0900	Woodruff, Donald	348.95
83-CC-0955	Williams, Willie	750.00
83-CC-0961	Kincy, Michael	50.00
83-CC-0995	Lucien, Rudolph	5.00
83-CC-1024	Elliot, David	50.00
83-CC-1076	Jones, La Carttle	221.59
83-CC-1291	Hilton, Robert	460.00
83-CC-1355	Harris, Glenn	64.35
83-CC-1372	Roberts, Clarence	200.00
83-CC-1558	Cruthird, George	85.72

83-CC-2163	Murrall, Richard	65.82
83-CC-2351	Strait, Myron	97.85
83-CC-2497	Bailey, James E.	60.00
83-CC-2695	Lee, Theodore	25.00
83-CC-2759	Sharp, Clarence	50.00
84-CC-0111	Edwards, Luther	78.00
84-CC-0761	Jones, Robert	154.73
84-CC-0890	McGee, Randy	275.93
84-CC-1413	Padilla, Jose	95.00
84-CC-1556	White, James	50.00
84-CC-2043	Lucien, Rudolph L.	30.93

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## STATE EMPLOYEES' BACK SALARY CASES FY 1984

Where as a result of lapsed appropriation, miscalculation of overtime or vacation pay, service increase, or reinstatement following resignation, and so on, a State employee becomes entitled to back pay, the Court will enter an award for the amount due, and order the Comptroller to pay that sum, less amounts withheld properly for taxes and other necessary contributions, to the Claimant.

77-CC-0677	Rowland, Elvis, Sr.	\$15,986.60
81-CC-0934	Nard, Edward	41,406.06
81-CC-2154	Pflugmacher, Gus	17,383.50
<b>82-CC-0159</b>	<b>Butts, Glen</b>	<b>752.57</b>
82-CC-0160	Dever, Ronald E.	210.39
82-CC-0486	Ross, David, Jr.	135.61
82-CC-1589	Robinson, John C.	131.18
82-CC-2143	Brown, Debra	452.03
82-CC-2149	Allison, Richard	350.66
82-CC-2162	Barksdale, Jack J.	870.75
82-CC-2279	Krug, James	266.75
82-CC-2324	Finley, Brent	308.27
82-CC-2388	Dodson, Larry E.	1,495.83
82-CC-2589	Ledbetter, Geraldine	79.77
82-CC-2701	Miller, Connie L.	49.93
82-CC-2739	Harris, Mona R.	204.88
82-CC-2747	Kilpatrick, Roberta Ann	359.17
82-CC-2748	Festerling, Joyce	94.56
82-CC-2749	Kunz, Robert	292.16
83-CC-0056	Ellsworth, Stanley D.	56.35
83-CC-0057	Hoffman, Richard	62.34
83-CC-0178	Tickle, Ronald	12.91
83-CC-0179	Funk, William	18.48
83-CC-0214	Overocker, Richard K.	184.89
83-CC-0216	Harms, Harm	10.67
83-CC-0217	Overocker, Richard K.	6.23
83-CC-0522	Potts, Ronald D.	5.89
83-CC-0538	Bell, Prentis	381.65
83-CC-0582	Doolin, James A.	264.10

83-CC-0587	Hanson, Kenneth P.	4.79
83-CC-0588	Stokes, William L.	9.98
83-CC-0624	Lowe, Rose W.	12,891.10
83-CC-0640	Johnson, Lawrence E.	3,893.14
83-CC-0742	Laurent, James	39,397.96
83-CC-0747	Lesh, Daniel J.	204.61
83-CC-0840	Anderson, Inola	1,014.86
83-CC-0870	Tonielli, Terry J.	828.41
83-CC-0887	Chrismore, Chris D.	67.48
83-CC-0991	Morrison, John W.	11,639.99
83-CC-1001	Rainbolt, James W.	1,576.60
83-CC-1003	Yoder, Russell	288.22
83-CC-1030	Titus, Ora	72.01
83-CC-1067	Willis, Maria	685.07
83-CC-1078	Nicholson, Arnetta	221.69
83-CC-1145	Singleton, Lorraine	15.52
83-CC-1202	Irwin, Sharolyn A.	790.64
83-CC-1212	Arnold, Donald L., Jr.	896.87
83-CC-1226	Martin, Butha	268.55
83-CC-1260	Bailey, Patricia D.	842.94
83-CC-1261	Davis, Noretia	1,031.32
83-CC-1263	Maddox, Claude E.	385.09
83-CC-1284	Workun, Theodore J.	993.69
83-CC-1287	Holland, Beverly J.	877.76
83-CC-1313	Singleton, Agatha P.	1,023.72
83-CC-1319	Phillips, Clyde M.	937.42
83-CC-1324	Feldsien, Linda K.	1,170.96
83-CC-1348	Russell, Jimmie B.	919.26
83-CC-1356	Hintz, Helen	884.07
83-CC-1374	Watkins, Renee	392.43
83-CC-1396	Wehrmeister, Allen A.	939.53
83-CC-1407	Richey, Sheila	903.15
83-CC-1427	Culver, Carl	336.75
83-CC-1428	Gottlob, Sherry L.	782.73
83-CC-1433	Smith, William S.	6,683.51
83-CC-1453	Williams, Henry W.	336.75
83-CC-1495	Mars, Willie	12,517.51
83-CC-1542	Shine, Lorraine	914.20
83-CC-1555	Sandifer, Kathleen	313.89
83-CC-1556	Stubbs, Charles E.	2,480.36
83-cc-1721	Valazquez, Maria	1,011.38

83-CC-1737	Marovitz, Shirley P.	940.66
83-CC-1740	Lindemann, Jeanne L.	868.88
83-CC-1761	Wren, Luther X.	929.43
83-CC-1791	Smith, Andrea	812.32
83-CC-1792	Stegner, John L.	802.94
83-CC-1832	Carter, Robert G.	4,203.36
83-CC-1872	Beatty, Samuel E.	2,481.16
83-CC-1873	Beatty, Samuel E.	(Awarded & vouchered under 83-CC-1872)
83-CC-1885	Glenn, Michael	315.04
83-CC-1896	Steele, Virginia S.	44.90
83-CC-1897	Walton, Hant L.	2,893.51
83-CC-1898	Hunt, Milton S.	262.67
83-CC-1941	Childress, Frances	166.51
83-CC-2007	<b>Albers</b> , Carl	375.93
83-CC-2013	Goodman, Patricia E.	285.10
83-CC-2019	Reid, Rita Harmon	45.68
83-CC-2024	Wisely, Allan R.	222.40
83-CC-2048	Asch, Ruth D., Deceased, by Thomas F. Asch, under Small Estate Affidavit	882.00
83-CC-2061	Harris, Everett	1,151.02
83-CC-2068	Kunzman, John B.	35.36
83-CC-2126	Garnarcz, Joseph W.	385.09
83-CC-2136	Pearson, William	6,033.07
83-CC-2142	Andeway, Helen	355.53
83-CC-2150	Burke, Pamela S.	55.60
83-CC-2152	Kocsis, John	535.17
83-CC-2160	Akin, G. Coleman	244.60
83-CC-2161	Gottschalk, Dorothy S.	960.77
83-CC-2195	Patrick, Gloria	367.52
83-CC-2238	Douglas, Terrell	409.22
83-CC-2246	Thompson, Jeannette L.	226.85
83-CC-2278	Menke, Randall	70.11
83-CC-2319	McAuliffe, Cornelius J.	405.91
83-CC-2358	Waidman, Shirley (Simpson)	133.80
83-CC-2382	Misek, Thomas O.	697.84
83-CC-2444	Harris, Johnie M.	301.50
83-CC-2461	Baylor, Larry A.	767.28
83-CC-2479	Wells, Stephen	2,661.17
83-CC-2488	Berglin, Jerry A.	<b>425.42</b>
83-CC-2557	Moultire, John W.	949.91

83-CC-2558	Rose, John D.	1,569.04
83-CC-2611	Mannon, Karen	612.25
83-cc-2639	Buranasiri, Pramual	179.45
83-CC-2677	Trapp, Kathryn M.	1,801.58
83-CC-2758	Marabain, Minnie	640.73
84-CC-0148	Burks, Albert, Jr.	3,669.27
84-CC-0149	Klasna, Robert	687.69
84-CC-0157	Meylor, William	829.78
84-CC-0228	Crosby, Celia	172.90
84-CC-0325	Penning, Frank L.	561.00
84-CC-0563	Hocking, Milton	505.15
84-CC-0613	Shinker, William	7,978.92
84-CC-0688	Douglas, Kathy	151.81
84-CC-0689	Blanchette, Sandra	597.40
84-CC-0690	Walker, Mae	324.25
84-CC-0700	Liggins, Tyrone	89.63
84-CC-0710	McGuire, Bobby G.	262.84
84-CC-0848	Spicer, Thomas A.	238.21
84-CC-1069	Jones, Rita	183.35
84-CC-1070	Holzhauser, Shirley	21.50
84-cc-1134	Kosinski, Dennis	1,251.27
84-CC-1165	Hughes, Robert J.	367.89
84-cc-1210	Cook, Elizabeth D.	103.78
84-cc-1225	Fane, Rose	32.64
84-CC-1272	Dunas, Robert	244.80
84-CC-1277	Penway, Susan	351.94
84-CC-1342	Gersch, Eugene R.	376.30
84-CC-1480	Gilkey, Grady	1,208.87
84-CC-1510	Thomas, Joyce E.	236.36
84-CC-1631	Looser, James J.	361.59
84-CC-1716	Van Houten, Marie	243.79
84-CC-1769	Lopez, Noreen	1,647.56
84-CC-1853	Luszowiak, Helen	1,106.30
84-CC-1903	Morris, Beulah	343.31
84-CC-1951	Dillard, Marcella	126.62
84-CC-1979	Elliott, Jean O.	105.79
84-cc-2085	French, John	112.74
84-CC-2151	Stear, Jeffrey M.	110.30
84-CC-2207	Strullmyer, Patricia L.	184.24

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## CRIME VICTIMS COMPENSATION ACT

Where person is victim of violent crime as defined in the Act; has suffered pecuniary loss of \$200.00 or more; notified and cooperated fully with law enforcement officials immediately after the crime; the victim and the assailant were not related and sharing the same household; the injury was not substantially attributable to the victim's wrongful act or substantial provocation; and his claim was filed in the Court of Claims within one year of the date of injury, compensation is payable under the Act.

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### OPINIONS PUBLISHED IN FULL FY 1984

(Claim denied.)

*In re* **PETITION OF SHARON F. BEENE.**

Order filed May 9, 1984.

LEGAL ASSISTANCE FOUNDATION OF CHICAGO (DEVEREUX BOWLEY, of counsel), for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALSBURG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION ACT—*extension* of time to file claim denied. Petition for extension of time within which to file documents to claim compensation under Crime Victims Compensation Act denied where so much time had elapsed since date Claimant was shot in attempted robbery that the Court of Claims no longer had authority to grant extension, notwithstanding Claimant's contention that Court improperly gave retroactive application to amendment of statute pertaining to extensions.

ROE, C.J.

This matter is before the Court on the petition of Sharon Beene for an extension of time within which to file documents to claim compensation under the Crime

Victims Compensation Act (Ill. Rev. Stat., ch. 70, par. 71 *et seq.*), hereinafter referred to as the Act.

On October 1, 1982, we ruled that we were constrained by operation of law to deny the petition on the grounds that so much time had lapsed since the date of the alleged crime that we no longer had authority to grant the petition. The petitioner asked for a hearing and the case was assigned to a commissioner of the Court. At the suggestion of the commissioner, the parties elected to file memoranda in lieu of holding the hearing.

The facts as stated in the Petitioner's memoranda are as follows.

The Petitioner, Sharon F. Beene, was the victim of a crime on December 6, 1979. She was sitting in a car with a friend in Garfield Park in Chicago when three men unknown to them went up to the car and one of them shot the Petitioner in the chest. The bullet went through her left lung and lodged in her spine. The men were never apprehended, and it is presumed the motive for the crime was robbery. No notice of intent or application were filed at that time by Petitioner, because she did not suffer monetary loss compensable under the Crime Victims Compensation Act. Her medical bills and sick leave were covered by her employer and insurance, and she was able to return to work about four months after the crime. She worked steadily until February of 1982, at which time the bullet which had been lodged in her body since 1979, migrated to a nerve causing severe back and muscle pain. As of that time she was unable to work, and thus suffered monetary damages necessary to seek compensation under the Act. On May 3, 1982, Claimant contacted attorney Devereux Bowly, Legal Assistance Foundation of Chicago, to represent her in this matter. He consulted Mr. Ron Castan, of the Chicago Crime

Victims Compensation Act office, of the Attorney General of Illinois. Mr. Castan informed him that the current practice in regard to situations such as this was for the Claimant to submit a petition for extension of time, but not a notice of intent nor claim: Mr. Castan said that if the petition for extension of time was granted by the Court, the notice of intent and claim could then be filed. On May 4, 1982, the petition and supporting documents were sent to Mr. Castan.

The statute in effect at the time of the crime was not the current statutory provision, which became effective on September 22, 1979. When the crime occurred, on September 6, 1979, the applicable statute was Ill. Rev. Stat. 1973, ch. 70, par. 73(g). It provided:

“Right to compensation-Conditions-Limitations-Notice. § 3. A person is entitled to compensation under this Act if:

• • •

(g) his application for compensation under this Act is filed with the Court of Claims within 2 years of the date of the injury to the victim or *within such further extension of time as the Court of Claims for good cause shown*, allows, provided that notice of intent to file a claim is filed in the Office of the Attorney General within 6 months of the date of the injury, *or within such further extension as the Court of Claims, for good cause shown*, allows.” (Emphasis added.)

The above-cited provision, unlike the current one, does not set any limit on how long an extension of time can be granted in regard to the application or notice of intent, provided the Claimant shows good cause for the extension. It is the petitioner’s contention that the Court erred in the October 1, 1982, order in quoting and applying the current version of the section of the Act (Ill. Rev. Stat. 1983, ch. 70, par. 76.1), which, as previously stated, did not go into effect until September 22, 1979, after the alleged crime in the instant case. Petitioner argues that statutes of limitation are given prospective effect, not retroactive operation, citing a case decided in 1875. It is unnecessary for us to recount the history of case law on

this subject which developed since that time. This is a situation where a limitation on the bringing of an action was decreased. The type of action was legislatively created (as opposed to existing under common law). We find the cases of *Orlick v. McCarthy* (1954), 4 Ill. 2d 342, 122 N.E.2d 513, and *Stanley v. Denning* (1970), 264 N.E.2d 521, controlling and that the current version of the statute should be applied retroactively.

The Petitioner also filed a reply brief which addressed several arguments. However, we find that our decision above makes it unnecessary for us to address them. The fact that the Attorney General failed to file with the Court any brief or memorandum at all would make it very difficult to address those arguments made in the Petitioner's reply brief had we found it necessary or helpful to do *so*.

Petition denied.

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(Claim denied.)

***In re* PETITION OF MATTIE RAMSEY**

Order filed May 9, 1984.

LEGAL ASSISTANT FOUNDATION OF CHICAGO (DEVEREUX BOWLEY, of counsel), for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALSBERG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION Act—notice of intent—limitations period. Within six months of occurrence of crime Claimant must file notice of intent to file claim with Attorney General, and within one year of occurrence of crime upon which claim is based, Claimant must file application, under oath, with Court of Claims; and upon good cause shown, Court of Claims may extend time for filing notice of intent and application for period not exceeding one year.

*SAME—petition for extension of time to file claim denied.* The Claimant's petition for extension of time to file documents to claim compensation under Crime Victims Compensation Act was untimely under the applicable statute pertaining to limitations on such extensions, and therefore the petition was denied, notwithstanding Claimant's contention that her original application was timely, as the record showed that the application was filed with the Attorney General, and not, as required by statute, with the Court of Claims.

ROE, C.J.

This matter is before the Court on the petition of Mattie Ramsey for an extension of time to file documents to claim compensation under the Crime Victims Compensation Act (Ill. Rev. Stat., ch. 70, par. 71 *et seq.*), hereinafter referred to as the Act.

On August 27, 1982, we ruled that we were constrained by operation of law to deny the petition on the grounds that too much time had lapsed since the date of the alleged crime. The crime was alleged to have occurred on May 9, 1980. Section 6.1 of the Act (Ill. Rev. Stat. 1983, ch. 70, par. 76.1), provides in pertinent part that a person is entitled to compensation under the Act if:

“(a) within 6 months of the occurrence of the crime he files a notice of intent to file a claim with the Attorney General and within one year of the occurrence of the crime upon which the claim is based, he files an application, under oath with the Court of Claims . . . Upon good cause shown, the Court of Claims may extend the time for filing the notice of intent to file a claim and application for a period not exceeding one year.”

Accordingly, we would only have authority to extend the filing time for a period not to exceed November 9, 1981, for the notice of intent and May 9, 1982, for the application. The notice of intent was submitted to the Attorney General on July 12, 1982, and the petition for the extension of time was filed on July 21, 1982, both dates being beyond our periods of discretion.

The Petitioner requested a hearing to review that decision which is a right provided under section 13.1(3) of the Act. (Ill. Rev. Stat., ch. 70, par. 83.1(3).) The case was assigned to a commissioner of the Court. At his

suggestion the parties elected to file memoranda in lieu of holding a hearing.

The Petitioner's first contention is that she filed her application within **21** months of the date of the crime and thus the Court was mistaken when it stated in the fourth paragraph of the aforementioned order that the application was not tendered. Petitioner attached to her petition as an exhibit a letter from the deputy chief of the Attorney General's crime victims division to the Petitioner which states that the application was received in their Springfield office on February **4, 1982**.

Petitioner also argues that this entire case has been fraught with confusion and error not only in regard to its handling by the Court but also the Attorney General's office. The letter referred to above was sent on June **15, 1982**. The letter purported to return the application to the Petitioner because it was unsigned. It also stated, "As you sent, this application two years after the incident occurred, you must show good cause for the Court of Claims, which handles these matters, to extend this filing deadline". In her memorandum Petitioner stated:

**"Claimant submitted her application on February 4, 1982, less than 21 months after the crime. The Attorney General's Office then took more than 5 months to compose a 7 sentence letter to respond to Claimant. To add insult to injury, the letter states that claimant sent her . . . 'application two years after the incident occurred. . . 'when in fact only 21 months had gone by, and the remainder of the two year passage of time occurred during the 5 months she waited for his reply."**

It is the Petitioner's contention that under these facts the State should be estopped from complaining about delays in this case because it contributed to and encouraged the very delays it complains of.

The Petitioner filed a reply brief which purports to address certain "myopic" and "distorted" views of the facts and case law contained in the State's brief which

Petitioner noted was filed almost two months late. We find it impossible to comment on those arguments because the State apparently neglected to file its brief with the Court (the docket shows no indication of it) and without knowing what was said in the State's brief we cannot make sense out of Petitioner's reply.

After having considered the record we find no error in our order of August **27, 1982**. Section 6.1(a) of the Act (quoted above) clearly states that applications for benefits are to be filed under oath with the *Court of Claims*. The statute contains no mention of filing applications with the Attorney General. Neither the docket nor the Court's **file** contains an application made by the Petitioner here. No mention of one being filed with the Court appears in Petitioner's memorandum or reply brief. It is our conclusion that none was tendered as stated in the previous order. The petition for an extension of time bears the filing stamp of the clerk's office dated July **21, 1982**. That date is well beyond the period within which we are authorized to grant an extension of time. Petitioner admitted that her notice of intent was filed beyond the discretionary period.

Petition denied.

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(No.75-CV-0254—Claimants awarded \$10,000.00.)

*In re* APPLICATION OF **IRENE A., NANCY and MARGARET BURKE.**

*Opinion filed July 20,1983.*

**IRENE BURKE, NANCY BURKE, and MARGARET BURKE,**  
*pro se,* for Claimants.

**NEIL F. HARTIGAN,** Attorney General (**FAITH S. SALS-**

BURG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION **Am—loss** of support—factors considered. Loss of support shall be determined on basis of the victim's average monthly earnings for the six months immediately preceding the date of the injury or on \$500 per month, whichever is less.

SAME—murder victim—maximum award allowed. Maximum award allowed for surviving spouse and children of murder victim, where the pecuniary loss resulting from the victim's death was in excess of the \$10,000 maximum after making all applicable deductions under the Crime Victims Compensation Act.

**POCH, J.**

This claim arises out of an incident that occurred on July 28, 1974. Irene Burke, Nancy Burke, and Margaret Burke, wife and daughters, respectively, of the deceased victim, Alexander Burke, seek compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1977, ch. 70, par. 71 *et seq.*

This Court has carefully considered the application for benefits submitted on January 31, 1975, on the form prescribed by the Court, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That Alexander Burke, age 61, was a victim of a violent crime as defined in section 2(c) of the Act (Ill. Rev. Stat. 1977, ch. 70, par. 72(c)); to wit: murder (Ill. Rev. Stat. 1977, ch. 38, par. 9—1).

2. That on July 18, 1974, the victim was discovered unconscious at a gas station located at 103rd and Western Avenues, Chicago, Illinois. The victim had been beaten by an unknown person, and a police investigation could not determine a motive. The victim was transported to

St. Joseph Hospital for treatment of his injuries, and expired on August 1, 1974.

3. That the Claimant, Irene Burke, seeks compensation for funeral expenses and for loss of support. The Claimants, Nancy Burke and Margaret Burke, seek compensation for loss of support only. They were 15 and 16 years of age, respectively, at the time of the incident.

4. That the Claimant, Irene Burke, incurred funeral and burial expenses in the amount of **\$4,192.41**, all of which the Claimant has paid. Of this amount, **\$2,000.00** has been deemed reasonable and therefore compensable by the Court.

5. That the Claimants, Irene Burke, Nancy Burke, and Margaret Burke, were dependent upon the victim for support.

6. That prior to his death, the victim was employed by the Chicago Board of Education and his average monthly earnings were \$1,600.00.

7. That section 4 of the Act states, “. . . loss of support shall be determined on the basis of the victim’s average monthly earnings for the six months immediately preceding the date of the injury or on \$500.00 per month, whichever is less.” Ill. Rev. Stat. 1977, ch. 70, par. 74.

8. That the victim was 61 years of age at the time of the crime. According to the U.S. Department of Health, Education and Welfare, *Vital Statistics of the United States, 1978*, Life Tables, volume II, his life expectancy would have been 77.2 years. Therefore, the projected loss of support suffered by the Claimant, Irene Burke, is 16.2 years or 194.4 months.

9. That this claim complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

10. That pursuant to section 7(d) of the Act (Ill. Rev. Stat. 1977, ch. 70, par. 77(d)), this Court must deduct \$200.00 from all claims plus the amount of benefits, payments or awards payable under the "Workmen's Compensation Act" (Ill. Rev. Stat. 1977, ch. 48, par. 138.1 *et seq.*), from local governmental, State or Federal funds or from any other source, except annuities, pension plans, Federal social security benefits and the net proceeds of the first \$25,000.00 (twenty-five thousand dollars) of life insurance paid or payable to the Claimant.

11. That the Claimant, Nancy Burke, born February 19, 1959, reached the age of majority on February 19, 1977, or 29 months after the death of her father. She is therefore eligible for loss of support for these 29 months.

12. That the Claimant, Margaret **Burke**, born December 4, 1957, reached the age of majority on December 4, 1975, or 16 months after the death of her father. She is therefore eligible for loss of support for these 16 months.

13. That based on \$500.00 per month, the maximum compensation for loss of support for 194.4 months, which is the maximum period a Claimant in this incident is eligible for, is \$97,200.00, which is in excess of the \$10,000.00 maximum amount compensable under section 7(c) of the Act. Ill. Rev. Stat., 1977, ch. 70, par. 77(c).

14. That the Claimant, Irene Burke, has received \$27,000.00 from various life insurance policies as a result of the victim's death, \$2,000.00 of which can be counted as an applicable deduction. Additionally, the Claimant has received \$255.00 'in Social Security Administration burial benefits and \$400.00 in Veteran's Administration burial benefits.' These amounts can be counted as applicable deductions under section 7(d) of the Act.

15. That after making all the applicable deductions under the Act, the pecuniary loss resulting from the victim's death is in excess of the \$10,000.00 maximum allowed in section 7(e) of the Act. Ill. Rev. Stat. 1977, ch. 70, par. 77(e).

16. That the Claimant, Irene Burke, is entitled to an award based on the following:

Funeral expenses	\$2,000.00
Loss of support (81% of total compensable loss of support)	<u>6,480.00</u>
<b>Total</b>	<b>\$8,480.00</b>

17. That the Claimant, Nancy Burke, is entitled to an award based on the following:

Loss of support (12% of total compensable loss of support)	\$ 960.00
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18. That the Claimant, Margaret Burke, is entitled to an award based on the following:

Loss of support (7% of total compensable loss of support)	\$ 560.00
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It is therefore, hereby ordered that the sum of \$8,480.00 (eight thousand four hundred eighty dollars) be and is hereby awarded to Irene Burke, wife of Alexander Burke, an innocent victim of a violent crime.

It is further ordered that the sum of \$960.00 (nine hundred sixty dollars) be and is hereby awarded to Nancy Burke, daughter of Alexander Burke.

It is further ordered that the sum of \$560.00 (five

**hundred sixty dollars) be and is hereby awarded to Margaret Burke, daughter of Alexander Burke.**

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(No. 76-CV-0748—Claimants awarded \$10,000.)

**In re APPLICATION OF MICHAEL DEBARTOLO, JOAN BENEDETTI AND JOAN EISENHAUR.**

Opinion filed August 16, 1982.

Opinion on rehearing filed May 9, 1984.

**KEEFE, EHEMANN & JAFFE (HOPE KEEFE, of counsel), for Claimant Joan Benedetti.**

**MICHAEL DEBARTOLO, *pro se*, for Claimant Michael DeBartolo.**

**JOAN EISENHAUR, *pro se*, for Claimant Joan Eisenhaur.**

**TYRONE C. FAHNER, Attorney General (MAUREEN CAIN and FAITH SALSBURG, Assistant Attorneys General, of counsel), for Respondent.**

**CRIME VICTIMS COMPENSATION** Am—victim's death not attributable to wrongful act *or* provocation. Facts that heroin was found near victim's body and that victim had committed bank robbery a year prior to his death were insufficient to establish that death was attributable to victim's wrongful conduct or provocation of assailants.

**SAME**—burden of proving loss of support—preponderance of evidence. The applicants for benefits under the Crime Victims Compensation Act have burden of proving loss of support by the preponderance of the evidence.

**SAME**—funeral expenses—relatives. Any person related to the victim, even though not dependent on victim for support, is eligible for compensation, but only for reasonable funeral expenses for the victim, provided that such expenses were paid by him.

**SAME**—*funeral* expenses—father-in-law granted reimbursement. Where record showed that father-in-law of victim at time of his death paid portion of funeral bill that was not paid by victim's father, father-in-law was entitled to reimbursement of funeral expenses.

**SAME**—evidence warranted award for children's loss of support. Even though record was not always clear, circumstantial evidence was sufficient to

infer that it was more true than not that victim was contributing to support of his children at time of murder, and awards granted as compensation for loss of support were proper.

*SAME—earnings during six months prior to death proved.* Claimants proved by preponderance of evidence that victim earned money during six months prior to his death, as evidence presented established that it was more true than not that victim had earnings while on work release from Federal prison, and he contributed to support of Claimants from those earnings.

*SAME—murder—maximum award allowed.* Maximum award was allowed where evidence established that murder victim had earnings during six months prior to death and contributed to support of wife and children from those earnings.

ROE, C.J.

This is a consolidated claim for compensation under the Crime Victims Compensation Act (Ill. Rev. Stat. 1975, ch. 70, par. 71 *et seq.*), hereinafter referred to as the Act. It arises out of an incident which occurred on or about January 31, 1976. The Court has carefully considered the application for benefits submitted on the form prescribed by the Court, the investigatory report of the Attorney General of Illinois, the evidence presented at the hearing before a commissioner of the Court, the post-hearing briefs, and the arguments and evidence presented at oral arguments' before the full Court sitting *en banc*. Based on the entire record in this cause we make the following determination.

This case involves two issues. The first issue is whether or not the death of the victim was substantially attributable to his wrongful act or substantial provocation of his assailant as conditioned by sections 3(f) and 7(c) of the Act. (Ill. Rev. Stat. 1975, ch. 70, pars. 73(f), 77(c)). If the first issue is decided in favor of the Applicants, the second issue is whether or not the decedent had any lawful earnings in the six months prior to his death upon which to base an award for the loss of support claimed.

On the aforementioned date Louis DeBartolo, age

29, was found murdered in a room behind a discount dry goods store which he operated located at 5900 W. North Avenue in Chicago, Illinois. He had been shot in the head prior to which the physical evidence indicated that he had been brutally tortured. Several packets of a white substance were found at the scene of the crime. The substance was later determined to be heroin and had a street value of tens of thousands of dollars. Additionally, the record shows that seven months prior to his death, decedent was convicted of bank robbery in Federal court and that 45 days before his death a judgment in the amount of \$30,477.00 was entered against him in a civil proceeding in Cook County circuit court, said sum representing unrecovered proceeds from the bank robbery.

With respect to the first issue, it is the State's position that the circumstantial evidence, including the manner of death, the decedent's involvement in criminal conduct almost a year before his death for which he was 'subsequently convicted, and the severe financial pressure brought about by the judgment and order of restitution, all constitute conduct which would preclude recovery or reduce it. We are asked to find that the death was a result of a crime of retribution and/or crime resulting from involvement in narcotics.

The circumstances, although quite bizarre, are insufficient to allow us to conclude that the decedent was not an innocent victim of the crime. There was no evidence as to how the heroin came to be where it was found. There was no evidence of any previous history of involvement of the decedent with heroin. Although the decedent was convicted seven months before his death of having committed a bank robbery a year before his death, there was no evidence linking this conduct with

his death. The same is true with respect to the judgment owed by the decedent. Therefore we find in favor of the Applicants on the first issue.

The second issue involves compensation. Before awarding loss of support in cases such as this, it is our practice to first make an award for funeral expenses incurred.

Michael DeBartolo, father of the decedent, seeks \$1,007.25, representing one-half of the expense of the funeral which he paid. Although the evidence is not exactly clear, we find that payment of the other half of the funeral expense is attributable to Joan Benedetti, the former wife of the decedent. We have previously determined that \$2,000.00 is a reasonable amount of compensation for funeral expenses under the Act. Therefore, Michael DeBartolo and Joan Benedetti are each entitled to their prorated share, or \$1,000.00 each, for funeral expenses.

With respect to the second issue, that of loss of support, section 4 of the Act provides that loss of support shall be determined on the basis of the victim's average monthly earnings for the six months immediately preceding the date of the crime or on \$500.00 per month, whichever is less. (Ill. Rev. Stat. 1975, ch. 70, par. 74.) The relevant time frame in this case is July 31, 1975, to January 31, 1976. The burden is on the Applicants to prove loss of support by the preponderance of the evidence.

The decedent was incarcerated at M.C.C. Federal prison in Chicago during the six months preceding his death. However, he was on a work release program, working during the days and returning to the prison at night. As a condition of eligibility for participation in the program he had to show that he had a job which paid

some amount of monetary compensation. He secured a position as a manager of International Discount Sales, a discount clothing store, which qualified. The business was a sole proprietorship owned and previously operated by Joseph J. Esposito.

Mr. Esposito testified that his business was in serious financial trouble, but that because the decedent was a long time friend and because of his predicament he turned the business over to the decedent. After relinquishing control Mr. Esposito did not pay attention to the affairs of the business and knew little or nothing about the amount of inventory on hand at any given time, the amount of revenue generated, the records of the business, etc. There was testimony that all the business records on the premises were seized by the Chicago Police Department and never became part of the record in this claim. The store went out of business the day the decedent's body was discovered.

As to the exact amount of compensation the decedent received, the evidence is not clear. Mr. Esposito's testimony conflicted at several points. He testified that the decedent was not an employee. When asked by the decedent for a job he said he replied, "I have a sick business here. If you want to come in, I can't pay you or anything." He further testified that, "I wrote him—I think I wrote him checks because I couldn't hire him. I just wrote him checks because I couldn't hire him. I couldn't afford to hire him." Later, in response to a question whether or not the checks were to compensate the decedent for the work he was doing in the store, Mr. Esposito replied in the affirmative.

There were either four, five, or six checks in the amount of \$150.00 each given to the decedent by Mr. Esposito. He could not remember how many nor could

he recall the exact dates they were given to him, but the time appears to be around the beginning of the six-month period preceding the murder. As for other earnings during that period, Mr. Esposito testified that the decedent took money out of the cash register, but he had no idea how much was taken. He never saw it taken; the proceeds of sales were just not there, and the decedent never turned any money over to Mr. Esposito. At one point he testified that there was \$8,000.00 or \$9,000.00 worth of inventory in the store, but later said there was only \$4,000.00 or \$5,000.00 worth. The merchandise remaining at closing was liquidated for \$1,500.00.

There was evidence of other jobs held by the decedent during 1975, but it appears they were outside the relevant six-month period. The tax return filed for that year did not disclose any income earned by the decedent from the store.

The amount of support provided to the Claimants, by their testimony, was far in excess of any earnings the decedent obtained from any identifiable source.

We conclude from the testimony of Mr. Esposito and reasonable inferences drawn from the circumstantial evidence that the decedent had earnings during the six months immediately preceding his death and that from those earnings he contributed \$100.00 a month toward the support of the Claimants.

At the time of his death, Mr. DeBartolo was married to Joan DeBartolo and they had two children, Gina and Louis, Jr., born August 2, 1966, and August 20, 1967, respectively. Joan DeBartolo remarried eight months after Mr. DeBartolo's death. She applied for loss of support for herself and their children. Also at the time of his death, Mr. DeBartolo was living with Joan Eisenhauer, who had given birth to a son, Frank, approximately two

and a half years prior to Mr. DeBartolo's death, which he acknowledged to be his. She is seeking loss of support on behalf of the son. Based upon ordinary life expectancies and \$100.00 per month support among the dependents, the amount of loss exceeds the maximum amount of compensation awardable under the Act, which was \$10,000.00 at the time of the crime. In view of the foregoing, it is hereby ordered that the sum of \$10,000.00 be awarded in this matter as follows:

1. To Michael DeBartolo — \$1,000.00 for reimbursement for funeral expenses;
2. To Joan Benedetti — \$1,000.00 for reimbursement for funeral expenses;
3. To Joan Benedetti on behalf of Gina DeBartolo — \$2,666.66;
4. To Joan Benedetti on behalf of Louis DeBartolo, Jr. — \$2,666.66;
5. To Joan Eisenhower on behalf of Frank DeBartolo — \$2,666.66;

said awards to be paid in lump sums.

#### OPINION ON REHEARING

ROE, C.J.

This case is before the Court on petition by Respondent for rehearing of the opinion rendered by this Court on August 16, 1982, concerning the above-captioned claims.

In said opinion this Court granted awards pursuant to the Crime Victims Compensation Act (Ill. Rev. Stat. 1975, ch. 70, par. 71 *et seq.*), hereinafter referred to as the Act, to the following persons:

1. To Michael DeBartolo — \$1,000.00;
2. To Joan Benedetti — \$1,000.00;
3. To Joan Benedetti on behalf of Gina DeBartolo — \$2,666.66;
4. To Joan Benedetti on behalf of Louis DeBartolo, Jr. — \$2,666.66;
5. To Joan Eisenhower on behalf of Frank DeBartolo — \$2,666.66.

The awards granted to Michael DeBartolo and Joan Benedetti were for reimbursement of the funeral expenses of the victim, Louis DeBartolo. **The** awards granted to Joan Benedetti on behalf of Gina DeBartolo, and Louis DeBartolo, Jr., along with the award made to Joan Eisenhower on behalf of Frank DeBartolo, were granted as compensation for loss of the victim's support.

The Respondent's petition for rehearing essentially sets forth three points supposedly overlooked or misapprehended by the Court.

Respondent first contends that Joan Benedetti, the victim's wife at the time of his death, should not have been granted award for reimbursement of funeral expenses because there was insufficient evidence in the record proving that she paid any part of the funeral bill.

A thorough review of the record does indeed reveal that Joan Benedetti failed to provide sufficient evidence that she paid a portion of the funeral expenses. The evidence indicates that her father, James Sena, paid the portion of the funeral bill that was not paid by Michael DeBartolo, the victim's father. We find, therefore, that Joan Benedetti is not entitled to receive any award for reimbursement for funeral expenses.

Section 3(a) of the Act (Ill. Rev. Stat. 1975, ch. 70, par. 73(a)), in effect at the time of the crime, provides in pertinent part that;

“Any person related to the victim, even though not dependent on that victim for support, is eligible for compensation but only for reasonable funeral expenses . . . for the victim, provided that such expenses were paid by him.”

Although the Act in effect at the time of the crime did not contain a definition of “relative”, a later amendment provided a definition of “relative” which includes a spouse’s parent. (Ill. Rev. Stat. 1979, ch. 70, par. 72(f).) Since the record indicates that James Sena was the father-in-law of the victim at the time of the victim’s death and that he paid the portion of the funeral bill that was not paid by the victim’s father, we find that James Sena is entitled to receive an award of \$1,000.00 for reimbursement of funeral expenses.

The second contention set forth by the Respondent is that Joan Benedetti should not have been granted the awards on behalf of Gina DeBartolo and Louis DeBartolo, Jr., because no evidence was introduced to show that Gina DeBartolo or Louis DeBartolo, Jr., were in fact being supported by the victim and dependent upon him at the time of the crime which caused his death.

The Act is silent concerning the degree of proof required to prove a Claimant’s dependency on the victim for support at the time of the crime. However, this Court has found that dependency must be proved by a preponderance of the evidence. (*In re Application of Sole* (1976), 31 Ill. Ct. Cl. 713.) A proposition proved by the preponderance of the evidence has been described as one that is more probably true than not. (*In re Estate of Ragan* (1979), 79 Ill. App. 3d 8, 13, 398 N.E.2d 198, 203.) It is this Court’s duty, as the trier of fact, to weigh the evidence and determine whether a proposition is more true than not. While the record in this case was not

always clear, we concluded there was sufficient circumstantial evidence in the record to infer that it was more true than not that the victim was contributing to the support of Gina DeBartolo and Louis DeBartolo, Jr., at the time of the crime. After again reviewing the record, it is our opinion that our initial conclusion regarding the victim's support of Gina DeBartolo and Louis DeBartolo, Jr., was correct. We therefore affirm the decision to grant Joan Benedetti awards on behalf of Gina DeBartolo and Louis DeBartolo, Jr., as compensation for the loss of the victim's support.

The Respondent's final contention is that all of the awards for loss of support should not have been granted because the Claimants failed to show that the victim had earnings during the six-month period preceding his death which could serve as a basis for determining the level of support lost.

The Act is also silent concerning the degree of proof required to prove that the victim earned any money during the six-month period preceding his death. As in the case of the degree of proof required to prove dependency, this Court has determined that the Claimant must prove by a preponderance of the evidence that the victim earned money during the six months prior *to* his death. (*In re Application of Sole, supra.*) Having reviewed the record, we find that there was sufficient evidence presented to prove that it was more true than not that the victim had earnings during the six-month period preceding his death and that from those earnings he contributed \$100.00 a month toward the support of the Claimants. All of the awards granted for loss of support are therefore affirmed.

In our prior opinion we found that based upon the ordinary life expectancies and \$100.00 per month support

among the dependents, the amount of loss exceeded the maximum amount of compensation awardable under the Act, which was \$10,000.00 at the time of the crime. An award was granted in the sum of \$10,000.00 which was divided as ordered by the Court. We affirm our decision to grant an award of \$10,000.00 in this matter. However, due to our deciding in this opinion to grant an award for funeral expenses to James Sena instead of Joan Benedetti, it is hereby ordered that the \$10,000.00 award be distributed as follows:

1. To Michael DeBartolo — \$1,000.00;
2. To James Sena — \$1,000.00;
3. To Joan Benedetti on behalf of Gina DeBartolo — \$2,666.66;
4. To Joan Benedetti on behalf of Louis DeBartolo, Jr. — \$2,666.67;
5. To Joan Eisenhower on behalf of Frank DeBartolo — \$2,666.67.

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(No. 77-CV-0437—Claimant awarded \$10,000.)

*In re* APPLICATION OF MARY L. BURTON.

*Opinion filed September 22, 1983.*

**DAVID H. GOLDENHERSH**, for Claimant.

**NEIL F. HARTIGAN**, Attorney General (**FAITHS. SALS-BURG**, Assistant Attorney General, of counsel), for Respondent.

*CRIME VICTIMS COMPENSATION ACT—arson victim—maximum award granted.* Surviving spouse and children of arson victim were granted the maximum award payable pursuant to the alternative provisions of the Crime

Victims Compensation Act, where the pecuniary loss, after making all applicable deductions, exceeded the maximum award allowed by the Act

**POCH, J.**

This claim arises out of an incident that occurred on July 20, 1975. Mary L. Burton, wife of the deceased victim, Luster Burton, Jr., seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1977, ch. 70, par. 71 *et seq.*

This Court has carefully considered the application for benefits submitted on the form prescribed by the Court, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant's deceased husband, Luster Burton, Jr., age 26, was a victim of a violent crime as defined in section 2(c) of the Act (Ill. Rev. Stat. 1977, ch. 70, par. 72(c)), to wit: arson (Ill. Rev. Stat. 1977, ch. 38, par. 20—1).

2. That on July 20, 1975, the victim's body was removed from his home at 2008 North 36th Street, East St. Louis, Illinois, after a fire explosion had totally destroyed the residence. The victim was pronounced dead at the scene. Police investigation was unable to determine the cause of the fire, although the East St. Louis Fire Department report indicates the fire was the result of arson.

3. That the Claimant seeks compensation for funeral expenses and for loss of support for herself and for her minor children, Marcus, age 4, Desmond, age 3, and Maurice, age 1.

4. That the Claimant incurred funeral and burial

expenses in the amount of \$1,811.50 of which the Claimant has paid \$1,811.50, all of which has been deemed reasonable and therefore compensable by the Court.

5. That the Claimant and her minor children were totally dependent upon the victim for support.

6. That prior to his death, the victim was employed as a security guard and his average monthly earnings were approximately \$1,500.00.

7. That section 4 of the Act states “. . . loss of support shall be determined on the basis of the victim’s average monthly earnings for the six months immediately preceding the date of the injury or on \$500.00 per month, whichever is less.” Ill. Rev. Stat. 1977, ch. 70, par. 74.

8. That the victim was **26** years of age at the time of the crime. According to the U.S. Department of Health, Education and Welfare, *Vital Statistics of the United States*, 1978, Life Tables, volume II, his life expectancy would have been **71.6** years. The projected loss of support for 45.6 years is in excess of \$10,000.00, which is the maximum amount compensable under section 7(e) of the Act. Ill. Rev. Stat. 1977, ch. 70, par. 77(e).

9. That this claim complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

10. That pursuant to section 7(d) of the Act, this Court must deduct \$200.00 from all claims plus the amount of benefits, payments or awards payable under the Workmen’s Compensation Act (Ill. Rev. Stat. 1977, ch. 48, par. 138.1 *et seq.*), from local governmental, State or Federal funds or from any other source, except annuities, pension plans, Federal social security benefits and the net proceeds of the first \$25,000.00 (twenty-five

thousand dollars) of life insurance paid or payable to the Claimant.

11. That the Claimant has received no reimbursements as a result of the victim's death that can be counted as applicable deductions.

12. That after making all the applicable deductions under the Act, the pecuniary loss resulting from the victim's death is in excess of the \$10,000.00 maximum allowed in section 7(e) of the Act.

13. That the Claimant's interest would be best served if the award hereunder would be paid pursuant to the alternative provisions of section 8 of the Act.

It is therefore, hereby ordered that the sum of \$10,000.00 (tenthousand dollars) be and is hereby awarded to Mary L. Burton, wife of Luster Burton, Jr., an innocent victim of a violent crime, to be paid and disbursed to her as follows:

- (a) \$2,000.00 (two thousand dollars) to be paid to Mary L. Burton in a lump sum;
  - (b) Sixteen (16) equal monthly payments of \$500.00 (five hundred dollars) each to be paid to Mary L. Burton for use and benefit of Marcus, Desmond and Maurice Burton;
  - (c) In the event of the death or marriage of the Claimant or the Claimant's children, it is the duty of the personal representative of the Claimant to inform this Court in writing of such death or marriage for the purpose of the possible modification of the award.
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(No. 77-CV-0596—Claimant awarded \$2,000.00.)

In re APPLICATION OF HELENE THANASOURAS and NICHOLAS THANASOURAS.

*Opinion filed February 29, 1984.*

*Order on review filed April 6, 1984.*

NICHOLAS C. PAMEL, for Claimant Helene Thanasouras.

WILLIAM J. HARTE, for Claimant Nicholas Thanasouras.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALSBURG, Assistant Attorney General, of counsel), for Respondent.

**CRIME VICTIMS COMPENSATION *Am—murder—mother granted funeral expenses.*** Mother of murder victim was granted maximum award for funeral expenses incurred in burial of her son, as loss was in excess of maximum award allowed for funeral expenses after making all applicable deductions.

***SAME—dependent defined.*** A dependent is a relative of a deceased victim who was wholly or partially dependent upon the victim's income at the time of his death and shall include the child of such victim born after his death, a child being an unmarried son or daughter who is under 18 years of age.

**Same—loss of support not proven—claim denied.** Son of murder victim failed to prove by preponderance of evidence that he incurred a compensable loss of support, as he presented only his own unsubstantiated testimony that at time of death son was 17 and was living with mother who had previously been divorced from victim, and there was no showing of loss of support either before or after son's eighteenth birthday.

POCH, J.

This claim arises out of an incident that occurred on July 27, 1977. Helene Thanasouras, mother of the deceased victim, Mark Thanasouras, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1977, ch. 70, par. 71 et seq.

This Court has carefully considered the application for benefits submitted on the form prescribed by the

Court, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant's deceased son, age **49**, was a victim of a violent crime as defined in section 2(c) of the Act (Ill. Rev. Stat. **1977**, ch. 70, par. 72(c)), to wit: murder (Ill. Rev. Stat. **1977**, ch. **38**, par. **9-1**).

2. That on July 22, **1977**, the victim was shot on the street at **5500 N. Campbell**, Chicago, Illinois. He was transported to Swedish Covenant Hospital, where he was pronounced dead on arrival: No assailants have ever been apprehended.

3. That the Claimant seeks compensation under the Act for funeral expenses only. The Claimant was not dependent upon the victim for support.

4. That funeral and burial expenses were paid by the Claimant in the amount of **\$3,134.50**, of which \$2,000.00 is deemed compensable by the Court.

5. That the Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

6. That pursuant to section 7(d) of the Act, this Court must deduct \$200.00 plus the amount of benefits, payments or awards payable under the Workmen's Compensation Act (Ill. Rev. Stat. **1977**, ch. **48**, par. **138.1 et seq.**), from local governmental, State or Federal funds or from any other source, except annuities, pension plans, Federal social security benefits and the net proceeds of the first **\$25,000.00** (twenty-five thousand dollars) of life insurance paid or payable to the Claimant.

7. That the Claimant has received no reimburse-

ments as a result of the victim's death that can be counted as applicable deductions.

8. That after making all the applicable deductions under the Act, the Claimant's loss is in excess of the \$2,000.00 maximum award deemed compensable by the Court for funeral benefits.

It is hereby ordered that the sum of \$2,000.00 (two thousand dollars) be and is hereby awarded to Helene Thanasouras, mother of the deceased victim, Mark Thanasouras.

#### ORDER ON REVIEW

POCH, J.

This claim arises out of an alleged criminal offense which occurred on July 27, 1977. Nicholas Thanasouras, son of the deceased victim, Mark Thanasouras, seeks compensation for loss of support pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. **1979**, ch. **70**, par. **71 et seq.**

This Court has carefully considered the Claimant's application for benefits and the commissioner's report and transcript of the evidentiary hearing that was held on November **21, 1983**.

The Claimant contends that he is entitled to loss of support compensation for the contributions with which his deceased father would have provided him, but for the father's crime-related death. The Claimant testified that he was born on May **7, 1960**, and that he was **17** years old at the time of the crime. He further testified that his parents did not live together on the date of the crime and that he lived with his mother. The Claimant has been a full-time student prior to and since the victim's death.

The issues presented to the Court are whether a child is eligible for compensation for loss of support that has been incurred after the child reaches the age of 18, and whether the Claimant here has shown that he suffered a loss prior to or after that time.

It is clear from the language of the Act that the Claimant cannot be compensated for loss of support allegedly incurred after his eighteenth birthday. Section 2(h) (Ill. Rev. Stat. 1979, ch. 70, par. 72(h)) provides for loss of support compensation for “dependents of the victim.” In section 2(e), “dependent” is defined as “a relative of a deceased victim who was wholly or partially **dependent upon the victim’s income at the time of his death** and shall include the child of such victim born after his death.” Section 2(g) specifically narrows the definition of “child” to mean “an unmarried son or daughter who is under 18 years of age . . .” Therefore, Nicholas was no longer a “child” within the statutory meaning of the term after he had reached the age of 18.

Our interpretation of the loss of support provision is consistent with the legislative mandate expressed in section 10.1(g) that states that the Act is a secondary source of compensation. (Ill. Rev. Stat. 1979, ch. 70, par. 80.1(g).) The Claimant is asking the Court to rely solely upon his unsubstantiated testimony that the victim would have contributed to his support after any possible legal obligation to do so ceased. In effect, he asserts that the State is legally required to provide support where his father would have borne no such duty. The limited relief provided by the Act does not allow the Court to engage in this type of speculation.

The Claimant has therefore failed to show that he suffered any compensable loss of support after his eighteenth birthday. Further, he has presented insufficient

evidence to show that he incurred a loss of support prior to his eighteenth birthday. Section 8.1 of the Act states that “(n)o award of compensation shall be made for any portion of the applicant’s claim that is not substantiated by the claimant.” Here, the Claimant presented only his own unsubstantiated testimony as evidence of his loss. This Court has previously held that the testimony of an interested party, standing alone, is insufficient to show a loss of support:

“The burden of proof is on the Claimant to prove her dependency and to prove the income of the decedent. In view of the unsubstantiated nature of the Claimant’s testimony . . . the Court is of the opinion that the Claimant has not proved dependency by her upon the decedent by a preponderance of the evidence.” *In re Application of Sole* (1976), 31 Ill. Ct. Cl. 713, 715.

The Claimant in the instant case was unable to produce any witnesses or documentary evidence other than his own testimony to show that his father had any earnings upon which loss of support is based. In addition, the Claimant offered only his own unsubstantiated testimony to show that he received actual support from the victim. The Claimant therefore has failed to prove by a preponderance of the evidence that he incurred a compensable loss of support under the Act.

For the foregoing reasons, it is hereby ordered that the claim of Nicholas Thanasouras be and is hereby denied.

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(No. 78-CV-0410— Claimant awarded \$206.88.)

*In re* APPLICATION OF JOHN A. KALOYEROS, JR.

*Opinion filed October 20, 1983.*

CIRRICIONE, BLOCK, KROCKEY & CERNUGEL, P.C.  
(MICHAEL D. BLOCK, of counsel), for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALS-BURG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION Am—aggravated battery—award granted. Victim of aggravated battery was granted award for loss of earnings and medical/hospital expenses, where evidence established that he was assaulted without provocation and sustained extensive injuries resulting in being unable to work for a month and six days, and award was set to reflect statutory deduction and restitution made by assailant.

POCH, J.

This claim arises out of a criminal offense that occurred on December 18, 1977. Claimant seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereinafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 *et seq.*

This Court has carefully considered the application for benefits submitted on the form prescribed by the Court, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant, John A. Kaloyeros, Jr., age 21, was a victim of a violent crime, as defined in section 2(c) of the Act (Ill. Rev. Stat. 1979, ch. 70, par. 72(c)), to wit: aggravated battery (Ill. Rev. Stat. 1979, ch. 38, par. 12-4).

2. That on December 18, 1977, the Claimant was assaulted by one John Harasti, without provocation. Claimant sustained extensive injuries. The incident occurred at the 7-Eleven parking lot, Romeoville, Illinois. Claimant was taken to the Silver Cross Hospital, Joliet, Illinois, for treatment of his injuries.

3. That Claimant seeks compensation for medical/hospital expenses and for loss of earnings.

4. That the Claimant incurred medical/hospital expenses in the amount of \$1,391.57, none of which was paid by insurance.

5. That section 4 of the Act states that loss of earnings shall be determined on the basis of the victim's average monthly earnings for the six months immediately preceding the date of the injury or on \$500.00 per month, whichever is less. Ill. Rev. Stat. 1979, ch. 70, par. 74.

6. That Claimant's average net monthly earnings for the six months preceding the date of his injury were in excess of \$500.00 per month.

7. That Claimant was disabled and unable to work from December 19, 1977, to January 30, 1978, for a period of one month and six working days.

8. That based on \$500.00 per month, the maximum compensation for loss of earnings for one month and six working days is \$636.38.

9. That the Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

10. That pursuant to section 7(d) of the Act, this Court must deduct \$200.00 from all claims plus the amount of benefits, payments or awards payable under the Workmen's Compensation Act (Ill. Rev. Stat. 1979, ch. 48, par. 138.1 *et seq.*), from local governmental, State or Federal funds, or from any source, except annuities, pension plans, Federal social security benefits and the net proceeds of the first \$25,000.00 (twenty-five thousand dollars) of life insurance paid or payable to the Claimant.

11. That the Claimant obtained a judgment against his attacker, John Harasti, in the amount of \$10,000.00,

which, pursuant to section 7(d) of the Act, is a permissible deduction.

12. That Claimant has received \$1,421.88 out of the \$10,000.00 in civil damages.

13. That on July 29, 1982, Claimant was informed by John Harasti that further payments would not be forthcoming due to Harasti's economic condition.

14. That the Claimant is entitled to an award based on the following:

Compensable loss of earnings	636.38
Medical/hospital expenses	<u>\$1,391.57</u>
Total	\$2,027.95
Less restitution	-\$1,421.88
Less \$200.00 deductible	<u>- 200.00</u>
Total	\$ 206.88

It is hereby ordered that the sum of \$206.88 (two hundred six and 88/100 dollars) be and is hereby awarded to John A. Kaloyeros, Jr., an innocent victim of a violent crime.

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(No. 81-CV-0298—Claim denied.)

*In re* APPLICATION OF IRVIN HOLLEY.

*Order filed March 4, 1983.*

*Order on review filed January 23, 1984.*

THOMAS P. YOUNG, for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALSBURG, Assistant Attorney General, of counsel), for Respondent.

**CRIME VICTIMS COMPENSATION ACT—victim was related where assailant was her son-in-law.** Where evidence established that victim was mother-in-law of assailant, statutory provision barring compensation where victim and assailant were related applied, as relation by affinity satisfied statutory definition of “relative”.

**SAME—relative need not share same household to be barred from compensation.** Statutory prohibition against compensation where victim and assailant are related applies even though related parties do not share same household.

**SAME—murder—victim related—mother-in-law—claim denied.** Claim for benefits under the Crime Victims Compensation Act filed by surviving spouse of murder victim was denied, as victim was mother-in-law of assailant and therefore the statutory prohibition against allowing an award where the victim and assailant were related applied.

POCH, J.

This claim arises out of an incident that occurred on January 29, 1979. Irvin Holley, husband of the deceased victim, Henderstene Holley, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1977, ch. 70, par. 71 *et seq.*

This Court has carefully considered the application for benefits submitted on October 29, 1980, on the form prescribed by the Court, and an investigatory report of the Attorney General of Illinois. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That Henderstene Holley, age 39, was a victim of a violent crime as defined in section 2(c) of the Act (Ill. Rev. Stat. 1977, ch. 70, par. 72(c)), to wit: murder (Ill. Rev. Stat. 1977, ch. 38, par. 9—1).

2. That on January 29, 1979, the victim and two of her daughters were shot by the victim’s son-in-law. The incident began when the offender went to the victim’s home, located at 1155 Hecker Court, Elgin, Illinois, looking for his wife and son. The offender’s wife and son had been living with the victim approximately one week

at the time of the incident. When the offender was informed by the victim that she did not know their whereabouts, the offender produced a gun and shot the victim. The offender then left this residence in his automobile and a short time later discovered his wife, son, sister-in-law and niece sitting in an automobile at a gas station located at 54 North State Street, Elgin, Illinois. The offender exited his automobile, approached the vehicle occupied by his wife and the others, and began arguing with his wife as to when he could visit his son. During this argument the offender became enraged and shot both his wife and his sister-in-law and fled the scene.

The victim and her daughter, the offender's wife, were pronounced dead on arrival at Sherman Hospital. The offender was apprehended, prosecuted and found guilty of murder, attempted murder and aggravated battery.

3. That the Claimant seeks compensation for funeral expenses and loss of support for the victim's minor children, Ivonne and Irvin Holley, Jr.

4. That section 3(e) of the Act states that the Claimant is eligible for compensation if the victim and the assailant were not related and sharing the same household. Ill. Rev. Stat. 1977, ch. 70, par. 73(e).

5. That it appears from the investigatory report and the police report that the victim and the assailant were related, in that the victim was the mother-in-law of the assailant.

6. That the Claimant has not met a required condition precedent for compensation under the Act.

It is hereby ordered that this claim be, and is hereby denied.

## ORDER ON REVIEW

POCH, J.

This claim arises out of an alleged criminal offense which occurred on January **29, 1979**. Irvin Holley, husband of the deceased victim, Henderstene Holley, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. **1979**, ch. **70**, par. **71 et seq.**

This claim was originally filed October 10, **1980**. Based upon the investigatory report of the Attorney General and other documentary evidence, the claim was denied on March **4, 1983**, in that section 3(e) of the Act states that the Claimant is eligible for compensation if the victim and the assailant were not related and sharing the same household. The investigatory report of the Attorney General disclosed that the victim and the assailant were related, in that the victim was the mother-in-law of the assailant; therefore, the Claimant had not met a required condition precedent for compensation under the Act.

The Claimant filed his objections to order and requested a full hearing on the merits of the claim.

An evidentiary hearing was held before commissioner John P. Simpson on December **1, 1983**, at the Court of Claims of Illinois, Chicago, Illinois.

At the hearing, it was stipulated by the parties that Henderstene Holley was in fact a victim of a violent crime as defined in section 2(c) of the Act, namely, murder (Ill. Rev. Stat. **1979**, ch. **38**, par. **9-1**). On January **29, 1979**, she was shot by her son-in-law at her home. She and her son-in-law did not share the same household.

At issue in this case is the application of the following provision of the Act:

“Section 3. A Person is entitled to compensation under this Act if:

• • • .

(e) the victim and his assailant were not related, and sharing the same household. Ill. Rev. Stat. 1977, ch. 70, par. 73.”

Claimant contends that the victim and her son-in-law were not related, and points out that at the time of the crime the statute did not define the word “related” or the word “relative”.

The statute currently in force defines “relative” as follows:

“(f) ‘Relative’ means a spouse, parent, grandparent, step-father, stepmother, child, grandchild, brother, brother-in-law, sister, sister-in-law, half brother, half sister, spouse’s parent, nephew, niece, uncle or aunt.” Ill. Rev. Stat. 1981, ch. 70, par. 72(f).

While the legislature has now seen fit to spell out the meaning of the word “relative” by adding subparagraph (f) to section 2 of the Act, it is submitted that both popularly and legally the definition of the word “relative” has always been broad enough to include persons related by affinity.

“Relative. A kinsman; a person connected with another by blood or affinity. When used generically, includes persons connected by ties of affinity as well as consanguinity, and, when used with a restrictive meaning, refers to those only who are connected by blood.” *Black’s Law Dictionary*, Fourth Edition, 1968, 1453.

The Illinois Supreme Court has discussed the matter as follows:

“Affinity is the relation contracted by marriage between the husband and his wife’s kindred and between the wife and her husband’s kindred. The marriage places the husband in the same degree to the blood relations of the wife as that in which she herself stands toward them and gives the wife the same connection with the blood relations of the husband.” *Clawson v. Ellis* (1918), 286 Ill. 81, 83.

From the above it is clear that even without the statutory definition of the word “relative” now present in the Act, the victim and her assailant were relatives.

Claimant next contends that even if the victim and her assailant were related, they were not sharing the same household, and therefore the claim is not barred. In other words, Claimant contends that for the claim to be barred, both circumstances set forth in section 3(e) of the Act must have existed at the time of the incident.

However, this Court has held in at least two cases, *In re Application of Gordon* (1975), 31 Ill. Ct. Cl. 223, and *In re Application of Williams* (1980), 34 Ill. Ct. Cl. 388, that the existence of either condition bars compensation.

“It is our opinion from the words of section 3(e) of the Act, that it was the intent of the legislature to deny compensation for injuries arising out of domestic quarrels. It did not intend that this Court enter into a morass of trying to determine provocation or causes of quarrels between relatives or persons who reside together.

From a grammatical standpoint, the comma after the word related in section 3(e) indicates that either a condition of being related to the assailant or a condition of sharing the household of the assailant disqualifies a person from compensation. If the legislature intended that both the condition of being related to the assailant and sharing the same household must be present in order to disqualify a person, then the comma would not have been required. To hold otherwise is also to hold that the legislature intended to pay a victim who shared the household of his assailant although not related to him. This Court cannot agree that such was the intent of the Act.” *In re Application of Williams*, 34 Ill. Ct. Cl. 388, 390.

For the foregoing reasons, the order of March 4, 1983, denying the claim is hereby affirmed. The claim of Irvin Holley is denied.

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(No. 81-CV-0529—Claimant awarded \$15,000.00.)

*In re* APPLICATION OF GEORGIA SIMMS.

*Opinion filed November 8, 1983.*

GEORGIA SIMMS, *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITHS. SALS-

BURG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION ACT—*aggravated kidnaping—death*—maximum award granted. An award in the maximum amount allowed by the Crime Victims Compensation Act was granted for funeral expenses and loss of support suffered by the victim's surviving spouse, where the evidence established that the victim was kidnaped from his place of employment during an armed robbery and his body was discovered in Indiana, as the pecuniary loss suffered, after taking the allowable deductions, exceeded the maximum award allowable.

POCH, J.

This claim arises out of a criminal offense which occurred on March 9, 1980, at the victim's place of employment at 2211 East 71st Street, Chicago, Illinois.

Claimant seeks compensation pursuant to the provisions of the Crime Victims Compensation Act (Ill. Rev. Stat. 1979, ch. 70, par. 71 *et seq.*), hereinafter referred to as the Act.

Based upon the request of the Attorney General this claim was assigned to a commissioner for the taking of evidence.

On September 20, 1983, a hearing was held before Commissioner John R. Fielding, where the following facts were established by a preponderance of the evidence.

1. That Charles Simms, age 68, was a victim of a violent crime as defined in section 2(c) of the Act, to wit: aggravated kidnaping (Ill. Rev. Stat. 1979, ch. 38, par. 10—2).

2. That on March 9, 1980, the victim was abducted by an unknown offender during the course of an armed robbery. The incident occurred at the victim's place of employment located at **2211** East 71st Street, Chicago,

Illinois. On March 10, 1980, the victim's body was found in the middle of a roadway in Highland, Indiana. An investigation by Highland, Indiana, police determined that the victim may have been shot in Indiana. The victim was taken to the Community Hospital of Munster where he was pronounced dead on arrival. The offender has not been apprehended.

3. That the Claimant seeks compensation for funeral, medical/hospital expenses, and loss of support for herself.

4. That although the death of the victim may have occurred outside of the jurisdiction of Illinois, his death would not have occurred but for the fact that he was kidnaped in Illinois. Therefore, the victim's medical and funeral expenses and loss of support suffered by his wife are reasonable expenses related to a crime committed in Illinois.

5. That the Claimant incurred funeral and burial expenses as a result of the victim's death in the amount of \$2,288.00. Pursuant to section 2(h) of the Act, funeral and burial expenses are compensable to a maximum amount of \$2,000.00 Ill. Rev. Stat. 1979, ch. 70, par. 72(h).

6. That the Claimant incurred medical/hospital expenses in the amount of \$458.75, \$367.00 of which was paid by Medicare, leaving a balance of \$91.75 which the Claimant has paid.

7. That the Claimant, Georgia Simms, was dependent upon the victim for support.

8. That the victim was employed by the Washing Machine prior to his death and his average monthly earnings were \$200.00.

9. That section 2(h) of the Act states ". . . loss of

support shall be determined **on** the basis of the victim's average net monthly earnings for the **six** months immediately preceding the date of the injury or on \$750.00 per month, whichever is less."

10. That the victim was 68 years of age at the time of the crime. According to the U.S. Department of Health, Education and Welfare, *Vital Statistics of the United States*, 1976, Life Tables, volume II, his life expectancy would have been 80.2 years. The projected loss of support for 12.2 years is \$29,280.00, which is in excess of \$15,000.00 which is the maximum amount compensable under section 10.1(f) of the Act. Ill. Rev. Stat., ch. 70, par. 80.1(f).

11. That pursuant to section 10.1(e) of the Act, this Court must deduct \$200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State Public Aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal social security payments payable to dependents of the victim, and the net proceeds of the first \$25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant.

12. That the Claimant has received \$450.00 from the Veterans Administration and \$255.00 from the Social Security Administration in reimbursements for burial benefits as a result of the victim's death that can be counted as an applicable deduction under section 7.1 of the Act. Ill. Rev. Stat., ch. 70, par. 77.1.

13. That after making all applicable deductions, the Claimant's pecuniary loss resulting from the victim's

death is in excess of \$15,000.00 maximum allowed in section 10.1(f) of the Act.

14. That the Claimant's best interests would be best served if the award hereunder is paid pursuant to the installment provision of section 11.1 of the Act, to be paid and disbursed to her as follows:

- (a) \$7,500.00 (seven thousand five hundred dollars) to be paid in a lump sum;
- (b) Ten (10) monthly payments of \$750.00 (seven hundred fifty dollars) each to be paid for the Claimant's use and benefit;
- (c) In the event of the death or marriage of the Claimant, it is the duty of the personal representative of the Claimant to inform this court in writing of such death or marriage for the purpose of the possible modification of the award.

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(No. 81-CV-0672— Claim denied.)

*In re* APPLICATION OF JOYCE and MARY COWHERD.

*Opinion filed May 8, 1984.*

JOYCE COWHERD and MARY COWHERD, *pro se*, for Claimants.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALSBERG, Assistant Attorney General, of counsel), for Respondent.

*CRIME VICTIMS COMPENSATION Am—murder—no good faith attempt to proceed—claim denied. Claim for funeral expenses incurred by reason of victim's death at hands of murderer denied, as Claimant failed to appear at pretrial and made no good faith effort to proceed.*

*SAME—murder—ineligible claimant—step-grandmother—claim denied. Step-grandmother was ineligible to make claim for funeral expenses incurred*

on behalf of murder victim, as that relationship is not one of those set forth in Crime Victims Compensation Act.

*SAME—funeral expenses—wilful misstatement—claim denied.* Mother of murder victim committed a wilful misstatement in violation of the Crime Victims Compensation Act, when she submitted a false document as part of claim for funeral expenses incurred on behalf of victim, and therefore, claim was denied.

POCH, J.

This is a claim for compensation pursuant to the provisions of the Crime Victims Compensation Act. Ill. Rev. Stat., ch. 70, par. 71 et seq.

At the request of the Attorney General this claim was assigned to a commissioner for the taking of evidence.

On March 15, 1984, a hearing was held before Commissioner Robert E. Cronin where the following was established by a preponderance of evidence.

1. The decedent, Paul Stewart, was the victim of a violent crime as defined in section 2(c) of the Act (Ill. Rev. Stat. 1977, ch. 70, par. 72(c)), to wit: murder (Ill. Rev. Stat. ch. 38, par. 9—1).

2. That the Claimants are Joyce Cowherd, mother of the deceased victim, Paul Stewart, and Mary Cowherd, step-grandmother of the deceased victim.

3. Claimants seek compensation for funeral expenses. They were not dependent upon the victim for support.

4. That the funeral and burial expenses incurred as a result of the victim's death were \$1,090.00.

5. That the Claimants submitted conflicting evidence as to which of them paid the funeral expenses and in what amount.

6. That the Assistant Attorney General and Claimant Joyce Cowherd appeared at the hearing. Claimant Mary Cowherd failed to appear.

7. That Rule 26 of the Court of Claims provides that an action may be dismissed for want of prosecution when the claimant makes no attempt in good faith to proceed.

8. That the failure of Mary Cowherd to appear on March 15, 1984, and her previous failure to appear at a pre-trial scheduled in this cause for February 10, 1984, show that she has made no good faith attempt to proceed.

9. That the Claimant Mary Cowherd is ineligible for compensation for funeral expenses under the Act because she is not a relative of the victim as required by section 10.1(c) (Ill. Rev. Stat. ch. 70, par. 80.1(c)). Mary Cowherd is the step-grandmother of the deceased victim. Section 2(f) (Ill. Rev. Stat. ch. 70, par. 72(f)), states that "relative" means a spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, brother-in-law, sister, sister-in-law, half brother, half sister, spouse's parent, nephew, niece, uncle or aunt. A step-grandmother is therefore not eligible for compensation.

10. That Claimant, Joyce Cowherd, under oath stated that after having obtained a funeral bill that had Mary Cowherd as payor, she deleted Mary Cowherd's name from the document, and then typed in her own name as the payor and then submitted the altered bill to the Attorney General as proof that she, and not Mary Cowherd, paid the funeral expenses.

11. That section 20(a) of the Act states that "a person who the Court of Claims finds has willfully misstated or omitted facts relevant to the determination

of whether compensation is due under this Act or of the amount of that compensation, shall be denied compensation under the Act". Ill. Rev. Stat. 1977, ch. 70, par. 90(a).

12. That Claimant Joyce Cowherd committed a willful misstatement in violation of section 20(a) of the Act when she submitted a false document to the Attorney General.

It is hereby ordered, that this claim for compensation be and is hereby denied.

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(No. 81-CV-1022—Claim denied.)

*In re* APPLICATION OF CHESTER KOSMAN.

Order filed June 28, 1984.

JOHN PANIICI, for Claimant.

NEIL F. HARTIGAN, Attorney General, for Respondent.

CRIME VICTIMS COMPENSATION Act—unemployment compensation *is* not "earnings". Claim arising from violent crime denied, as Claimant was not employed for six-month period prior to offense and received only unemployment compensation benefits during that time, and therefore he suffered no loss of earnings Compensable under the Crime Victims Compensation Act, as unemployment compensation benefits are not "earnings" for purposes of the Act.

ROE, C.J.

This is a claim arising out of a criminal offense which occurred on July 3, 1980, at 2254 North Parkside, Chicago. Claimant seeks compensation under the provisions of the Crime Victims Compensation Act (Ill. Rev. Stat. 1979, ch. 70, par. 71 *et seq.*), hereinafter referred to as the Act.

On April 12, 1982, this Court entered an order

finding that the Claimant was a victim of a violent crime but denied the claim inasmuch as the Claimant was not employed for the six months immediately preceding the date of the incident out of which the claim arose and therefore suffered no loss of earnings compensable under section 2(h) of the Act (Ill. Rev. Stat. **1979**, ch. **70**, par. **72(h)**), and further that the Claimant incurred medical/hospital expenses, not otherwise reimbursed, in an amount less than \$200.00.

Following the issuance of the April **12, 1982**, order, the Claimant timely requested, pursuant to the Act, that a hearing be held before a commissioner. A hearing was subsequently held and the commissioner has duly filed his report with the Court.

The Court has carefully considered the commissioner's report, a brief filed by the Claimant and other documents concerning this claim. Based on the foregoing information we find as follows:

The sole issue in this case is whether a Claimant who was unemployed for **six** months immediately preceding the date of the injury but who received unemployment compensation payments from the State may use such payments as "earnings" within the meaning of section 2(h) of the Act. This issue was recently decided by this Court in *In re Application of Smith*, No. **83-CV-0312**, filed May **8, 1984**, wherein we held that unemployment compensation payments from the State do not constitute "earnings" within the meaning of section 2(h) of the Act. This claim must therefore be denied due to Claimant's failure to show that he suffered a loss of earnings compensable under section 2(h) of the Act.

It is hereby ordered that this claim be, and hereby is, denied.

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(No. 82-CV-0099—Claim denied )

*In re* APPLICATION OF DAVID R. HERNDON.

*Opinion filed October 18, 1983*

DAVID R. HERNDON, *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALS-  
BURG, Assistant Attorney General, of counsel), for Respon-  
dent.

*CRIME VICTIMS COMPENSATION Am—murder—loss of support not prou-  
en—claim denied.* Claimant failed to prove loss of support as to child of  
himself and murder victim, as evidence established that child lived with  
victim, and Claimant paid child support to victim for his daughter pursuant  
to previously entered divorce decree, and victim did not claim daughter as  
dependent.

POCH, J.

This claim arises out of an incident that occurred on August 7, 1980. David R. Herndon, former husband of the deceased victim, Cathy Sue Santy, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 *et seq.*

This Court has carefully considered the application for benefits submitted on July 29, 1981, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the deceased victim, Cathy Sue Santy, age 25, was a victim of a violent crime as defined in section 2(c) of the Act (Ill. Rev. Stat. 1977, ch. 70, par. 72(c)), to wit: murder (Ill. Rev. Stat. 1979, ch. 38, par. 9—1).

2. That on August 7, 1980, the victim and her husband were shot by a neighbor. The incident occurred at the victim's residence, located at 1603A Lyndhurst,

Champaign, Illinois. Police investigation revealed that the shooting was the result of a sequence of events during which the offender harassed the victim for no apparent reason. The victim and her husband were both pronounced dead at the scene of the incident.

3. That the Claimant alleges that his minor child, Alicia Catherine Herndon, age 3, was dependent upon the victim for support and seeks compensation for loss of support on her behalf.

4. That the victim's father, Frederick Obermiller, incurred funeral and burial expenses as a result of the victim's death in the amount of \$2,610.65. The maximum compensable amount of \$2,000.00, pursuant to section 2(h) of the Act (Ill. Rev. Stat. 1979, ch. 70, par. 72(h)), was paid to Frederick Obermiller, under claim No. 81-CV-0408.

5. That section 2(h) of the Act states “. . . loss of support shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on \$750.00 per month, whichever is **less.**”

6. That the victim was unemployed at the time of her death. However, the victim had been employed by P.A. Bergner during the six months prior to her death and her average monthly earnings were \$166.08.

7. That under the divorce decree in *Herndon v. Herndon*, case No. 78 D 980, filed in the Circuit Court, Third Judicial Circuit, Madison County, Illinois, the Claimant was ordered to pay \$250.00 per month for the support of his daughter, Alicia Catherine Herndon. In addition, according to information submitted by the Claimant, the victim was not claiming Alicia Catherine Herndon as a dependent. The Claimant has presented no

evidence to support his allegation that the victim's minor child was dependent upon her for support.

**8.** That pursuant to section 10.1(e) of the Act (Ill. Rev. Stat. **1979**, ch. **70**, par. 80.1(e)), this Court must deduct \$200.00 from all claims (except in the case of an applicant **65** years of age or older) and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State Public Aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal social security payments **payable to dependents of the victim and the net proceeds** of the first \$25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant.

**9.** That the Claimant has failed to meet required conditions precedent for compensation of loss of support under the Act.

It is hereby ordered that the claim of David R. Herndon be and is hereby denied.

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(No. 83-CV-0300—Claimant awarded \$618.21.)

*In re* APPLICATION OF PATRICIA BENNETT.

*Opinion filed February 8, 1984.*

PATRICIA BENNETT, *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITHS. SALS-  
BURG, Assistant Attorney General, of counsel), for Respon-  
dent.

CRIME VICTIMS COMPENSATION ACT—*assault—medical/hospital ex-  
penses—loss of earnings—claim allowed.* Victim of assault was entitled to an

award for lost earnings and medical/hospital expenses, as evidence established that loss was incurred when victim was assaulted by an unknown offender in an unprovoked attack, and after making the standard deduction and the deduction for disability benefits, an award was granted to victim.

POCH, J.

This claim arises out of an incident that occurred on July 17, 1982. Patricia Bennett, Claimant, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 *et seq.*

This Court has carefully considered the application for benefits submitted on September 27, 1982, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant, Patricia Bennett, age 30, was a victim of a violent crime, as defined in section 2(c) of the Act (Ill. Rev. Stat. 1977, ch. 70, par. 72(c)), to wit: assault (Ill. Rev. Stat. 1979, ch. 38, par. 12—1).

2. That on July 17, 1982, the Claimant was assaulted by an unknown offender in an unprovoked attack. The incident occurred on the street at 6635 North Olmsted, Chicago, Illinois. The Claimant was taken to Resurrection Hospital for treatment.

A suspected offender was arrested. However, he was released without being charged after the Claimant could not make a positive identification.

3. That the Claimant seeks compensation for medical/hospital expenses and for loss of earnings.

4. That the Claimant incurred medical/hospital expenses in the amount of \$823.22, \$481.20 of which was

paid by insurance, leaving a balance of \$342.02. The Claimant has paid the entire balance.

5. That the Claimant was employed by GCA Corporation prior to the incident and her average monthly earnings were \$641.00. Claimant was disabled and unable to work from July 19, 1982, to October 4, 1982, a period of two months and 10 working days.

6. That section 2(h) of the Act states that loss of earnings shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on \$750.00 per month, whichever is less. Ill. Rev. Stat. 1979, ch. 70, par. 72(h).

7. That 'based on \$641.90 per month, the maximum compensation for loss of earnings for two months and 10 working days is \$1,575.80.

8. That the Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

9. That pursuant to section 10.1(e) of the Act (Ill. Rev. Stat., ch. 70, par. 80.1(e)), this Court must deduct \$200.00 from all claims (except in the case of an applicant 65 years of age or older) and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State Public Aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal social security payments payable to dependents of the victim and the net proceeds of the first \$25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant.

10. That the Claimant has received \$1,099.61 in

disability benefits in reimbursements that can be counted as an applicable deduction.

11. That the Claimant is entitled to an award based on the following:

Compensable loss of earnings	\$1,575.80
Net medical/hospital expenses	<u>342.02</u>
Total	\$1,917.82
Less disability benefits	- 1,099.61
Less \$200.00 deductible	<u>- 200.00</u>
Total	\$ 618.21

It is hereby ordered that the sum of \$618.21 (six hundred eighteen dollars and twenty-one cents) be and is hereby awarded to Patricia Bennett, an innocent victim of a violent crime.

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(No. 83-CV-0312—Claim denied.)

***In re* APPLICATION OF DANIEL SMITH.**

*Opinion filed May 8, 1984.*

LEGAL ASSISTANCE FOUNDATION OF CHICAGO (LAUREN B. SIMON, of counsel), for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALSBERG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION ACT—*unemployment compensation benefits are not “earnings”*. Victim of shooting was denied award, as medical expenses were less than \$200, and during six months prior to shooting, victim suffered no loss of earnings, as he was not employed and was receiving unemployment compensation benefits, and unemployment compensation benefits do not constitute “earnings” for purposes of Crime Victims Compensation Act.

POCH, J.

This claim arises out of an incident which occurred on August 25, 1981. Claimant seeks compensation pursuant to the provisions of the Illinois Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat., ch. 70, par. 71 *et seq.*

On February 4, 1983, this Court entered an order finding that the Claimant was injured as a result of a shooting on August 25, 1981, and was the innocent victim of a violent crime but was denied an award on the basis that the medical/hospital expenses were less than \$200.00 and on the basis that Claimant was not employed for the six months immediately preceding the date of the incident out of which this case arose and therefore suffered no loss of earnings compensable under section 2(h) of the Act. Ill. Rev. Stat. 1977, ch. 70, par. 72(h).

Claimant's claim for loss of earnings is based on unemployment compensation insurance payments made to him within six months prior to the date of the injury.

The sole issue in this case is whether Claimant's receipt of payments under the Illinois unemployment insurance program constitutes earnings which may form the basis of an award for loss of earnings within the meaning of section 2(h) of the Act. This Court has previously ruled that public aid benefits are charity and not earnings as contemplated by the Act. (*In re Chandler* (1978), 32 Ill. Ct. Cl. 1084; *In re Cooper* (1978), 32 Ill. Ct. Cl. 400.) The question of whether unemployment compensation payments qualify as such earnings is one of first impression in this Court.

Claimant argues forcefully that the unemployment insurance program established by the United States

Congress in Title III of the Social Security Act (**42 U.S.C. 501 et seq.**) and implemented in Illinois through the Illinois Unemployment Insurance Act (Ill. Rev. Stat. **1983**, ch. 48, par. **300 et seq.**), were enacted to lighten the economic burden of involuntary unemployment through a compensation insurance program which provides for setting aside of reserves during periods of employment to be used to pay benefits during periods of unemployment. Thus, Claimant argues, the unemployment compensation payments are related to and measured by the worker's former employment, and are for services rendered, satisfying the requirements of "earnings" under the Act.

To further buttress his argument, Claimant cites **42 U.S.C. sec. 1104** to the effect, that money paid for unemployment insurance must be kept in a trust fund and payments to workers are made out of that fund and not from the State's general budget, thus distinguishing these payments from public welfare programs. Unemployment compensation payments are therefore tied to the former employment, and not upon need, and thus the employment compensation payments are not charity. Furthermore, unemployment compensation payments are taxable as income. **26 U.S.C. sec. 85.**

Respondent argues that the courts have consistently refused to classify unemployment benefits as earnings, citing *National Labor Relations Board v. Marshall Field & Co.*, (7th Circ. **1942**) **129 F.2d 169, 171**, *aff'd*. **318 U.S. 253**, which stated the unemployment benefits were not earnings. See also *National Labor Relations Board v. Gullett Gin Co.* (1951), **341 U.S. 361**; *National Labor Relations Board v. Brashear Freight Lines, Znc.* (7th Circ. **1942**), **127 F.2d 198**; *Johnson v. Williams* (1945), **235 Ia.**

688, 17 N.W.2d 406; and *United Benefit Life Insurance Co. v. Zwan* (1940), 143 S.W.2d 977. :

The Act; in pertinent part provides as follows:

“2(h) . . . Loss of earnings, loss of future earnings and loss of support shall be determined on the basis of the victim’s average net monthly earnings for the six months immediately preceding the date of the injury or on \$750.00 per month, whichever is less . . .”

In the opinion of the Court, unemployment compensation payments are not earnings within the meaning of sec. 2(h). As the Supreme Court of the U.S. said (in a different context) in *National Labor Relations Board v. Marshall Field & Co.*, *supra*:

Only by distorting the English language could we say that unemployment benefits are “earnings”. The word “earnings” denotes an “economic good to which a person becomes entitled for rendering economic service”.

The Supreme Court reasoning is applicable here.

Unemployment compensation payments are, of course, income. They are taxed as income. But income and earnings are not synonymous. It is significant that the Act, when using the word “income” uses the same only in conjunction with the word “work”. Thus section 2(h) talks of future earnings being reduced by “income from *substitute work* actually performed by the victim or by income he would have earned in available appropriate *substitute work* he was capable of performing.” (Emphasis added.)

Even more important, the Act required determination of lost earnings “on the basis of the victim’s average net monthly earnings *for the six months immediately preceding the date of the injury . . .*” (Emphasis added.)

Thus, even if, *arguendo*, unemployment compensation payments were to be considered as earnings, and Claimant’s arguments were to be wholly accepted, the unemployment compensation payments would have been

earned prior to the six months immediately preceding the date of the injury, part of which earnings were set aside in an insurance fund to be paid during the period of unemployment. Thus, the payments were made within the six-month period but they were earned prior to the six-month period. Hence, payments of "insurance benefits" would not qualify as earnings during the statutory six-month period.

For the above reasons, this claim will be denied.

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(No. 83-CV-0470—Claimant awarded \$2,000.00.)

**In re APPLICATION OF EILEEN CARMODY.**

*Opinion filed December 27, 1983.*

**EILEEN CARMODY, pro se,** for Claimant.

**NEIL F. HARTIGAN, Attorney General (FAITH S. SALSBERG, Assistant Attorney General, of counsel),** for Respondent.

**CRIME VICTIMS COMPENSATION Am—loss of support not proven—voluntary manslaughter—claim denied.** Voluntary manslaughter victim's mother failed to submit any documentation to substantiate dependency, and therefore she failed to establish her eligibility for benefits under the Crime Victims Compensation Act for loss of support.

**SAME—Unpaid medical/hospital expenses—claim not allowed.** Mother of voluntary manslaughter victim incurred medical/hospital expenses as result of victim's death, but that amount could not be considered for compensation under the Crime Victims Compensation Act, as none of the amount has been paid.

**SAME—voluntary manslaughter—funeral expenses—claim allowed.** Claim was granted for funeral expenses in maximum amount allowable under statute, as mother of voluntary manslaughter victim paid funeral and burial expenses in an amount exceeding statutory maximum.

**ROE, C.J.**

This claim arises out of an incident that occurred on

January 16, 1982. Eileen Carmody, mother of the deceased victim, Andrew Carmody, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 *et seq.*

This Court has carefully considered the application for benefits submitted on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant's deceased son, age 28, was a victim of a violent crime as defined in section 2(c) of the Act (Ill. Rev. Stat. 1979, ch. 70, par. 72(c)), to wit: voluntary manslaughter (Ill. Rev. Stat. 1979, ch. 38, par. 9—2).

2. That on January 16, 1982, the victim was fatally shot in the abdomen during a dispute with his landlord. The incident occurred in the offender's apartment at 3956 West Dakin, Chicago, Illinois. Police investigation revealed that the victim was complaining about the lack of hot water in his apartment when the offender shot him in the stomach. The victim was taken to Swedish Covenant Hospital where he expired during surgery for his injuries. The offender was apprehended, charged with murder and convicted of voluntary manslaughter.

3. That the Claimant seeks compensation under the Act for funeral expenses, medical/hospital expenses and for loss of support.

4. That the Claimant alleges that she was partially dependent upon her son for support. However, she has not submitted any documentation to substantiate depen-

dency and, therefore, she has not established eligibility for loss of support under the Act.

5. That according to section 10.1(c) of the Act, a person related to the victim is eligible for compensation for funeral, medical and hospital expenses for the victim provided that such expenses were paid by him.

6. That the Claimant incurred medical and hospital expenses as a result of the victim's death in the amount of \$6,829.31, none of which has been paid to date. Pursuant to section 10.1(c) of the Act, these expenses cannot be considered for compensation unless they have been paid.

7. That funeral and burial expenses were paid by the Claimant in the amount of \$8,689.50. Pursuant to section 2(h) of the Act, funeral and burial expenses are compensable to a maximum of \$2,000.00. Ill. Rev. Stat. 1979, ch. 70, par. 72(h).

8. That the Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

9. That pursuant to section 10.1(c) of the Act, this Court must deduct \$200.00 from all claims, (except in the case of an applicant 65 years of age or older) and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal social security payments payable to dependents of the victim and the net proceeds of the first \$25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant.

10. That the Claimant has received no reimburse-

ments as a result of the victim's death that can be counted as applicable deductions.

11. That after making all the applicable deductions under the Act, the Claimant's loss is in excess of the \$2,000.00 maximum award deemed compensable under the Act for funeral benefits.

It is hereby ordered that the sum of \$2,000.00 (two thousand dollars) be and is hereby awarded to Eileen Carmody, mother of the deceased victim, Andrew Carmody, an innocent victim of a violent crime.

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(No. 83-CV-0545—Claim denied.)

*In re* APPLICATION OF JOHN J. CAULFIELD.

Opinion *filed* August 18, 1983.

JOHN J. CAULFIELD, *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALS-BURG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION Act—murdered policeman—funeral expenses denied—no loss. Father of policeman who was shot and killed while on duty was denied award for funeral expenses incurred because of son's death, as father received workers' compensation benefits, life insurance proceeds and benefits under the Law Enforcement Officers and Firemen Compensation Act, and after deductions were taken for those amounts, no compensable loss remained for consideration under provisions of Crime Victims Compensation Act.

POCH, J.

This claim arises out of an incident that occurred on September 30, 1982. John J. Caulfield, father of the deceased victim, Michael Caulfield, seeks compensation pursuant to the provisions of the Crime Victims Com-

pensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 *et seq.*

This Court has carefully considered the application for benefits submitted on December 16, 1982, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant's deceased son, age 22, was a victim of a violent crime as defined in section 2(c) of the Act (Ill. Rev. Stat. 1979, ch. 70, par. 72(c)), to wit: murder (Ill. Rev. Stat. 1979, ch. 38, par. 9—1).

2. That on September 30, 1982, the victim was shot by an unknown offender while on duty as a Forest Park policeman. The incident occurred in the Forest Park Police Station, located at 517 Des Plaines Avenue in Forest Park, Illinois. As the victim was processing the offender for two traffic warrants, the offender grabbed a gun from the victim's partner and shot the victim and his partner. A third officer then shot the offender. The victim was taken to Foster McGaw Hospital where he was pronounced dead a short time later.

3. That the Claimant seeks compensation under the Act for funeral expenses only. Medical/hospital expenses of the victim were covered by workers' compensation. The Claimant was not dependent upon the victim for support.

4. That funeral and burial expenses were paid by the Claimant in the amount of \$2,113.40. Pursuant to section 2(h) of the Act, funeral and burial expenses are compensable to a maximum amount of **\$2,000.00**. Ill. Rev. Stat. 1979, ch. 70, par. 72(h).

5. That the Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

6. That pursuant to section 10.1(e) of the Act, this Court must deduct \$200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal social security payments payable to dependents of the victim and the net proceeds of the first \$25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant. Ill. Rev. Stat. 1979, ch. 70, par. 80.1(e).

7. That the Claimant has received **\$1,750.00** from Workers' Compensation, \$20,000.00 from the Illinois Law Enforcement Officers and Firemen Compensation Act, and \$687.10 in life insurance as a result of the incident that can be counted as applicable deductions.

8. That after considering all the applicable deductions under the Act, the Claimant's net loss 'for which he seeks compensation is as follows:

Funeral expenses	\$ 2,113.40
Less Workers' Compensation	- 1,750.00
Less Illinois Law Enforcement Officers and Firemen Compensation Act	-20,000.00
Less life insurance	- 687.10
Less \$200.00 deductible	- 200.00
Net loss	<u>0.00</u>

9. That section 6.1b of the Act limits the right of

compensation to persons who have suffered a pecuniary loss of \$200.00 or more attributable to a violent crime resulting in the injury or death of the victim. The Claimant did not sustain a compensable loss under the Act after applicable deductions are considered. Ill. Rev. Stat. 1979, ch. 70, par. 76.1(b).

10. That this claim does not meet a required condition precedent for compensation under the Act.

It is hereby ordered that this claim be, and is hereby denied.

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(No. 83-CV-0582—Claimants awarded \$1,181.90.)

***In re* APPLICATION OF MATTHEW and JEWEL MOORE.**

Amended opinion filed October 20, 1983.

**MATTHEW and JEWEL MOORE, *pro se***, for Claimants.

**NEIL F. HARTIGAN**, Attorney General (**FAITH S. SALSBERG**, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION ACT—*murder—award* granted for funeral expenses. Parents of murder victim were granted award for funeral expenses incurred because of their daughter's death, even though official inquest verdict stated that cause of death was undetermined, as Claimants complied with all pertinent provisions of Crime Victims Compensation Act and received no reimbursements that could be counted as applicable deductions.

**POCH, J.**

This claim arises out of an incident that occurred on July 31, 1982. Matthew and Jewel Moore, parents of the deceased victim, Carol Moore, seek compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 *et seq.*

This Court has carefully considered the application for benefits submitted on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimants' deceased daughter, Carol Moore, age 24, was a victim of a violent crime as defined in section 2(c) of the Act (Ill. Rev. Stat. 1979, ch. 70, par. 72(c)), to wit: murder (Ill. Rev. Stat. 1979, ch. 28, par. 9—1).

2. That on July 31, 1982, the victim was pronounced dead by the Du Page County Coroner at the victim's apartment located at 585 E. Gunderson, Carol Stream. The victim appeared to have been beaten at the time of her death. The coroner determined that the victim died as a result of a cocaine overdose, but he was unable to find a point where the drug had been injected into the body. The official inquest verdict stated that the cause of the victim's death was undetermined.

3. That the Claimants seek compensation under the Act for funeral expenses only.

4. That according to section 10.1(c) of the Act, a person related to the victim is eligible for compensation for funeral expenses for the victim provided that such expenses were paid by him. Ill. Rev. Stat. 1979, ch. 70, par. 80.1(c).

5. That the victim was unemployed for the six months prior to the crime and that the Claimants therefore could not have suffered any loss of support.

6. That at a pre-trial hearing held on September 20,

**1983**, before Commissioner John R. Fielding, the parties determined that the Claimants were entitled to an award of **\$1,181.90** for funeral expenses that they incurred as a result of the victim's death.

7. That the Claimants have complied with all pertinent provisions of the Act and qualify for compensation thereunder.

8. That pursuant to section 10.1(e) of the Act this Court must deduct \$200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payment or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal social security payments payable to dependents to the victim and the net proceeds of the first \$25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant. Ill. Rev. Stat. **1979**, ch. **70**, par. **80.1(e)**.

9. That the Claimants have received no reimbursements as a result of the victim's death that can be counted as applicable deductions.

It is hereby ordered that the sum of **\$1,181.90** (one thousand one hundred eighty-one dollars and ninety cents) be and is hereby awarded to Matthew and Jewel Moore, parents of Carol Moore, an innocent victim of a violent crime.

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(No. 83-CV-0848—Claim denied.)

*In re* APPLICATION OF PRECIOUS J. DIXON.

Order filed August 18, 1983.

PRECIOUS J. DIXON, *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALS-  
BURG, Assistant Attorney General, of counsel), for Respon-  
dent.

CRIME VICTIMS COMPENSATION ACT—*victim stabbed by brother—shared same household—claim denied.* Sister of stabbing victim was denied award under Crime Victims Compensation Act, as evidence established that victim was stabbed by his brother and both victim and assailant shared same household at time offense occurred.

POCH, J.

This claim arises out of an incident that occurred on December **15, 1982**. Precious J. Dixon, sister of Theopolis Mays, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. **1979**, ch. **70**, par. **71 et seq.**

This Court has carefully considered the application for benefits submitted on March **14, 1983**, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That on December **15, 1982**, the victim was stabbed. Available evidence indicates that the victim was stabbed by his brother for undetermined reasons. The incident occurred on the street at **11032** South Vincennes, Chicago, Illinois. The victim was taken to St. Francis Hospital where he expired shortly thereafter. The suspected offender was apprehended and is being prosecuted. The victim and the suspected offender were sharing the same household at the time the crime occurred.

2. That section 3(e) of the Act states that the Claimant is eligible for compensation if the victim and the assailant were not sharing the same household at the time the crime occurred. Ill. Rev. Stat. 1979, ch. 70, par. 73(e).

3. That it appears from the investigatory report that the victim and the suspected offender were sharing the same household at the time the crime occurred.

4. That the Claimant has not met a required condition precedent for compensation under the Act.

It is hereby ordered that this claim be, and is hereby denied.

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(No. 83-CV-0897—Claimant awarded \$108.50.)

*In re* APPLICATION OF DAVID SHARPE.

*Opinion filed May 1, 1984.*

DAVID SHARPE, *pro se*, for Claimant.

NEIL F. HARTICAN, Attorney General (FAITH S. SALSBURG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION Act—aggravated *assault—medical/hospital expenses—claim allowed*. After making deductions required by Crime Victims Compensation Act, award was made for medical/hospital expenses incurred by Claimant who was beaten and robbed by the offender, and no award was justified for loss of earnings, as Claimant suffered no loss of earnings compensable under the Act.

POCH, J.

This claim arises out of an incident that occurred on May 1, 1982. David Sharpe; Claimant, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 et seq.

This Court has carefully considered the application for benefits submitted on March 25, 1983, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted 'to the Court, the Court finds:

1. That the Claimant, David Sharpe, age 26, was a victim of a violent crime, as defined in section 2(c) of the Act (Ill. Rev. Stat. 1979, ch. 70, par. 72(c)), to wit: aggravated assault (Ill. Rev. Stat. 1979, ch. 38, par. 12-2).

2. That on May 1, 1982, the Claimant was beaten during the course of a robbery by the offender. The incident occurred on an exit ramp on Interstate 80, Geneseo, Illinois. Prior to the incident, the Claimant had accepted a ride in a car containing the offender and three others. Upon reaching the exit ramp, the offender beat and robbed the Claimant. The Claimant was initially taken to Geneseo Hospital for the treatment of his injuries. The offender was apprehended, prosecuted and convicted of aggravated assault.

3. That the Claimant seeks compensation for medical/hospital expenses only.

4. That section 2(h) of the Act states that the loss of earnings shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on \$750.00 per month, whichever is less. Ill. Rev. Stat. 1979, ch. 70, par. 72(h).

5. That the Claimant was not employed for the six months immediately preceding the date of the incident

out of which this claim arose and therefore suffered no loss of earnings compensable under the Act.

6. That the Claimant incurred medical/hospital expenses in the amount of **\$392.50**, \$84.00 of which was paid by insurance, leaving a balance of \$308.50.

7. That the Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

8. That pursuant to section 10.1(e) of the Act, this Court must deduct **\$200.00** from all claims (except in the case of an applicant **65** years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal social security payments payable to dependents of the victim and the net proceeds of the first \$25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant. Ill. Rev. Stat. **1979**, ch. **70**, par. 80.1(e).

9. That the Claimant has received no reimbursements that can be counted as applicable deductions.

10. That the Claimant is entitled to an award based on the following:

Net medical expenses	<b>\$308.50</b>
Less <b>\$200.00</b> deductible	<b>- 200.00</b>
Total	<b>\$108.50</b>

It is hereby ordered that the sum of \$108.50 (one hundred eight dollars and fifty cents) be and is hereby

awarded to David Sharpe, an innocent victim of a violent crime.

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(No. 83-CV-0900—Claimant awarded \$1,751.00.)

*In re* APPLICATION OF LUCILLE GARRETT.

*Opinion filed January 11, 1984.*

LUCILLE GARRETT, pro se, for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALSBERG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION *Am—reckless homicide—mother of victim awarded funeral expenses.* Mother of reckless' homicide victim was awarded full amount of funeral expenses incurred by reason of daughter's death, as mother paid bill, received no reimbursements that could be counted as applicable deductions and was exempt from the \$200 deductible because she was over 65 years of age.

ROE, C.J.

This claim arises out of an incident that occurred on February 13, 1983. Lucille Garrett, mother of the deceased victim, Dorothy Lang, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 et seq.

This Court has carefully considered the application for benefits submitted on March 28, 1983, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant's deceased daughter, Dorothy

Lang, age 45, was a victim of a violent crime as defined in section 2(c) of the Act (Ill. Rev. Stat. 1979, ch. 70, par. 72(c)), to wit: reckless homicide (Ill. Rev. Stat. 1979, ch. 38, par. 9—3).

2. That on February 13, 1983, the victim's body was found on the street at 649 East 46th Street, Chicago, Illinois. The victim was pronounced dead on arrival at Provident Hospital. The medical examiner determined that the victim had been struck by an automobile and ruled the death a homicide.

3. That the Claimant seeks compensation under the Act for funeral expenses only. The Claimant was not dependent upon the victim for support.

4. That according to section 10.1(c) of the Act, a person related to the victim is eligible for compensation for funeral expenses for the victim provided that such expenses were paid by him. Ill. Rev. Stat. 1979, ch. 70, **par. 80.1(c)**.

5. That the Claimant incurred funeral and burial expenses in the amount of \$1,751.00.

6. That the Claimant has complied with all pertinent provisions of the act and qualifies for compensation thereunder.

7. That pursuant to section 10.1(e) of the Act, this Court must deduct \$200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal social security payments payable to dependents of the victim and the

net proceeds of the first \$25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant. Ill. Rev. Stat. 1979, ch. 70, par. 80.1(c).

8. That the Claimant has received no reimbursements as a result of the victim's death that can be counted as applicable deductions.

9. That the Claimant is over 65 years of age and therefore, pursuant to section 10.1(e) of the Act, she is exempt from the \$200.00 deductible.

It is hereby ordered that the sum of \$1,751.00 (one thousand seven hundred fifty-one dollars) be and is hereby awarded to Lucille Garrett, mother of Dorothy Lang, an innocent victim of a violent crime.

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(No. 83-CV-1117—Claimant awarded \$2,000.00.)

*In re* APPLICATION OF MARIA PACHECO.

*Opinion filed January 11, 1984.*

MARIA PACHECO, *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALSBURG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION ACT—*arson—mother of victim granted maximum award for funeral expenses.* Maximum award allowed for funeral expenses was granted to mother of arson victim, as evidence established that mother paid bill, received no reimbursements that could be counted as applicable deductions and, after making all the applicable deductions under the Crime Victims Compensation Act, the loss exceeded the maximum award allowed for funeral benefits.

ROE, C.J.

This claim arises out of an incident that occurred on April 4, 1983. Maria Pacheco, mother of the deceased victim, Carmen Pacheco, seeks compensation pursuant

to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 *et seq.*

This Court has carefully considered the application for benefits submitted on May 23, 1983, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant's deceased daughter, Carmen Pacheco, age 26, was a victim of a violent crime as defined in section 2(c) of the Act (Ill. Rev. Stat. 1979, ch. 70, par. 72(c)), to wit: arson (Ill. Rev. Stat. 1979, ch. 38, par. 20—1).

2. That on April 3, 1983, the victim died of smoke inhalation as a result of an intentionally set fire in her basement apartment at **1535** North Central, Chicago, Illinois. The victim was taken to St. Anne's Hospital where she expired shortly thereafter.

The police investigation was able to determine that there were three points of origin and that the fire was started with a high boiling petroleum distillate. The offender has not been apprehended.

3. That the Claimant seeks compensation under the Act for funeral expenses only. The Claimant was not dependent upon the victim for support.

4. That funeral and burial expenses were paid by the Claimant in the amount of \$3,673.00. Pursuant to section 2(h) of the Act funeral and burial expenses are compensable to a maximum of \$2,000.00. Ill. Rev. Stat. 1979, ch. 70, par. 72(h).

5. That the Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

6. That pursuant to section 10.1(e) of the Act, this Court must deduct \$200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal social security payments payable to dependents of the victim and the net proceeds of the first \$25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant. Ill. Rev. Stat. 1979, ch. 70, par. 80.1(e).

7. That the Claimant has received no reimbursements as a result of the victim's death that can be counted as applicable deductions.

8. That after making all the applicable deductions under the Act, the Claimant's loss is in excess of the \$2,000.00 maximum award deemed compensable under the Act for funeral benefits.

It is hereby ordered that the sum of \$2,000.00 (two thousand dollars) be and is hereby awarded to Maria Pacheco, mother of the deceased victim, Carmen Pacheco, an innocent victim of a violent crime.

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(No. 83-CV-1192—Claimant awarded \$277.95.)

*In re* APPLICATION OF GEORGIA CURTIS.

Opinion filed August 18, 1983.

GEORGIA CURTIS, *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALSBERG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION ACT—*battery—purse snatching—senior citizen—no lost earnings—medical expenses allowed*. Victim of battery during purse snatching was not entitled to compensation for lost earnings, as she **was** not employed for six-month period preceding offense and therefore suffered no loss of earnings, but she was entitled to the full amount of her medical expenses, as she received no reimbursement and was exempt from the \$200 deductible because she was over 65 years of age.

POCH, J.

This claim arises out of an incident that occurred on July 30, 1982. Georgia Curtis, Claimant, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 *et seq.*

This Court has carefully considered the application for benefits submitted on June 21, 1983, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant, Georgia Curtis, age 71, was a victim of a violent crime, as defined in section 2(c) of the Act (Ill. Rev. Stat. 1979, ch. 70, par. 72(c)), to wit: battery (Ill. Rev. Stat. 1979, ch. 38, par. 12—3).

2. That on July 30, 1982, the Claimant was knocked to the ground by an unknown offender during a purse snatching. The incident occurred on the street at 319

West Prairie, Decatur, Illinois. The Claimant was taken to Decatur Memorial Hospital for treatment of her injuries.

3. That the Claimant seeks compensation for medical/hospital expenses only.

4. That section 2(h) of the Act states that loss of earnings shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on \$750.00 per month, whichever is less. Ill. Rev. Stat. 1979, ch. 70, par. 72(h).

5. That the Claimant was not employed for the six months immediately preceding the date of the incident out of which this claim arose and therefore suffered no loss of earnings compensable under the Act.

6. That the Claimant incurred medical/hospital expenses in the amount of \$277.95, none of which was paid by insurance, leaving a balance of \$277.95.

7. That the Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

8. That pursuant to section 10.1(e) of the Act, this Court must deduct \$200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal social security payments payable to dependents of the victim and the net proceeds of the first \$25,000.00 (twenty-five thousand

dollars) of life insurance that would inure to the benefit of the applicant. Ill. Rev. Stat. 1979, ch. 70, par. 80.1(e).

9. That the Claimant has received no reimbursements that can be counted as applicable deductions.

10. That the Claimant is over 65 years of age and, therefore, pursuant to section 10.1(e) of the Act, she is exempt from the \$200.00 deductible.

11. That the Claimant is entitled to an award for compensation of her medical expenses in the amount of \$277.95.

It is hereby ordered that the sum of \$277.95 (two hundred seventy-seven dollars and ninety-five cents) be and is hereby awarded to Georgia Curtis, an innocent victim of a violent crime.

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(No. 84-CV-0015—Claimant awarded \$15,000.00.)

***In re APPLICATION OF DONALD BOLTE.***

Opinion filed *January 17, 1984.*

Amended opinion filed June 20, 1984.

**DONALD BOLTE, *pro se*, for Claimant.**

**NEIL F. HARTIGAN, Attorney General (FAITH S. SALSBERG, Assistant Attorney General, of counsel), for Respondent.**

CRIME VICTIMS COMPENSATION Am—aggravated *battery—quadriplegia*—maximum award allowed. Victim of aggravated battery was rendered quadriplegic as result of incident and became permanently disabled and unable to return to work, and the maximum award allowed by the Crime Victims Compensation Act was granted, as the victim's loss of earnings and medical expenses, after taking the applicable deductions, exceeded the statutory maximum.

SAME—aggravated battery—joint payment awarded. Pursuant to provi-

sion of Crinie Victims Compensation Act, portion of award made to victim of aggravated battery was made payable jointly to Claimant and various providers of medical services.

*SAME—joint payment—returned award check—amount awarded solely to Claimant.* Award made to victim of aggravated battery was made payable jointly to victim and providers of services, and when check to one provider was returned to Court of Claims upon discovery that provider had written off debt, check was reissued solely to Claimant, as Claimant was entitled to maximum award.

**POCH, J.**

This claim arises out of an incident that occurred on April 28, 1983. Donald Bolte, Claimant, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 *et seq.*

This Court has carefully considered the application for benefits submitted on July 6, 1983, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant, Donald Bolte, age 41, was a victim of a violent crime as defined in section 2(c) of the Act (Ill. Rev. Stat. 1979, ch. 70, par. 72(c)), to wit: aggravated battery (Ill. Rev. Stat. 1979, ch. 38, par. 12—4).

2. That on April 28, 1983, the Claimant was shot during an apparent robbery attempt by an unknown offender. The incident occurred while the Claimant was on the porch of 652 Henry, Joliet, Illinois. The Claimant was taken to Silver Cross Hospital for treatment of a severe gunshot wound. The Claimant is quadriplegic as a result of the injuries suffered in this shooting. A suspected offender has been apprehended and is being prosecuted.

3. That the Claimant seeks compensation for medical/hospital expenses and for loss of earnings.

4. That as of September 2, 1983, the Claimant had incurred medical/hospital expenses in the amount of **\$90,347.39, \$74,384.95** of which was paid by insurance and **\$9,895.89** of which will be covered by public aid, leaving a balance of **\$6,066.55**. To date, the Claimant has paid **\$317.37** of this balance, leaving **\$5,749.18** due. All other medical expenses will be covered through public aid.

5. That the Claimant was employed by Joyce Beverages Company prior to the injury and his average monthly earnings were **\$1,148.22**. The Claimant suffers from quadriplegia as a result of the incident and is permanently disabled and unable to return to work.

6. That section 2(h) of the Act states that loss of earnings shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on \$750.00 per month, whichever is less. Ill. Rev. Stat. 1979, ch. 70, par. 72(h).

7. That the Claimant was **41** years of age at the time of the crime. According to the U.S. Department of Health, Education and Welfare, *Vital Statistics of the United States, 1978*, Life Tables, volume II, his life expectancy would have been **73.3** years. Based on **\$750.00** per month, the projected loss of earnings for **32.3** years is **\$290,700.00**.

8. That the Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

9. That pursuant to section 10.1(c) of the Act, this Court must deduct **\$200.00** from all claims (except in the

case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source except annuities, pension plans, Federal social security payments payable to dependents of the victim and the net proceeds of the first **\$25,000.00** (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant.

10. That the Claimant has received disability benefits in the amount of \$2,300.00, which can be counted as an applicable deduction. Also, effective November 3, 1983, the Claimant was entitled to an amount of **\$538.00** per month from social security disability benefits, which must be counted as a deduction. This amount may increase over the course of the Claimant's entitlement to these benefits, which can be projected over his life expectancy of **73.3** years.

11. That after considering the applicable deductions against the Claimant's loss of future earnings, his loss is in excess of \$15,000.00, which is the maximum amount compensable under section 10.1(f) of the Act. Ill. Rev. Stat. 1979, ch. 70, par. 80.1(f).

12. That pursuant to section 18(c) of the Act, the Court may order that all or a portion of an award be paid jointly to the applicant and provider of services. In the instant case, the Court finds this section applicable and orders that joint payment be made.

13. That as the Claimant's full award exceeds the \$15,000.00 maximum compensable award, the Court orders that the award be paid pursuant to section 8(c) as follows:

Rehabilitation Institute of Chicago	\$ 3,807.96
Northwestern Memorial Hospital	210.22
Dr. Paul Meyer	460.00
Northwestern Medical Faculty Foundation	250.00
St. Joseph's Hospital	366.75
Dr. Steven Nemeth	120.00
Medical Personnel Pool of Joliet	534.25
Loss of earnings and paid medical expenses	<u>9,250.82</u>
Total	\$15,000.00

It is therefore, hereby ordered that the sum of \$9,250.82 (nine thousand two hundred fifty dollars and eighty-two cents) be and is hereby awarded to Donald Bolte, an innocent victim of a violent crime, to be paid and disbursed to him as follows:

- (a) **\$2,250.82** (two thousand two hundred fifty dollars and eighty-two cents) to be paid in a lump sum;
- (b) fourteen (14) equal monthly payments of \$500.00 (five hundred dollars) each.

It is further ordered that the sum of \$3,807.96 (three thousand eight hundred seven dollars and ninety-six cents) be and is hereby awarded to Donald Bolte and Rehabilitation Institute of Chicago.

It is further ordered that the sum of \$210.22 (two hundred ten dollars and twenty-two cents) be and is hereby awarded to Donald Bolte and Northwestern Memorial Hospital, account N13045085.

It is further ordered that the sum of \$460.00 (four hundred sixty dollars) be and is hereby awarded to Donald Bolte and Dr. Paul Meyer.

It is further ordered that the sum of \$250.00 (two hundred fifty dollars) be and is hereby awarded to

Donald Bolte and Northwestern Medical Faculty Foundation.

It is further ordered that the sum of \$366.75 (three hundred sixty-six dollars and seventy-five cents) be and is hereby awarded to Donald Bolte and St. Joseph's Hospital.

It is further ordered that the sum of \$120.00 (one hundred twenty dollars) be and is hereby awarded to Donald Bolte and Dr. Steven Nemeth.

It is further ordered that the sum of \$534.25 (five hundred thirty-four dollars and twenty-five cents) be and is hereby awarded to Donald Bolte and Medical Personnel Pool of Joliet.

#### AMENDED OPINION

POCH, J.

This claim arises out of an incident that occurred on April 28, 1983. The Claimant, Donald Bolte, sought compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 *et seq.*

The Claimant was awarded compensation by Order of the Court issued on January 17, 1984. At the time of that award, the Court found that the Claimant was entitled to the maximum award of \$15,000.00 under the provisions of section 10.1(f) of the Act (Ill. Rev. Stat. 1979, ch. 70, par. 80.1(f)). This claim is now before the Court pursuant to a check for part of the award which was returned to the Court.

The Court has carefully reviewed its prior order in this cause and the returned check. Based upon this review the Court finds:

1. That in the Court's order of January 17, 1984, the amount of \$366.75 was ordered paid in a joint check payable to the Claimant and St. Joseph's Hospital.

2. That upon the Claimant's receipt of this check, he attempted to sign this check over to St. Joseph's Hospital and found that this amount has been written off by that institution.

3. That the Claimant has returned this check to the Court and this check has been redeposited with the Comptroller's office.

4. That the Claimant is permanently disabled and eligible for the maximum award under section 10.1(f) for both medical expenses and loss of earnings. Therefore, this amount of \$366.75 should be considered within the Claimant's loss of earnings and should be reissued in a check payable to him.

It is therefore, hereby ordered that the sum of \$366.75 (three hundred sixty-six dollars and seventy-five cents) be awarded to Donald Bolte.

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(No. 84-CV-0200 — Claimant awarded \$2,013.50.)

*In re* APPLICATION OF JEANNINE ROLNICK.

*Opinion filed June 20, 1984.*

JEANNINE ROLNICK, *pro se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALSBURG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION Act—reckless conduct—medical/hospital expenses—joint payment awarded. Claimant, victim of reckless conduct,

was not entitled to award for loss of earnings, as she was not employed for six-month period preceding shooting, but she was granted award for medical/hospital expenses incurred because of the incident, and the award was made payable jointly to Claimant and the various providers of medical services.

POCH, J.

This claim arises out of an incident that occurred on June 21, 1983. Jeannine Rolnick, Claimant, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 *et seq.*

This Court has carefully considered the application for benefits submitted on August 26, 1983, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant, Jeannine Rolnick, age 40, was a victim of a violent crime, as defined in section 2(c) of the Act (Ill. Rev. Stat. 1979, ch. 70, par. 72(c)), to wit: reckless conduct (Ill. Rev. Stat. 1979, ch. 38, par. 12—5).

2. That on June 21, 1983, the Claimant was shot by an unknown offender while she was sitting on a beach. The incident occurred at 5810 North Sheridan Road, Chicago, Illinois. The Claimant was taken to Edgewater Hospital for treatment of her injuries.

3. That the Claimant seeks compensation for medical/hospital expenses only.

4. That the Claimant was not employed for the six months immediately preceding the date of the incident out of which this claim arose and therefore suffered no loss of earnings compensable under the Act.

5. That the Claimant incurred medical/hospital expenses in the amount of \$2,213.50, none of which was paid by insurance, leaving a balance of \$2,213.50. To date, the Claimant has paid \$107.00 towards this balance.

6. That the Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

7. That pursuant to section 10.1(e) of the Act, this Court must deduct \$200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal social security payments payable to dependents of the victim and the net proceeds of the first \$25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant. Ill. Rev. Stat. 1979, ch. 70, par. 80.1(e).

8. That the Claimant has received no reimbursements that can be counted as applicable deductions.

9. That pursuant to section 18(c) of the Act, the Court may order that all or a portion of an award be paid jointly to the applicant and provider of services. In the instant case, the Court finds this section applicable and orders that joint payment be made. Ill. Rev. Stat. 1979, ch. 70, par. 88(c).

10. That after applying the applicable deductions, the Claimant's loss for which she seeks compensation is \$2,013.50, based upon the following:

	Compensable Amount	Less % of \$200.00 Deductible	Total
Edgewater Hospital	\$1,596.50	72%	\$1,452.50
Northside Physicians and Surgeons	310.00	14%	282.00
Dr. J. G. Panchuk	200.00	9%	182.00
Medical expenses paid by Claimant	<u>107.00</u>	<u>5%</u>	<u>97.00</u>
Total	\$2,213.50	100%	\$2,013.50

It is hereby ordered that the sum of \$97.00 (ninety-seven dollars) be and is hereby awarded to Jeannine Rolnick, an innocent victim of a violent crime.

It is further ordered that the sum of \$1,452.50 (one thousand four hundred fifty-two dollars and fifty cents) be and is hereby awarded to Jeannine Rolnick and Edgewater Hospital, account No. **370321-2**.

It is further ordered that the sum of \$282.00 (two hundred eighty-two dollars) be and is hereby awarded to Jeannine Rolnick and Northside Physicians and Surgeons, account No. 401117.

It is further ordered that the sum of \$182.00 (one hundred eighty-two dollars) be and is hereby awarded to Jeannine Rolnick and Dr. J. G. Panchuk, account No. 081023.

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(No. 84-CV-0228—Claimant awarded \$15,000.00.)

*In re* APPLICATION OF LAUNA SHEPHERD.

*Opinion filed February 8, 1984.*

LAUNA SHEPHERD, pro **se**, for Claimant.

**NEIL F. HARTIGAN**, Attorney General (**FAITH S. SALS-BURG**, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION Act—murder—adrlt child not eligible for support. Child of murder victim was not eligible for loss of support, as child had attained majority prior to incident in which her father was killed.

**SAME—murder—maximum** award made to surviving spouse. Surviving spouse of murder victim was granted maximum award allowed by Crime Victims Compensation Act, where evidence established that victim was employed at time of incident, Claimant was totally dependent upon victim, and loss exceeded maximum possible award after all applicable deductions under Act were taken.

**POCH, J.** .

This claim arises out of an incident that occurred on September 14, 1981. Launa Shepherd, wife of the deceased victim, Robert Shepherd, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 *et seq.*

This Court has carefully considered the application for benefits submitted on September 6, 1983, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant's deceased husband, Robert Shepherd, age 53, was a victim of a violent crime as defined in section 2(c) of the Act (Ill. Rev. Stat. 1979, ch. 70, par. 72(c)), to wit: murder (Ill. Rev. Stat. 1979, ch. 38, par. 9—1).

2. That on September 14, 1981, the victim was stabbed repeatedly during an attack by an unknown offender. The incident occurred on a rural road near

Pittsfield, Illinois. Police investigation determined that the offender attacked the victim after the victim had given the offender a lift in his car. The victim was pronounced dead at the scene. The offender was apprehended, prosecuted and convicted of murder.

3. That the Claimant seeks compensation for funeral expenses and for loss of support for herself. The Claimant has listed her daughter, Tammy, as an applicant for loss of support on the application. However, Tammy was born on January 20, 1963, and had attained the age of majority prior to the incident and is, therefore, not eligible for loss of support.

4. That the Claimant incurred funeral and burial expenses in the amount of \$2,905.85. Pursuant to section 2(h) of the Act, funeral and burial expenses are compensable to a maximum award of \$2,000.00. Ill. Rev. Stat. 1979, ch. 70, par. 72(h).

5. That the Claimant was totally dependent upon the victim for support.

6. That prior to his death, the victim was employed by the Illinois Department of Corrections and his average monthly earnings were \$982.80.

7. That section 2(h) of the Act states “. . . loss of support shall be determined on the basis of the victim’s average net monthly earnings for the six months immediately preceding the date of the injury or on \$750.00 per month, whichever is less.”

8. That the victim was 53 years of age at the time of the crime. According to the U.S. Department of Health, Education and Welfare, *Vital Statistics of the United States*, 1978, Life Tables, volume II, his life expectancy would have been **75.2** years. The projected loss of

support for **22.2** years is in excess of \$15,000.00 which is the maximum amount compensable under section 10.1(f) of the Act. Ill. Rev. Stat. 1979, ch. 70, par. 80.1(f).

9. That this claim complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

10. That pursuant to section 10.1(e) of the Act, this Court must deduct \$200.00 from all claims (except in the case of an applicant **65** years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal social security payments payable to dependents of the victim and the net proceeds of the first \$25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant. Ill. Rev. Stat. 1979, ch. 70, par. 80.1(e).

11. That the Claimant has received **\$450.00** in reimbursements from the Veterans Administration as a result of the victim's death that can be counted as an applicable deduction under section 7.1(7) of the Act. Ill. Rev. Stat. 1979, ch. 70, par. 77.1(7).

12. That after making all the applicable deductions under the Act, the pecuniary loss resulting from the victim's death is in excess of the \$15,000.00 maximum allowed in section 10.1(f) of the Act. Ill. Rev. Stat. 1979, ch. 70, par. 80.1(f).

13. That the Claimant's interest would be best served if the award hereunder would be paid pursuant to the installment provision of section 11.1 of the Act. Ill. Rev. Stat. 1979, ch. 70, par. 81.1.

It is therefore, hereby ordered that the sum of \$15,000 (fifteen thousand dollars) be and is hereby awarded to Launa Shepherd, wife of Robert Shepherd, an innocent victim of a violent crime to be paid and disbursed to her as follows:

- (a) \$2,250.00 (two thousand two hundred fifty dollars) to be paid to Launa Shepherd;
  - (b) Seventeen (**17**) equal monthly payments of \$750.00 (seven hundred fifty dollars) each to be paid to Launa Shepherd;
  - (c) In the event of the death or marriage of the Claimant, it is the duty of the personal representative of the Claimant to inform this Court in writing of such death or marriage for the purpose of the possible modification of the award.
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**CRIME VICTIMS COMPENSATION ACT  
OPINIONS NOT PUBLISHED IN FULL  
FY 1984**

76-CV-0304	Dixon, Parnell	Dismissed
76-CV-1562	Goulakos, Rosemary	\$ 5,000.00
77-CV-0002	DeBartolo, Mike	1,000.00
77-CV-0050	McKinley, Shirley	10,000.00
77-CV-0173	Lowery, James	Dismissed
77-CV-0190	Eisenhauer, Joan	2,666.66
77-CV-0341	Curtin, Rosemary	7,500.00
77-CV-0593	Chambers, Miriam	10,000.00
77-CV-0783	McGloin, Kevin G.	4,847.64
78-CV-0019	Schneider, Michael J.	89.11
78-CV-0069	Venegas, Rogelio	5,000.00
78-CV-0214	Shelton, Eugene	Dismissed
78-CV-0299	Alexander, Michael A.	Denied
78-CV-0399	Comacho, Paula M.	10,000.00
78-CV-0418	Stensrud, Olive	664.00
78-CV-0674	Hernandez, Socorro; Esmeralda, Florentino & Torres, Genoveva	2,688.00
78-CV-0689	Reyes, Hubertina & Reyes, Otilio	10,000.00
78-CV-0785	Ridley, Alberta	590.00
79-CV-0009	Henderson, Nathan, Sr.	994.00
79-CV-0149	Konrad, Charles A.	Dismissed
79-CV-0165	Gardner, Elmer C.	775.03
79-cv-0189	Goodman, Gilbert	5,315.64
79-CV-0218	Steinbrenner, Ann & Wilbert	Denied
79-CV-0269	Bennett, Eddie Gordon	Denied
79-CV-0296	Bunner, Robert	10,000.00
80-CV-0033	Worthman, Carol Olsen	391.23
80-CV-0073	Williams, Larry Paul	10,000.00
80-CV-0114	Rios, Ramon	Dismissed
80-CV-0149	Greco, Jacquelyn Gamari	10,000.00
80-CV-0204	Stewart, Alfred L.	Denied
80-CV-0216	Bogus, Beverly L.	Denied
80-CV-0286	McGhee, Ardealia	Dismissed
80-CV-0303	Seracy, James T., Rev.	104.85
80-CV-0352	Brewer, Michael D.	Dismissed
80-CV-0389	Navarro, Juan A., a/k/a Navarro, Antonio J.	6,507.97
80-CV-0390	Moore, Christine	10,000.00

80-CV-0391	Miller, Lawrence K.	Dismissed
80-CV-0422	Hubbard, Gladys	Dismissed
80-CV-0435	Resmann, Mark	Dismissed
80-CV-0442	Stahl, Mary E.	Denied
80-CV-0517	Woods, Judith L.	1,304.50
80-CV-0544	James, Saul, Jr.	10,000.00
80-CV-0583	Lockridge, Roland	Dismissed
80-CV-0604	Young, Emma I.	2,000.00
80-CV-0610	Romanowski, Richard J.	Dismissed
80-CV-0614	Carreon, Uvaldo	2,956.97
80-CV-0653	Turner, David C.	1,399.00
80-CV-0674	Kolouktsis, Maria; Rozos, Chris; Sourbis, Dan & Paleothodoros, Nick	1,938.25
80-CV-0738	Charleston, Ruby	1,715.00
80-CV-0739	Carril, Maryann Hubert & Wallace, Terri	2,000.00
80-CV-0770	Wallace, Terry L.	5,504.75
80-CV-0839	Pedersen, Dennis	Dismissed
81-CV-0032	Heacox, Warner L. I.	Dismissed
81-CV-0045	Satchell, Minnie	Dismissed
81-CV-0056	Hayden, Dennis	10,000.00
81-CV-0078	Huerta, Estella	15,000.00
81-CV-0082	Sargent, Andrea	Dismissed
81-CV-0125	Loftin, William	Dismissed
81-CV-0139	Caruvana, David	Dismissed
81-CV-0163	Gonzalez, Edward P.	15.15
81-CV-0204	Noland, Gene R.	Dismissed
81-CV-0226	Smart, Linda	Denied
81-CV-0245	Jarvis, Dede	Dismissed
81-CV-0267	Reese, Josephine	Denied
81-CV-0288	Smyszniuk, Maria	6,663.25
81-CV-0296	Demaldonado, Altagracia Alicea	400.00
81-CV-0308	Santy, Paul R.	15,000.00
81-CV-0313	Farmilant, Steve & Farmilant, Edward	847.05
81-CV-0372	Kilpatrick, Roger A.	2,294.61
81-CV-0384	Stepney, Robert B.	857.27
81-CV-0417	Cabrera, Ranulfo	1,195.00
81-CV-0422	Garcia, Emmet	Dismissed
81-CV-0424	Green, Mildred	1,999.00
81-CV-0430	Lewandowska, Anna J.	731.15
81-CV-0441	Rodica, Marilou Salvador	15,000.00
81-CV-0465	Chastang, Donald A.	Denied

81-CV-0469	Harris, Lee A.	94.09
81-CV-0484	Ray, Robert	3,526.15
81-CV-0502	Smith, Collean	415.00
81-CV-0505	Avitia, Telesforo & Avitia, Socorro Meraz De	15,000.00
81-CV-0507	Boritz, Sophie G.	10,000.00
81-CV-0513	Finley, Colleen D.	462.03
81-CV-0526	Riley, William	Dismissed
81-CV-0553	Spellisy, Sandra L.	808.20
81-CV-0574	Buchman, Loris & Thomas	Denied
81-CV-0588	Slider, Thomas Lynn	2,506.10
81-CV-0591	Chin, Edmond	Denied
81-CV-0614	Buchman, Loris Annette	Denied
81-CV-0640	Mazer, Rhoda L.	2,410.00
81-CV-0707	Duhem, Arthur G.	445.46
81-CV-0710	Espinoza, Juan	10,574.83
81-CV-0714	Hughes, Hattie	Dismissed
81-CV-0725	Jankovsky, Stephanie	835.27
81-CV-0734	Alvarez, James I.	15,000.00
81-CV-0745	Thomas, Richard	15,000.00
81-CV-0750	Coleman, Thelma	15,000.00
81-CV-0756	Cameron, Michael	6,659.59
81-CV-0780	Garcia, Victor H.	1,347.28
81-CV-0785	Johns, Robert L.	Dismissed
81-CV-0836	Claro, Alex L.	9,529.55
81-CV-0854	Sorrwell, Joan	5,764.00
81-CV-0869	Salto, Eustaqio	1,659.05
81-CV-0885	Avila, Arturo	2,030.09
81-CV-0891	Ramirez, Jose	Dismissed
81-CV-0898	Burrage, John W.; Burrage, Mary Ellen, & Burrage, Doris	8,750.00
81-CV-0899	Aldrich, Carl	324.10
81-CV-0904	Haley, Nelda	Denied
81-CV-0907	Cassagnol, Melia	791.99
81-CV-0916	Galindo, Angela & Galindo, Gustavo	15,000.00
81-CV-0928	Utley, Anthony S.	Denied
81-CV-0933	Caldwell, Lucille	Denied
81-CV-0938	Guillen, Benjamin	1,746.94
81-CV-0947	Walson, Sam A.	Dismissed
81-CV-0948	Ledbetter, Mary	Denied
81-CV-0972	Leone, Irene	15,000.00
81-CV-0975	Ramirez, Jose Moncade	15,000.00

81-CV-0976	Rodriguez, Dora	Dismissed
81-CV-0979	Orendorff, Donna L. Stevenson	15,000.00
81-CV-0987	Mayes, Charles	609.40
81-CV-0989	Campbell, Malcolm B.	1,793.96
81-CV-1023	Mercuri, Domenica	2,000.00
81-CV-1029	Siliunas, Ona	15,000.00
81-CV-1063	Holcomb, Robert M.	968.00
82-CV-0002	Biddle, Alfred T.	560.00
82-CV-0005	Lazaro, Emma	Denied
82-CV-0007	Powell, Jimmie	695.64
82-CV-0010	Van Deventer, David	Dismissed
82-CV-0016	Flores, Manuel	561.27
82-CV-0032	Hansen, James	Denied
82-CV-0034	Hennings, Kenneth M. .	2,511.94
82-CV-0037	<b>Lopez</b> , Samuel	4,388.65
82-CV-0047	Thompson, Adel	223.55
82-CV-0049	Hernandez, Daniel	Denied
82-CV-0051	Barnes, Margaret Ann	2,000.00
82-CV-0054	Buxton, Mary Ellen	Denied
82-CV-0057	Copenhauer, Florence M.	2,000.00
82-CV-0060	Gay, L. M.	328.26
82-CV-0088	Newcomb, Harold	86.98
82-CV-0089	Ohlman, Leon Dale	Denied
82-CV-0096	Torres, Wilfredo	1,300.00
82-CV-0097	Trotter, William, Jr.	Denied
82-CV-0098	Santy, Michael S. & Paul	(Consolidated & paid under 81-CV-0308)
82-CV-0102	Brown, Jerri V.	10,810.09
82-CV-0105	<b>Clark</b> , Michael J.	Dismissed
82-CV-0107	Ehrlich, Beatrice	Denied
82-CV-0118	Kessler, John C.	558.24
82-CV-0121	Schottenloher, Dorothy & Masunas, Sharon	2,000.00
82-CV-0126	Nitti, Charles A.	9,982.40
82-CV-0127	Ohmer, Thomas J.	295.90
82-CV-0129	Oettinger, Roberta	35.30
82-CV-0136	Tasker, David	Dismissed
82-CV-0141	Yates, Michael Roger	252.64
82-CV-0150	Converse, Mitchell A.	886.12
82-CV-0157	Holbach, Mary (Gordon), on behalf of Annette Gordon	Denied
82-CV-0162	Jones, Derrick R.	2,859.44

82-CV-0165	McDaniel, Sharon L.	1,632.63
82-CV-0169	Nordtvedt, Judy	Denied
82-CV-0174	Starks, Melvin	25.00
82-CV-0175	Taylor, Sidney	Dismissed
82-CV-0188	Brown, James L.	3,548.62
82-CV-0192	Dunn, Lucille	500.00
82-CV-0194	Gibson, Geraldine & Gibson, Janice	7,691.84
82-CV-0198	Gutowski, Tammy	Denied
82-CV-0206	Maldonado, Jose Antonio	1,138.91
82-CV-0207	Mangum, Gennie	1,730.00
82-CV-0210	Priget, Lester C.	Dismissed
82-CV-0212	Quinones, Maria M.	15,000.00
82-CV-0213	Schultz, Shirley A.	2,695.78
82-CV-0218	Alvarez, Myrtle (Dumas)	1,000.00
82-CV-0221	Conner, David	Denied
82-CV-0222	Conner, Louis Q.	1,180.44
82-CV-0229	Gronski, Joseph T.	3,954.87
82-CV-0234	Kobylarz, Glenn James	2,000.00
82-CV-0237	Lowry, Thelma	Denied
82-CV-0239	Ousley, Wanda	7,500.00
82-CV-0242	Summers, Rick	Dismissed
82-CV-0246	Bartolini, David K.	1,271.00
82-CV-0251	Oliver, Mary	Denied
82-CV-0253	Fajfar, Joseph F.	15,000.00
82-CV-0264	Johnson, Robert Ray	1,601.00
82-CV-0266	Koutoulogenis, Nick	3,454.45
82-CV-0272	Saunders, Randy James	4,500.00
82-CV-0274	Smith, James	Denied
82-CV-0277	Williams, Shirley A.	Dismissed
82-CV-0288	Cook, Lenora J.	2,000.00
82-CV-0289	Grantham, Leroy	245.05
82-CV-0301	Miller, Lynette O.	1,991.00
82-CV-0304	Pope, Lillie	1,200.00
82-CV-0306	Prazuch, Anthony L.	Dismissed
82-CV-0312	Woodruff, Kevin Ellis	5,856.31
82-CV-0314	Alexander, Barbara J. Lacey	Denied
82-CV-0315	Baker, Norman L.	3,408.00
82-CV-0321	Clark, Vickie L.	Denied
82-CV-0322	Cox, William R.	171.66
82-CV-0323	Downing, Dorothy	2,000.00
82-CV-0324	Estes, Deandra	553.14

82-CV-0325	Ferro, Richard D.	Denied
82-CV-0328	Call, Edward, Jr.	2,022.80
82-CV-0338	McLaughlin, Timothy J.	236.00
82-CV-0340	Marvin, Dawn Marie	261.75
82-CV-0342	Pacis, Maria Paz L.	Dismissed
82-CV-0344	Peterson, Mable I.	312.46
82-CV-0354	Stokes, Alice	Denied
82-CV-0358	Williams, Morgan	Denied
82-CV-0361	Bruno, Gregory	3,209.95
82-CV-0362	Cant, Josephine	2,000.00
82-CV-0365	Jones, Madilynn A.	143.75
82-CV-0366	Mineiko, Kurt T.	Denied
82-CV-0368	Owens, L. C.	515.00
82-CV-0371	Salva, Peter	101.30
82-CV-0373	Vielmas, Samuel	Denied
82-CV-0376	Falkner, Anita	Denied
82-CV-0378	Johnson, Marilyn	2,501.45
82-CV-0383	McGee, Michael	Dismissed
82-CV-0386	Ponder, Don Carlton	Denied
82:CV-0391	Robles, Socorro	Dismissed
82-CV-0392	Baker, Doretha Spencer	1,482.80
82-CV-0394	Valladares, Pedro Jesus	3,760.60
82-CV-0396	Walton, Mildred	1,948.40
82-CV-0404	DeCicco, Lynna A.	Dismissed
82-CV-0406	Forestiere, Rose S.	15,000.00
82-CV-0410	Mendoza, Jose M.	1,202.13
82-cv-0411	Mendoza, Jose M.	305.20
82-CV-0415	Velentzas, Janice	15,000.00
82-CV-0416	Scott-Williams, Almarie	1,346.00
82-CV-0420	Cook, Frances V.	907.29
82-CV-0436	Bolden, Joseph	278.04
82-CV-0438	Butler, William E., Jr.	Denied
82-CV-0439	Cappelletti, Frank	2,270.20
82-CV-0449	Helgert, Helene	751.65
82-CV-0453	Iusco, Cheorghe	1,061.35
82-CV-9457	Lavin, Barbara	Denied
82-CV-0461	Morales, Jacqueline	567.75
82-CV-0462	Odle, Howard D.	4,848.16
82-CV-0463	Richmond, Velma	Dismissed
82-CV-0465	Sales, Herbert J.	2,000.00
82-CV-0468	Stewart, Louise D. & Connor, Norris N., Sr.	2,000.00

82-CV-0469	Suhrbier, Lawrence	291.78
82-CV-0470	Triphahn, Kenneth	Denied
82-CV-0471	Williams, Alfred	634.34
82-CV-0473	Aldridge, Sharon	1,700.00
82-CV-0475	Brooks, Edward Lee	3,618.18
82-cv-0478	Healy, Barbara A.	Denied
82-Cv-0482	Mason, Lucy	15,000.00
82-CV-0487	Doremba, Deborah L.	262.67
82-CV-0493	Bruce, Virginia	78.15
82-cv-0495	Coleman, Gregory	523.10
82-CV-0498	Geron, Lawrence C.	Dismissed
82-CV-0499	Griswold, Charles M., Sr.	Denied
82-CV-0500	McVey, Vodies	4,735.56
82-CV-0503	Overby, Sylvia	Denied
82-CV-0512	Burrell, Sandra M.	Denied
82-CV-0514	Chavez, Roberto	1,320.20
82-CV-0517	Frye, Marilyn Lorraine	1,632.00
82-cv-0520	Lessentine, Barbara J.	Denied
82-CV-0523	Rodriguez, Miselenia	Denied
82-CV-0533	<b>Cruz, Jose</b>	Denied
82-CV-0538	Heller, Honorata	4.40
82-CV-0541	Kirrane, Nora	Dismissed
82-CV-0542	Lane, Addie	1,892.58
82-CV-0544	Winters, Joseph	1,622.85
82-CV-0546	Mercado, Edward	1,335.24
<del>82-CV-0550</del>	Pappas, Jim	Dismissed
82-CV-0551	Ramos, Nilda	Denied
82-CV-0555	Sierotnik, Stanislaw	379.80
82-CV-0556	Danek, Andrew	2,271.00
82-CV-0557	Sumner, Janice & Hill, Samuel	2,000.00
82-CV-0559	Toebe, Ronald, Jr.	106.90
82-CV-0566	Davis, Jessie	1,973.97
82-CV-0567	Butler, Jenifer Dodd	Denied
82-CV-0569	Guzman, Maria	439.60
82-CV-0570	Hall, Jessie L.	Denied
82-cv-0572	Hull, Herbert	Dismissed
82-cv-0573	Johnson, Bernice	2,000.00
82-cv-0574	Long, Darrell C. & Markwell, Berdella	2,000.00
82-CV-0579	Rende, Helen J.	2,069.08
82-CV-0581	Schovain, James A.	111.31
82-CV-0590	Williams, Willie Mae	Denied

82-CV-0591	Zotto, Mark	Dismissed
82-cv-0593	Abbott, Ernest F.	2,510.17
82-CV-0598	Brown, James E.	2,000.00
82-CV-0600	Bumpers, Whurry	2,593.13
82-CV-0605	Deoca, Norberto Montes	15,000.00
82-CV-0615	Gjerstad, Harold	110.00
82-CV-0619	Johnson, Maylen N.	4,160.05
82-CV-0622	Lofgren, Barbara & Lofgren, Joetta	Denied
82-CV-0628	Moore, Melvin	1,567.00
82-CV-0632	Murphy, Theresa J.	5,259.59
82-CV-0633	Ocon, Rebecca Navarette	15,000.00
82-CV-0634	Prette, Margaret	237.80
82-CV-0636	Reynolds, Marian	4,478.00
82-CV-0638	Rodriguez, Fernando	Dismissed
82-CV-0640	Schmitt, Mark	492.89
82-CV-0646	Springer, Brian A. & Kelly P.	Denied
82-CV-0647	Tarver, Doris	1,624.00
82-CV-0651	Vaughn, Dorothy L.	746.55
82-CV-0656	Mooney, Robert C.	2,000.00
82-CV-0662	Afshar, Mohammad Hadi	Denied
82-CV-0671	Deshazo, Faye J.	Denied
82-CV-0675	Jeske, William J.	Denied
82-CV-0679	Macon, Lionel	3,554.92
82-CV-0682	Milliner, Betty	1,958.55
82-CV-0684	Nichols, Sherwin L.	Denied
82-CV-0686	Pawlow, John	Dismissed
82-CV-0687	Potempa, David A.	6,054.30
82-CV-0692	Shegog, Lou Ethel	2,000.00
82-CV-0697	Moretz, Timothy	Dismissed
82-CV-0699	Blair, Gordon C.	1,493.92
82-CV-0700	Borst, Robert D.	12,597.90
82-CV-0704	Carter, Melvina K.	Dismissed
82-CV-0706	Coleman, O'Neal, Jr.	Denied
82-CV-0708	Creviston, Geneva C.	517.60
82-CV-0711	Haas, Paul J.	720.45
82-CV-0712	Jeffers, Jesse James	2,185.22
82-CV-0713	Johnson, Martha I.	70.44
82-CV-0718	Mock, Diane	15,000.00
82-cv-0722	Yahudah, Shemyahudah	Dismissed
82-CV-0725	Scherf, Robert Paul	15,000.00
82-CV-0726	Sharp, Thomas F.	4,480.60

82-cv-0727	Sobjeski, Rose	321.48
82-cv-0728	Metzger, Karen Ann	210.90
82-cv-0729	St. Dennis, Sandra	708.86
82-cv-0730	Vera, Angel G.	3,608.13
82-cv-0734	Burgess, Patsy D.	1,000.00
82-cv-0735	Farlow, Bruce W.	1,071.91
82-cv-0737	Gany, Bobby Lee	1,000.00
82-cv-0740	Kurtzke, Karen T.	580.23
82-cv-0741	Kushida, Stanley T.	Dismissed
82-cv-0743	Manuel, Phyllis A.	Dismissed
82-cv-0744	Martin, Clara	2,000.00
82-CV-0746	Paskale, Jessie T.	231.29
82-cv-0747	Potts, Rufus Clyde	10,000.00
82-cv-0750	Shaw, Johnny	10,000.00
82-cv-0754	Bell, Julian	Denied
82-CV-0756	Devlin, Timothy M.	Denied
82-cv-0759	Duckworth, Leona	605.00
82-CV-0761	Francik, Lillian	231.28
82-CV-0762	Hanley, Robert E.	4,543.81
82-CV-0764	Harris, James	Denied
82-CV-0767	Mason, Eileen E.	Dismissed
82-CV-0768	Matuszewski, George	1,048.20
82-CV-0772	Brooks, Cleo	Denied
82-CV-0773	Mueller, Wendell	2,000.00
82-CV-0776	Pulgar, Humberto	1,475.00
82-cv-0778	Vargas, Jesus	Dismissed
82-CV-0780	Stewart, Antionette	7,400.15
82-cv-0782	Szleszinski, Joseph	5,033.40
82-cv-0783	Taylor, Beatrice	Denied
82-CV-0784	Valcourt, Pierre	Dismissed
82-cv-0788	Allen, Paulette Williams	908.53
82-cv-0790	Zicarelli, Linda S.	168.64
82-cv-0794	Johnson, Gregory P.	329.48
82-cv-0797	Aguilera, Alfredo	1,091.76
82-Cv-0798	Dettloff, Janet (Bradley)	292.84
82-cv-0800	Brown, George A.	Denied
82-cv-0803	Burgett, Marilyn	Denied
82-cv-0805	Chamberlain, Hazel	Denied
82-CV-0806	Chara, Esperanza & Garza, Francisca	2,000.00
82-CV-0808	Cotton, Johnny & Hattie	953.00

82-CV-0813	Esparza, Manuel	559.54
82-CV-0815	Gallardo, Rebeca	10,000.00
82-CV-0824	Houston, Robert E.	Dismissed
82-CV-0826	Jackson, Dorothy	Denied
82-CV-0829	Johnson, Mary Ann	1,538.02
82-CV-0830	Jones, Fred	7,629.35
82-CV-0831	Kaufman, Carol	506.18
82-CV-0833	Kline, Pan	6,633.10
82-CV-0835	Limas, Elizabeth L.	1,128.00
82-CV-0838	Marshall, Leslie Scott	1,673.50
82-CV-0841	Morgan, Leudian E.	2,000.00
82-CV-0846	Palicka, George, Jr.	Dismissed
82-CV-0848	Reid, Anita	Dismissed
82-CV-0849	Rey, Caridad	15,000.00
82-CV-0852	Ridley, Nancy	3,591.04
82-CV-0856	Rutkowski, Stanislaw	1,255.64
82-CV-0858	Schierbaum, Sharon K.	2,101.03
82-CV-0860	Serrano, Elsie	2,000.00
82-CV-0862	Smith, Clote	194.25
82-CV-0864	Stewart, Malcolm	972.32
82-CV-0865	Sullivan, Helen	497.07
82-CV-0870	Trujillo, Carlos A.	Denied
82-CV-0872	Wells, Isaac & Wells, Lillie	1,533.95
82-CV-0876	Young, Harrison	948.65
82-CV-0878	Herring, Elsie M.	15,000.00
82-CV-0879	Frantz, Dorothy A.	15,000.00
82-CV-0880	Vitas, Bogdan	2,863.62
82-CV-0882	Brown, Leonia	Denied
82-CV-0883	Calvillo, Alfredo	464.24
82-CV-0884	Cash, Mealia	2,695.64
82-CV-0887	Henry, Willa D.	Dismissed
82-CV-0893	Murphy, Richard T.	663.96
82-CV-0895	Nam, Hyo Eun	4,659.30
82-CV-0897	Thorpe, Lewis	4,683.64
82-CV-0898	Wachowski, Paul	Denied
82-CV-0904	Hoover, Louise	Denied
82-CV-0909	Munoz, Miguel A.	Denied
82-CV-0913	Carbin, David	7,082.14
82-CV-0915	Cruz, Katherine	2,000.00
82-CV-0918	Jacobson, Bernard	1,798.00

82-CV-0919	Jacobson, Bernard	1,798.00
82-CV-0921	Morales, Adelaide R. & Santiago, Confesor	1,102.15
82-CV-0924	Plowman, Lisa	Dismissed
82-CV-0926	Ritacco, Dominick C., Jr. & Ritacco, Dominick C., Sr.	6,378.67
82-CV-0927	Ali, Mumtaz	9,742.87
82-CV-0928	Rivera, Angel	360.00
82-CV-0931	Stricklin, Roberta	Denied
82-CV-0933	Berry, James N.	14,044.97
82-CV-0937	Crawford, Russell R.	15,000.00
82-CV-0938	Erby, Mamie	985.39
82-CV-0940	Goltz, Emma	15,000.00
82-CV-0942	Hernandez, Jose Trinidad	1,944.38
82-CV-0943	Johnson, Bernice	2,000.00
82-CV-0947	Negron, Irma	2,000.00
82-CV-0948	Otero, Victor, Sr.	2,000.00
82-CV-0952	Sullivan, Gerald J.	3,893.04
82-CV-0953	Weddington, Linda	2,000.00
82-CV-0957	Bomkamp, Robert	Denied
82-CV-0961	Hicks, Margie	855.00
82-CV-0962	Imler, Clarence D.	130.00
<b>82-CV-0963</b>	<b>Insley, Thomas &amp; Caruso, Laura Insley</b>	Denied
82-cv-0974	Bartuch, John Joseph	Denied
82-CV-0976	Batts, Bettye Jean	2,000.00
82-CV-0979	Bower, Robert W.	384.96
82-CV-0980	Bradley, Mary	97.10
82-CV-0985	Collins, Bearia	2,000.00
82-CV-0987	Deleon, Anita	Denied
82-CV-0999	Mitchell, Hamp	Denied
82-CV-1003	Swinferd, Lyda A.	638.24
82-CV-1010	Hart, Thomas J.	636.81
82-CV-1011	Hudson, Barbara	281.52
82-CV-1015	Taylor, Enrico	Denied
82-CV-1017	Trevino, Juan Jose	1,809.95
82-CV-1018	Wolfe, Alma & Wolfe, Jack	858.00
82-CV-1022	Carrasco, Maximiliano	1,700.00
82-CV-1025	Smith, Derrick E.	35.96
82-CV-1026	Gardner, A. J.	Denied
82-CV-1027	Green, John	Dismissed
82-CV-1028	Hansen, Erna C.	1.324.77

82-CV-1030	Horne, Fred W.	374.50
82-CV-1032	Mason, Roy	Dismissed
82-CV-1036	Patrick, Juanita B.	824.20
82-CV-1038	Robinson, Martin E.	13,411.28
82-CV-1040	Schmidt, Gretchen L.	1,951.67
82-CV-1044	Toulouse, Lena H.	480.59
82-CV-1051	Whison, Darlene Sue Glaser	Denied
82-CV-1054	Rychlik, Betty A.	15,000.00
82-CV-1055	Washington, Henry C.	Denied
82-CV-1056	Chabera, Hilda	Dismissed
82-CV-1058	Cumber, William	Denied
82-CV-1059	Cummings, Jim A.	2,000.00
82-CV-1061	Ford, Walter Lee	Dismissed
82-CV-1062	Grayer, Lillie	2,000.00
82-CV-1067	Mayberry, Marsha L. & Mayberry, Pamela	Denied
82-CV-1068	Pyle, Jerry L.	Denied
82-CV-1069	Quezada, Leoncio	1,080.44
82-CV-1070	Rosa, Gilceria M.	Dismissed
82-CV-1078	Lewis, Beatrice	1,514.65
82-CV-1079	Lipsey, Peggy	250.00
83-CV-0002	Arguelles, Salvador	2,050.00
83-CV-0003	Crowley, Michael E.	187.50
83-CV-0008	Moore, Edward James	9.08
83-CV-0009	Quinn, Elena Morrell	68.75
83-CV-0010	Johnson, Orlando	Dismissed
83-CV-0015	Scott, Bessie	Denied
83-CV-0020	Davis, Dora H.	4,266.75
83-CV-0025	Jimenez, Gabriel	1,255.00
83-CV-0036	Randle, Louise	604.38
83-CV-0046	Watson, Arie	2,000.00
83-CV-0049	Alejandro, Ruperto M.	1,150.00
83-CV-0050	Anderson, Margaret & Anderson, Thomas	2,000.00
83-CV-0051	Anderson, Margaret & Anderson, Thomas	2,000.00
83-CV-0052	Baker, Patrick	1,214.03
83-CV-0053	Basica, Helen	1,059.82
83-CV-0054	Bender, Francis	593.15
83-CV-0055	Billups, Jannie	15,000.00
83-CV-0056	Brown, Willie Mae	1,050.00
83-CV-0064	Hopson, Ruby R.	1,888.00
83-CV-0065	Ingram, Daisy L.	605.50
83-CV-0070	Linton. Bolton	6,153.94

83-CV-0072	Malinowska, Bernarda	Dismissed
83-CV-0074	Miller, Louis C.	30.00
83-CV-0078	Owens, Jeannette	995.00
83-CV-0079	Perkins, Joseph, Sr.	Denied
83-CV-0080	Robinson, Lois	1,500.00
83-CV-0088	Brown, Adaline J.	2,039.59
83-CV-0090	Henderson, John, Rev.	1,734.72
83-CV-0092	Pripish, Robert J.	Denied
83-CV-0096	Gouyd, John S.	Dismissed
83-CV-0106	Bella, Agustina	Dismissed
83-CV-0108	Chambers, Charles	513.27
83-CV-0109	Chang, Young Ran	15,000.00
83-CV-0110	Chung, Kyu Ja	15,000.00
83-CV-0112	Covarrubias, Maria	Denied
83-CV-0113	Creal, Eloise	4,858.50
83-CV-0117	Hogan, Anna	2,520.00
83-CV-0118	Jackson, Geneva	2,000.00
83-CV-0119	Jones, Lonzell, Jr.	1,697.00
83-CV-0120	Peebles, John & Ruby	1,887.27
83-CV-0121	Pyle, John	1,440.00
83-CV-0122	Rhodes, Edgar A., Jr.	Denied
83-CV-0124	Sanchez, Ramon	Denied
83-CV-0129	Bodnarchuk, Natalia	322.30
83-CV-0130	Bogojevic, Milan	7,972.65
83-CV-0132	Cha, Suk Hui & Cha, Rak Woo	15,000.00
83-CV-0134	Crawford, Egypt	757.49
83-CV-0137	Ford, Harriet	Denied
83-CV-0138	Foster, Leari Jean	1,602.40
83-CV-0139	Ingram, Willie L.	Denied
83-CV-0147	Sanders, Mae L.	1,724.00
83-CV-0150	Whitmer, Sherry Lynn	302.50
83-CV-0161	Chavez, Pedro J.	Dismissed
83-CV-0166	Gonzalez, Ronald	10,652.65
83-CV-0169	Mays, Ernestine	139.00
83-CV-0171	Retzloff, Kimberly Jo	11,527.93
83-CV-0172	Seewald, Larry B.	1,112.52
83-CV-0178	Abernathy, Modean	2,212.20
83-CV-0181	Cho, In Ho	1,237.00
83-CV-0184	Foster, Henry R.	50.65
83-CV-0187	Leitza, Robert C.	687.23
83-CV-0194	Schlachter, Ronald R.	1,394.91

83-CV-0195	Barish, Jay Edward	1,020.69
83-CV-0197	Chavez, Joseph J.	201.15
83-CV-0198	Clayton, Wesley A.	273.62
83-CV-0199	Gonzalez, Jose F.	6,809.39
83-CV-0200	Hill, Bertha	2,000.00
83-CV-0203	Kuzma, Helen	2,775.09
83-CV-0205	Mosbrook, Sharon	Denied
83-CV-0208	Reed, Eular	1,825.24
83-CV-0209	Sadoff, Charlotte	15,000.00
83-CV-0210	Scimeca, Russell	Dismissed
83-CV-0212	Smith, Samuel Lee	2,671.61
83-CV-0213	Sullivan, Joyce & Sullivan, Rovaster	2,000.00
83-CV-0214	Torlak, Ante	7,708.44
83-CV-0216	Turner, Emma	15,000.00
83-CV-0220	Underwood, Betty	Denied
83-CV-0221	Figuroa, Margarita	1,300.00
83-CV-0223	Garrett, Vennie M.	Denied
83-CV-0224	Greaves, Robbie	Denied
83-CV-0225	Henderson, Relillian	Denied
83-CV-0227	Mannino, Joseph	Denied
83-CV-0230	Ogden, Anita Jane	72.56
83-CV-0236	Stanish, Stephanie M.	Denied
83-CV-0237	Sullivan, Mercie	610.00
83-CV-0238	Thomas, Pearlle Mae	1,340.00
83-CV-0240	Williams, Joyce A.	Denied
83-CV-0244	Dawson, Keith	365.01
83-CV-0245	Ekoku, Arthur D.	Dismissed
83-CV-0246	DeBauche, Daniel E.	191.00
83-CV-0248	Limon, Frank	1,723.00
83-CV-0249	Mallard, Evelyn	1,925.00
83-CV-0250	Maturo, Margaret Ellen	81.50
83-CV-0252	Nedrud, Christine G.	317.50
83-CV-0254	Williams, Leo	2,000.00
83-CV-0259	Bryant, Janice	1,638.40
83-CV-0263	Dilworth, Bernice	Denied
83-CV-0265	Glavaz, Gerald, Sr.	2,000.00
83-CV-0268	Henley, Nelson	4,598.60
83-CV-0270	Loredo, Margarita	735.54
83-CV-0271	Mitchell, Gloria Jean	2,050.00
83-CV-0272	Offer, Lena Mae	Dismissed
83-CV-0274	Paddon, Leonard W.	2,000.00

83-CV-0276	Ramos, Nidia	Denied
83-CV-0279	Reid, Anita	Dismissed
83-CV-0283	White, Ida May	2,778.24
83-CV-0287	Stimetz, Valeria A.	1,599.00
83-CV-0289	Martinez, Mario E.	1,150.00
83-CV-0290	McCoats, Martha <b>Sue</b> & Lewis, Mary Ann	2,000.00
83-CV-0291	Fernandez, Fanny	124.20
83-CV-0293	Coleman, Ozella	Denied
83-CV-0294	Diorio, Michael A.	352.70
83-CV-0296	Robertson, Edner	Denied
83-CV-0303	Dickens, Loretha	2,000.00
83-CV-0307	Hernandez, Rita	15,000.00
83-CV-0310	Mason, Jane E.	166.88
83-CV-0311	Ross, Samaria K.	6,906.36
83-CV-0313	Travers, Eileen	136.00
83-CV-0317	Wilson, Willie, Jr.	221.36
83-CV-0319	Fluker, Joseph & Roberta	2,000.00
83-CV-0320	Hernandez, Esperanza, Individually & on behalf of Carol <b>Ann Gray</b>	15,000.00
83-CV-0322	Johnson, W. Beatrice	Denied
83-CV-0324	Minjarez, Jose	Dismissed
83-CV-0325	Munoz, Margarita	Denied
83-CV-0331	Williams, Edmund L.	Denied
83-CV-0334	Stonebraker, Michael	1,404.10
83-CV-0335	Wrinch, Julia	1,236.45
83-CV-0336	Blair, Annie B.	2,000.00
83-CV-0338	Claudio, Betty	15,000.00
83-CV-0341	Whitmore, Inez	2,000.00
83-CV-0342	Alexander, Georgia A.	Dismissed
83-CV-0344	Cannon, Louise	Denied
83-CV-0345	Cardona, Rosalie	15,000.00
83-CV-0346	Fleming, Darsenia & Riley, Christine	1,960.00
83-CV-0347	Fugate, Leslie <b>H.</b>	15,000.00
83-CV-0359	Ivester, Charles & Lymuel	2,000.00
83-CV-0361	Richardson, Letha Marie	2,000.00
83-CV-0362	Steinke, Robert A.	552.24
83-CV-0364	Colgan, Elston <b>H.</b> (Fred)	1,230.63
83-CV-0366	Williams, Dawn	847.20
83-CV-0368	Becker, Susan	Denied
83-CV-0369	Maurici, Frank	2,000.00

83-CV-0370	Prather, Billy Gene	1,590.00
83-CV-0371	Powell, Robert, Sr.	1,500.00
83-CV-0372	Walker, Cedric & Walker, Gregory	1,640.00
83-CV-0382	Clifton, Emmit R.	1,399.20
83-CV-0383	Delgado, Gloria	1,774.40
83-CV-0385	Kerley, Cheryl E.	15,000.00
83-CV-0386	Kester, Ricky D.	1,564.49
83-CV-0387	Kite, Sherryl	2,525.71
83-CV-0388	McCombs, Thomas, Jr.	14,126.92
83-CV-0392	Gomez, Juan	Denied
83-CV-0393	Bush, Ethel	2,000.00
83-CV-0394	Galvan, Linda M.	2,000.00
83-CV-0398	Smith, Quillie	Denied
83-CV-0400	Nottolini, Rick	9,915.08
83-CV-0402	Ross, Gladean	Dismissed
83-CV-0403	Terrell, Mary J.	929.00
83-CV-0406	Moon, Dale Eugene	Denied
83-CV-0407	Harris, Shirley M.	2,000.00
83-CV-0411	Martinez, Jorge O.	1,666.34
83-CV-0413	Fandl, Adolf & Fandl, John	1,046.67
83-CV-0414	Dunn, Earlene	1,708.90
83-CV-0415	Bundza, Ellen C. & Mathis, Helen	7,300.00
83-CV-0421	Pringle, Walter L.	Denied
83-CV-0425	Rehana, Najat	1,649.74
83-CV-0426	Abram, Reuben R.	986.28
83-CV-0427	Arroyo, Federico	2,000.00
83-CV-0428	Brandenburg, Charlene	899.30
83-CV-0429	Chopp, Joseph T., Jr.	3,201.03
83-CV-0430	Dawson, Shirley	2,000.00
83-CV-0433	Freeman, Grady	Denied
83-CV-0435	Harris, Harriet	2,000.00
83-CV-0436	Russell, Pearlina	530.00
83-CV-0438	Tostado, Christine	15,000.00
83-CV-0440	Gustafson, Beverly A.	2,000.00
83-CV-0444	Wand, Marie	136.94
83-CV-0445	Weinschenk, Bridgette J.	15,000.00
83-CV-0448	Bennett, Rickey J.	694.33
83-CV-0450	Twidell, Sharon	568.00
83-CV-0452	Martinek, Aniela	83.00
83-CV-0453	Paschal, Willie Mae	2,000.00

83-CV-0454	Perez, Carolina	Denied
83-CV-0455	Dodd, Linda M. (Gardner) & Gardner, F. Robert	1,362.15
83-CV-0456	Flinn, William J.	Dismissed
83-CV-0458	Tansil, Marilyn Kay	272.62
83-CV-0461	Brooks, Joyce Carol	184.49
83-CV-0463	Manninen, Florence	693.75
83-CV-0466	Davis, Maxine	3,000.00
83-CV-0469	Covarrubias, Jose	799.46
83-CV-0471	Simmons, Lela	2,000.00
83-CV-0472	Mrowiec, Thaddeus	2,600.00
83-CV-0475	Jibowu, Ola	583.44
83-CV-0477	Cannon, Verner	1,046.81
83-CV-0481	Bolden, Evelyn W.	Denied
83-CV-0482	Brown, Deborah R.	349.80
83-CV-0486	Leavy, Loubirda	2,000.00
83-CV-0487	Merritt, Paul Leon	2,102.00
83-CV-0488	Weddington, Lucille R.	15,000.00
83-CV-0489	Adams, Mary	Denied
83-CV-0490	Garcia, Albert	203.76
83-CV-0491	LaRocca, Ruby	2,000.00
83-CV-0492	Mays, Leo	1,231.80
83-CV-0493	Baspen, Roberta B.	Denied
83-CV-0495	Koenig, Arthur D.	1,060.78
83-CV-0498	DiFranco, Gabriel A.	4,959.78
83-CV-0500	Paganelli, Fred A. & Sherwinski, Kathleen	2,000.00
83-CV-0503	Abraham, Solomon	1,110.89
83-CV-0504	Ballard, Julia	15,000.00
83-CV-0510	<b>Collins, Peggy</b>	1,055.57
83-CV-0512	Sulaiman, Jimoh	Dismissed
83-CV-0514	Younkins, Emanuel <b>H.</b>	9,283.01
83-CV-0515	Asllangj, Rania	2,000.00
83-CV-0516	Guzman, Miguel <b>B.</b>	Denied
83-CV-0517	Souvannasy, Lammore	Denied
83-CV-0519	Bowen, Mary Lou	5,050.00
83-CV-0520	McClain, Portia	2,337.35
83-CV-0521	McCurlley, Jessie M.	2,000.00
83-CV-0523	Yonan, D'Ann	1,807.00
83-CV-0524	Weber, Frederick, J. & Mata M.	15,000.00
83-CV-0526	Dahlman, Sharon Lynn	256.80
83-CV-0529	Riley, Darrell	Denied

83-CV-0537	Pryor, Ernest	1,216.00
83-CV-0546	Grant, Howard	1,485.36
83-CV-0548	Miller, Leroy	781.00
83-CV-0550	Kellum, Erma & Grant, Sherrell L.	15,000.00
83-CV-0551	Moore, Robert R.	908.02
83-CV-0552	Solano, Librada Lena	1,784.00
83-CV-0553	Cuellar, Fernando	1,400.48
83-CV-0555	Martin, Johnnie M	395.00
83-CV-0556	Quiles, Pedro L.	2,469.30
83-CV-0557	Vasilauskis, Walter	2,000.00
83-CV-0558	Calixto, Connie	15,000.00
83-CV-0559	Fowler, Linda	7,700.96
83-CV-0562	Redmond, Ophelia	2,000.00
83-CV-0565	Trimuel, John	6,966.93
83-CV-0566	Harris, Sammie E	780.00
83-CV-0567	Haley, Ozell & Lucy	1,718.00
83-CV-0569	Mitchell, James	7,968.05
83-CV-0570	Freeman, Martin J.	7,254.85
83-CV-0571	Gregory, Kim	1,752.70
83-CV-0573	Knepp, Alvin L.	697.35
83-CV-0575	Paschal, Charlotte D.	210.15
83-CV-0576	Boggs, David	77.50
83-CV-0577	Cleary, Bridgette R.	229.83
83-CV-0578	Giles, Sylvester, Sr., & Giles, Elnora	1,787.00
83-CV-0579	Johnson, Donald Gene, Jr.	1,004.95
83-CV-0580	Maddox, Willie	1,481.19
83-CV-0583	Balajadia, Marietta A.	11,250.00
83-CV-0585	Fincher, Clifton	Dismissed
83-CV-0586	Galloway, Joedder	2,000.00
83-CV-0587	Gratch, Hannah	177.80
83-CV-0590	Bobis, Louise Diane	933.80
83-CV-0592	Hickey, Barbara	2,000.00
83-CV-0594	Orrell, Larry H.	2,818.28
83-CV-0595	Vega, Patricia O.	2,000.00
83-CV-0598	Shriner, Marybelle	459.99
83-CV-0602	Miller, Lee J.	Denied
83-CV-0603	Gemmingen, Marie	2,000.00
83-CV-0605	Ponder, Erika Maria	15,000.00
83-CV-0610	Wilks, Willie T.	216.00
83-CV-0612	Canedy, Anthony M	Denied
83-CV-0615	Linn, Lorraine A.	1,238.00

83-CV-0616	Porter, Jeffery Paul	1,077.35
83-CV-0617	Romero, Gloria & Romero, Jose, Sr.	Dismissed
83-CV-0620	Secoy, David R. & Secoy, Dorothy	1,657.25
83-CV-0623	Estrada, Gloria	2,000.00
83-CV-0624	Graves, Herbert L.	1,000.00
83-CV-0628	Morales, Denise	Dismissed
83-CV-0631	Wojtysiak, Eleanor	15,000.00
83-CV-0632	Austin, Eddie	2,000.00
83-CV-0634	Bennett, Kathy	1,980.00
83-CV-0635	Cassem, Uetta	15,000.00
83-CV-0636	Cleaves, Christine	2,000.00
83-CV-0637	Ford, Josephine	Denied
83-CV-0640	Houlne, Kenneth W.	Denied
83-CV-0643	Landerholm, Timothy	1,850.16
83-CV-0648	Morfett, Geneva	2,036.00
83-CV-0651	Stewart, Frances M. & Williams, Alice	2,000.00
83-CV-0652	Payne, Glenn	682.55
83-CV-0654	Ryan, Diana & Nowak, Barbara Jean	1,883.36
83-CV-0658	Wagner, Christine J.	2,000.00
83-CV-0661	Byrd, Helen	398.86
83-CV-0665	Mitchell, Katherine	140.01
83-CV-0666	McWilliams, Paul J.	1,233.99
83-CV-0667	Nelson, Richard J.	2,393.90
83-CV-0670	Collignon, Richard	2,000.00
83-CV-0671	Pas, Theresa H.	205.90
83-CV-0672	Payton, Patricia	2,000.00
83-CV-0674	Alexander, Raymond	1,645.14
83-CV-0675	Babb, Barbara C.	Dismissed
83-CV-0677	Clifford, Marilyn	15,000.00
83-CV-0678	Gold, Claud Duane	Denied
83-cv-0679	Gulley, Jack, Sr.	6,647.93
83-CV-0680	Ivy, Jesse E.	132.33
83-CV-0683	Smith, Clararetta	1,302.14
83-CV-0684	Weathers, Thad	Dismissed
83-CV-0689	Browning, Julian C.	5,087.74
83-CV-0692	Day, Georgia E.	977.00
83-CV-0693	Johnson, Pearl	2,127.95
83-CV-0695	Stoffregen, Michael P. & Stoffregen, Jill	15,000.00
83-CV-0696	Whittaker, Yolanda	473.05
83-CV-0697	Brown, Georgia	3,231.80
83-CV-0698	Guerrero, Maria & Guerrero, David	5,500.00

83-CV-0699	Holzer, Betty J.	2,000.00
83-CV-0702	Gordon, Vera D.	535.73
83-CV-0705	Kastel, Jeffrey L.	2,895.75
83-CV-0706	Parker, Charles	5,207.24
83-CV-0709	Chamberlain, Mabel	2,000.00
83-CV-0710	Froemel, Ernest L., Sr.	2,000.00
83-CV-0711	Roby, Cheryl A.	391.53
83-CV-0712	Stevens, Denise	311.35
83-CV-0714	Rose, Alan L., Adm. of the Estate of Roy J. Rose, a/k/a Roy J. G. Rose, deceased	Dismissed
83-CV-0715	Conway, Bridget	2,000.00
83-CV-0721	Queen, Richard, Jr.	2,623.70
83-CV-0725	Frantz, Dorothy A.	324.00
83-CV-0727	Caron, Leigh L.	1,899.33
83-CV-0729	Bilsky, Jorie	460.52
83-CV-0730	Brown, Emma L. & Brown, Sadie White	2,000.00
83-CV-0731	White, Doris	Denied
83-CV-0732	Moore, John P., III	Denied
83-CV-0736	Browoski, Raymond E., Sr.	2,000.00
83-CV-0738	Newman, Louise & Larry	2,000.00
83-CV-0739	Scott, Bruce	1,157.14
83-CV-0740	Fairfax, Heyward G.	757.00
83-CV-0742	Hammer, Jeffrey W.	1,324.48
83-CV-0743	Harlow, Don	Dismissed
83-CV-0744	Jones, George	264.55
83-CV-0746	Maloney, Patrick J., IV	8,583.90
83-CV-0748	Murphy, Sylvia O.	15,000.00
83-CV-0752	Smith, Dorothy M.	2,000.00
83-CV-0754	Williams, Fred	1,667.56
83-CV-0758	Massonburg, Preston	Denied
83-CV-0760	Baker, Maria	Denied
83-CV-0762	Castaneda, Dolores Reyes	15,000.00
83-CV-0764	Goodman, Clifford L.	48.00
83-CV-0766	Head, Jasper R.	576.60
83-CV-0772	Walton, Louise	Denied
83-CV-0773	Wilson, Colette A.	3,222.50
83-CV-0776	Franke, Michael E.	6,565.85
83-CV-0777	Fairgrieve, Richard C. & Fairgrieve, Elizabeth W.	Denied
83-CV-0778	Gentile, James	2,000.00
83-CV-0779	Green, Larry	1,116.19

83-CV-0780	Jackson, Paul	632.03
83-CV-0781	King, Anna W.	424.00
83-CV-0784	Marquez, Armando	2,000.00
83-CV-0785	Nelson, DeLorn	1,931.73
83-CV-0789	Ward, Moses & Ward, Lrila J.	1,501.00
83-CV-0790	Alvarado, Jose	293.00
83-CV-0791	Avanessian, Mary	4,450.79
83-CV-0792	Garcia, Jose	60.57
83-CV-0793	Garner, <b>Carol A.</b>	348.75
83-CV-0795	Moore, Floyd N.	Dismissed
83-CV-0796	O'Leary, Patrick	29.50
83-CV-0799	Baratta, John J.	Denied
83-CV-0800	Bethel, Deloris <b>M.</b>	322.63
83-CV-0801	Chestnut, Laplose & Louise	1,793.56
83-CV-0802	DeLegge, Theresa	15,000.00
83-CV-0804	Golon, Sharon Ann	Denied
83-CV-0805	Griffith, Deloris	1,400.75
83-CV-0806	Hicks, Faye	1,339.91
83-CV-0808	<b>Manning, Fannie</b>	1,946.90
83-CV-0813	Rollins, Margaret	15,000.00
83-CV-0814	Smith, Laura	Dismissed
83-CV-0815	Wheeler, James	140.90
83-CV-0818	Overcash, Karen	Dismissed
83-CV-0819	Perez, Theresa	Denied
83-CV-0820	Whitley, Henry, Jr.	1,736.35
83-CV-0821	Lyons, Eva C.	1,409.69
83-CV-0822	Moore, Alfreda	1,374.40
83-CV-0823	Moore, Alfreda	1,612.70
83-CV-0825	Bien, Jacqueline	271.73
83-CV-0826	Christo, George, <b>H., Sr.</b> & Christo, Alice L.	<b>2,000.00</b>
83-CV-0827	Davis, Ernie	3,430.09
83-CV-0829	Keller, Dennis I.	3,466.45
83-CV-0830	Manley, Gary <b>R., Sr.</b>	Denied
83-CV-0831	Odom, Major	385.91
83-CV-0832	Schmidt, Emily L.	640.03
83-CV-0833	Wash, Mazie	2,000.00
83-CV-0836	Jones, Cora Lee	1,700.00
83-CV-0837	Kentzel, Michael E.	1,640.90
83-cv-0838	King, Mark E.	3,046.25
83-CV-0841	Sepulveda, Maria L.	15,000.00
83-CV-0844	Garcia, Juan	2,952.00

83-CV-0846	Rebeck, Brian	3,502.32
83-CV-0847	Blockton, Jessie	2,000.00
83-CV-0850	Fields, Anita B.	Dismissed
83-CV-0851	Freeman, Gerald N.	Denied
83-CV-0854	Abrasimow, Fedor	840.11
83-CV-0855	Richmond, Victoria	15,000.00
83-CV-0856	Roach, Howard W., Jr.	2,363.49
83-CV-0857	Wells, Fred L.	1,988.40
83-CV-0861	Lichter, John H	1,249.85
83-CV-0862	Morgan, Earl	132.41
83-CV-0863	Sandberg, Darlene A.	Denied
83-CV-0865	Barnes, Lelia Ann	Denied
83-CV-0866	Grace, Linda	Denied
83-CV-0868	Judth, Lillian A.	1,725.60
83-CV-0869	Walker, Ida B.	360.00
83-CV-0871	Browder, David W.	Dismissed
83-cv-0872	Colon, Ruben	15,000.00
83-CV-0875	Mondl, Michael J.	226.96
83-CV-0876	Dockins, David A.	1,313.84
83-CV-0878	Coleman, Bobbie Jean	2,000.00
83-CV-0879	Evans, Lendy	1,630.00
83-CV-0880	Falvey, Lawrence E.	1,593.99
83-CV-0881	Gray, Henrietta	Dismissed
83-CV-0882	Grazioli, Richard C.	2,000.00
83-CV-0884	Sloan, Kathleen M.	264.67
83-CV-0885	Campbell, Christopher	431.59
83-CV-0887	Moore, John W.	9,631.60
83-CV-0888	Morris, Patsy Miller	2,000.00
83-CV-0889	Phillips, James W.	445.83
83-CV-0890	Priami, Mary	2,000.00
83-CV-0892	Ruiz, Manuel	804.80
83-CV-0894	Ortiz, Victor Luis	Denied
83-CV-0895	Schaaf, William D., III	15,000.00
83-CV-0896	Scordo, Bruno	1,663.77
83-CV-0898	Sollinger, Sandra L.	Dismissed
83-CV-0899	Garnett, Kirk	Denied
83-CV-0901	McIntire, Michael W.	Denied
83-CV-0902	Robinson, William	874.05
83-CV-0903	Wilson, Roosevelt	1,323.40
83-CV-0905	McGee, Ruby	2,000.00
83-CV-0906	Tedeschi, Eugene W.	6,347.77

83-CV-0909	Marsili, Angeline	381.20
83-CV-0911	Vicich, Frank J.	Denied
83-CV-0912	Barter, Edward A.	2,078.26
83-CV-0914	Freeman, Richard	2,000.00
83-CV-0916	Marquez, Olga	2,000.00
83-CV-0919	Jones, Hazel L.	2,000.00
83-CV-0922	Abrams, Sam	2,294.59
83-CV-0924	Heckenbach, Thomas R.	7,357.00
83-CV-0926	Paul, Tammy L.	368.91
83-CV-0929	Tucker, Robert, Sr.	Denied
83-CV-0930	Alexander, Josephine	587.47
83-CV-0932	Carpenter, Kenneth E.	559.90
83-CV-0933	Nelson, Hattie	598.00
83-CV-0934	Ormiste, Eugenie K.	819.00
83-CV-0936	Bullis, Jonathon Pete	Denied
83-CV-0938	Gordon, Walter	85.09
83-CV-0940	Jackson, Everlean	1,642.00
83-CV-0942	Mitchell, Florcie	15,000.00
83-CV-0943	Miller, Franklin F.	2,000.00
83-CV-0945	Henley, Linnie Mae	1,000.14
83-CV-0948	Calhoun, Beverly	1,408.58
83-CV-0949	Jacobson, John G.	2,000.00
83-CV-0952	Coyne, Thomas E.	2,000.00
83-CV-0956	Guzman, Antonio N.	Dismissed
83-CV-0960	Jones, Johanne	Denied
83-CV-0961	Matthew, Harry E.	Denied
83-CV-0962	Campbell, Dorothy Levels	2,000.00
83-CV-0963	Lockett, Jinimie, Sr.	2,000.00
83-CV-0964	McGhee, Willie B.	2,000.00
83-CV-0966	Pliakas, Evangelos	1,323.11
83-CV-0969	Rojas, John M.	2,000.00
83-CV-0971	Tyler, Willie J., Rev.	2,000.00
83-CV-0972	Webb, Gwendolyn Dedeaux	4,707.62
83-CV-0974	Armstrong, Robert C., II	654.87
83-CV-0975	Beard, Kenneth W.	Denied
83-CV-0976	Gatson, Mizell	2,573.30
83-CV-0979	Morano, Donald V.	661.20
83-CV-0980	McDonald, Kathleen S.	281.58
83-CV-0981	Pratt, Alice B.	252.79
83-CV-0982	Santana, Adalberto	Dismissed
83-CV-0983	Szczepanski, Sister Edissa Mary, B.V.M.	Denied

83-CV-0985	Brown, Joseph E.	8,637.44
83-CV-0987	Northup, Gail M.	1,901.95
83-CV-0990	Carmona, Andres, Jr.	170.00
83-CV-0994	Madison, Katherine	15,000.00
83-CV-0996	Mychalcewycz, Anna	2,000.00
83-CV-0997	Savage, Patricia M. & Jeremiah, Sr.	2,000.00
83-CV-0999	Bolden, Norman	956.20
83-CV-1000	Collins, Robert	865.55
83-CV-1005	Belsan, Diane	723.16
83-CV-1006	Cook, David J.	11,230.00
83-CV-1008	Hastings, Patsy Angel	Denied
83-CV-1009	Varchetto, Catherine	15,000.00
83-CV-1010	Hall, Mirta	Denied
83-CV-1011	Howard, Randy D.	439.21
83-CV-1014	Scott, Norman F.	Dismissed
83-CV-1015	Tharpe, Dorothy	2,000.00
83-CV-1016	Cummings, Barbara	12,000.00
83-CV-1017	Tallowford, Nicholas	8,215.00
83-CV-1018	Jackson, Melvin	7,636.94
83-CV-1021	Copple, Francis J., Lance Corporal, & Alexander, Carol	Denied
83-CV-1022	Dean, Otto	Denied
83-CV-1023	Ford, Doris	1,779.21
83-CV-1024	Graham, James	Denied
83-CV-1025	Horton, Fannie	1,750.00
83-CV-1026	Miller, Thera Jean	2,000.00
83-CV-1027	Powell, Arthur L.	1,840.18
83-CV-1028	Radel, Robert N.	236.90
83-CV-1029	Williams, Rudolph	2,943.74
83-CV-1030	Barrera, Frank	2,000.00
83-CV-1031	Johnson, Julia M.	2,000.00
83-CV-1034	Djukic, Stojanka	490.87
83-CV-1035	Millard, Richard	15,000.00
83-CV-1037	Rupe, Donna L.	114.03
83-CV-1038	Silas, Vera E.	537.93
83-CV-1039	Brown, Shelly, Jr.	Denied
83-CV-1041	Grimaldi, Martin L.	1,271.38
83-CV-1043	Adams, Ava D.	Denied
83-CV-1044	Bogan, Anthony	900.00
83-CV-1045	Canales, Modesto	Dismissed
83-CV-1046	Carcerano, Ronald J.	1,498.21

83-CV-1048	Dunagen, Charles E.	Denied
83-CV-1049	Gentile, <b>Rosa</b>	15,000.00
83-CV-1050	Luciano, Valentin	900.00
83-CV-1051	Miller, Tina	758.03
83-CV-1052	Murphy, Lisa A.	145.22
83-CV-1057	Wright, Donald J. & Delphine A.	2,000.00
83-CV-1058	Buchanan, Terry Lee	7,276.10
83-CV-1059	Cook, James R.	3,718.97
83-CV-1060	Dudek, Anne M.	817.59
83-CV-1063	<b>Griffis, Ella</b>	2,000.00
83-CV-1065	Nieves, Dolores	15,000.00
83-CV-1066	Williams, Vernita	15,000.00
83-CV-1067	Bandemer, Nancy M.	465.12
83-CV-1070	Boone, Carolyn	683.35
83-CV-1071	Briner, Harold & Briner, Nancy	11,532.70
83-CV-1072	Clements, Brenda M.	592.11
83-CV-1074	Fehl, Wreatha <b>A.</b>	2,000.00
83-CV-1075	Grant, Christine R.	1,279.49
83-CV-1079	<b>Huart, Gregg J.</b>	2,230.85
83-CV-1080	Hughes, Maurice	1,561.00
83-CV-1082	Jackson, Tony	558.07
83-CV-1083	Jenkins, Emma	2,000.00
83-CV-1084	Liddell, Emma	2,065.00
83-CV-1085	Peters, Mildred A.	4,125.75
83-CV-1090	Coleman, Turner	15,000.00
83-CV-1091	Watkins, Christine	Denied
83-CV-1093	Blanford, Darrel	2,000.00
83-CV-1094	Forney, Darren	Denied
83-CV-1095	Modreske, Henrietta	749.68
83-CV-1096	Page, Peter	15,000.00
83-CV-1097	Roberts, Cynthia & Roberts, Avrom	6,000.00
83-CV-1100	White, Peggy	720.00
83-CV-1102	Flores, Antonio V.	7,250.80
83-CV-1103	Kim, Byung Ae	15,000.00
83-CV-1106	Vaughn, Robert G. & Vaughn, Bette T. Guardians	6,600.00
83-CV-1107	Kimmons, Annie	4,118.18
83-CV-1109	Seaton, Terry	Denied
83-CV-1110	Thomas, Bruce	8,192.46
83-CV-1111	Wittner, Phyllis	1,759.49
83-CV-1112	Wright, Thelma Jean	2,921.60

83-CV-1113	Armstrong, Sandra	899.36
83-CV-1115	Hollind, Charles	1,143.85
83-CV-1116	Lozano, Debra	325.00
83-CV-1121	McGee, Dorothy	1,943.00
83-CV-1127	Holland, Loretta	1,393.87
83-CV-1134	Walsh, Silvia B.	15,000.00
83-CV-1137	Orange, Marion	1,212.20
83-CV-1141	Pfister, Lawrence E.	8,306.79
83-CV-1143	Darcy, Patricia M.	15,000.00
83-CV-1144	Malkowski, David Todd	7,635.12
83-CV-1145	Buchholz, Robert	60.35
83-CV-1146	Davis, Ada Lee	534.31
83-CV-1148	James, Winklett	2,000.00
83-CV-1149	Sahid, Connie	2,361.25
83-CV-1151	Varga, Jolan	232.50
83-CV-1152	Ware, Gregory	Denied
83-CV-1154	Altman, Gayle	4,182.96
83-CV-1155	Bell, Annie C.	2,000.00
83-CV-1156	Fillippo, William Dale	1,997.65
83-CV-1158	Walker, Donald R.	1,818.00
83-CV-1159	Blackman, Steven L.	1,570.65
83-CV-1160	Bouchard, Annette L.	1,782.87
83-CV-1161	Curry, James C.	1,717.08
83-CV-1163	Hurd, Louvonzelor	2,000.00
83-CV-1164	Blue, Glenese J.	1,730.82
83-CV-1167	Nathan, Mildred	1,841.80
83-CV-1168	Orduno, Elio	15,000.00
83-CV-1169	Orduno, Jose	5,059.90
83-CV-1171	Baker, Wonder F.	7,228.16
83-CV-1172	DelValle, <b>Jose</b>	1,864.00
83-CV-1173	George, Joyce	2,000.00
83-CV-1174	Grimm, Joseph	2,147.75
83-CV-1175	McDonald, Thelma K.	602.60
83-CV-1176	Patton, Danny	289.80
83-CV-1180	Cnmbo, Theresa	Denied
83-CV-1181	Smith, Eula	1,000.00
83-CV-1182	Holcombe, Frank H., Jr., & Holcombe, Frank H., Sr.	13,506.39
83-CV-1183	Woods, Donald E.	Denied
83-CV-1184	McMikel, Margaret A.	15,000.00
83-CV-1185	Wittkamp, Larirabeth	318.10

83-CV-1186	Grant, Alex	1,450.00
83-CV-1189	Hutton, Roger & Kim P.	Dismissed
83-CV-1190	Davis, J. T.	1,611.00
83-CV-1191	Chester, Ardell	2,000.00
83-CV-1194	Segal, Bert	414.54
83-CV-1195	Shoffner, Carol	1,335.00
83-CV-1196	Smith, Alice	1,449.50
83-CV-1198	Webb, Clifton	Denied
83-CV-1199	Wilson, Frankie Mae	1,271.30
83-CV-1200	Young, Thomas Wayne	1,973.73
83-CV-1201	Domko, Linda L.	Denied
83-CV-1202	Neal, Jerry C.	2,956.58
83-CV-1204	Wilkins, James A.	6,031.45
83-CV-1205	Abdallah, Rafat	2,188.38
83-CV-1206	DelAngel, Jose M.	2,000.00
83-CV-1207	Johnson, Davies	1,709.00
83-CV-1208	Siavelis, Harry	Denied
83-CV-1209	Jett, Margaret	1,500.00
83-CV-1210	Walsh, Thomas P.	400.50
83-CV-1212	Thornton, Janette Marie	Denied
83-CV-1213	Castro, Ann	926.65
83-CV-1214	Hudson, Lillie	Denied
83-CV-1215	Lopez, Cirilo	1,899.00
83-CV-1218	Mustafa, Omar A.	87.25
83-CV-1219	Pratt, Gladys	Denied
83-CV-1223	Riley, Johnny M.	Denied
83-CV-1225	Smith, Elizabeth	1,084.00
83-CV-1226	Whitfield, Jimmie & Juanita	1,303.34
83-CV-1227	Ausborne, Nettie M.	764.00
83-CV-1228	Carrau, Jose	89.40
83-CV-1231	Frantz, Mary Kay	Dismissed
83-CV-1232	George, Annette	2,000.00
83-CV-1233	Jones, Ethel F.	Denied
83-CV-1234	Kennedy, Betty	Denied
83-CV-1235	Lipe, Mamie H.	202.00
83-CV-1238	Vincent, Marilyn G.	15,000.00
83-CV-1239	Aron, Rose	3,963.59
83-CV-1240	Clark, Lorraine M.	2,000.00
83-CV-1241	Bell, Hattie	1,905.00
83-CV-1242	Crockett, Calvin	1,588.40
83-CV-1244	Freeman, Marjorie	Denied

84-CV-0001	Bates, James R.	1,250.00
84-CV-0002	Burns, Joan	Denied
84-CV-0003	Koschetz, Richard, Jr.	1,003.78
84-CV-0005	Stich, Elden A.	2,000.00
84-CV-0010	Parker, Richard	684.00
84-CV-0012	Wisdom, Hazel M.	1,555.87
84-CV-0018	Ross, Inez	Denied
84-CV-0020	Ayers, Dale Marie	Denied
84-CV-0021	Branch, Victor	Denied
84-CV-0022	Chavez, Jose	3,698.61
84-CV-0023	Cockrell, Barbara	1,518.00
84-CV-0025	Evans, Rosie Lee	1,528.26
84-CV-0033	Gregg, Lillian L.	606.93
84-CV-0037	McCullum, Rosemary	2,000.00
84-CV-0040	Mays, Bobbie J.; King, Dorothy L. & Kenney, Rebia	1,683.85
84-CV-0046	Groff, Mary Marsha	7,348.18
84-CV-0047	Beal, Mattie D.	3,490.41
84-CV-0048	Bush, Claudette	Denied
84-CV-0054	Levine, Peter L.	2,732.00
84-CV-0056	Brisco, Hilton	2,000.00
84-CV-0057	Smith, William	735.66
84-CV-0058	Bruton, William A.	Denied
84-CV-0060	Terry, Jimmie L.	1,162.00
84-CV-0061	Tarallo, Nicholas B.	6,161.52
84-CV-0064	Gutierrez, Ruben, Sr.	1,710.00
84-CV-0065	Lewis, Roy W.	7,221.00
84-CV-0068	Feehery, Thomas	Denied
84-CV-0069	Kowar, Josef F.	1,952.10
84-CV-0070	Cooley, Freeman R.	150.20
84-CV-0072	Rolland, Johnnie	5,926.53
84-CV-0075	Lawrence, Edward A.	3,689.89
84-CV-0076	Starr, Elmer	2,890.45
84-CV-0078	Lichtman, William	87.50
84-CV-0080	Schoonover, Michael B.	Denied
84-CV-0081	Spidel, Steven W.	51.80
84-CV-0083	Chalmers, Thelma	2,000.00
84-CV-0087	Mounteney, Lee	643.79
84-CV-0088	Scott, Reginald	533.90
84-CV-0089	Watson, Mildred; Funches, Carol & Davis, Alycia	385.00

84-CV-0090	Smith, George Etta & Lewis, Roland T	1,363.00
84-CV-0091	Zuber, Michael P.	358.08
84-CV-0092	Daniels, Carol	145.00
84-CV-0095	Schmidt, Lawrence J.	123.87
84-CV-0097	Zurita, Jose M. Soto	15,000.00
84-CV-0101	Tellone, John	2,000.00
84-CV-0103	Dobbs, Kenneth E.	Denied
84-CV-0104	Dunsford, Frank	4,455.50
84-cv-0109	Pociejewski; Stanislaw	15,000.00
84-CV-0111	Ali, Rasheedah Z.	Denied
84-CV-0112	Andersen, Mary & John	1,639.50
84-CV-0117	Kownacki, Walter P.	851.20
84-CV-0119	Poindexter, Eddie Lloyd	2,000.00
84-CV-0122	Tolbert, Mary	2,000.00
84-CV-0124	Woycheese, Lon	4,181.90
84-CV-0126	Constable, Sally	121.26
84-CV-0127	Deemie, Alfred B.	1,486.52
84-CV-0130	Stanisha, John A. & Stanisha, Loretta	3,416.61
84-CV-0132	Devries, Kenneth E.	1,382.80
84-CV-0134	Konyn, Emerance	2,000.00
84-CV-0137	Crawford, Robert	2,000.00
84-CV-0140	Norlander, Walter J., Mr. & Mrs.	405.00
84-CV-0141	Oleksijew, Walter	Dismissed
84-CV-0142	Schneider, Herman D.	1,119.47
84-CV-0144	Daniel, Isaiah	2,670.61
84-CV-0146	Pitts, Gwendolyn	974.63
84-CV-0148	Hall, Curtis	Denied
84-CV-0149	Richardson, Mildred	2,000.00
84-CV-0150	Tomaka, Cordelia G.	2,000.00
84-CV-0152	Alvarez, Arturo	11,240.09
84-CV-0153	Colson, Wayne	454.50
84-CV-0154	Spraggins, Allen	1,501.00
84-CV-0155	Young, Olis	252.57
84-CV-0159	Vaughn, Robert G. & Bette T.	2,000.00
84-CV-0160	Vaughn, Robert G. & Bette T.	1,639.67
84-CV-0165	Smith, Johnson	Denied
84-CV-0170	Holcornb, Annie	2,000.00
84-CV-0171	Jans, Loretta M.	327.39
84-CV-0172	Klacza, Barbara A.	15,000.00
84-CV-0173	Villarreal, Mary	2,000.00

84-CV-0180	Farias, Javier	Denied
84-CV-0181	Ferdman, Louise	97.36
84-CV-0182	Gary, Charles	Denied
84-CV-0186	McAfee, Zerry	2,000.00
84-CV-0187	Pollard, Linda Ann	Denied
84-CV-0189	Tyler, Gloria J.	900.00
84-CV-0191	Booker, Mary	1,995.00
84-CV-0192	Burnett, Elizabeth	2,000.00
84-CV-0193	Locke, Michael J.	12,380.70
84-CV-0195	Macek, Frank	948.22
84-CV-0199	Leach, James	5,564.28
84-CV-0204	Bramlett, Sallie	2,000.00
84-CV-0209	McElroy, Jasper P.	1,870.65
84-CV-0211	Reidel, Bret Alan	6,405.40
84-cv-0225	<b>Thompson, Leslie R., Jr</b>	Denied
84-CV-0227	Powell, Dempsey	Denied
84-CV-0230	Nicarico, Thomas J.	2,000.00
84-CV-0231	Reyes, Carmen	650.00
84-CV-0235	Burner, Marcella	15,000.00
84-CV-0236	McCormick, Anthony J	2,230.99
84-CV-0238	Trnka, Arthur F.	Denied
84-CV-0239	Dixon, Renaldo E.	1,215.00
84-cv-0245	Johnson, Eric	15,000.00
84-CV-0246	Portis, Arthur J.	1,523.07
84-CV-0248	Brown, Dianna L.	1,466.68
84-CV-0253	Knoespler, Edward	446.04
84-CV-0258	Konstandinof, Krste	1,162.00
84-CV-0266	Moore, Rubye	Denied
84-CV-0267	Marcuccilli, Patricia	15,000.00
84-CV-0268	Varhol, Grace	518.93
84-CV-0269	Woolen, Joseph C.	1,169.08
84-CV-0270	Hawatmeh, Bishara & Hawatmeh, Hanan	6,750.00
84-CV-0271	Zabolotnyj, Dmytro	3,724.60
84-CV-0272	Ferrentino, Marjorie & Ferrentino, Peter	Denied
84-CV-0275	McKay, Scott C.	579.43
84-CV-0278	Trotter, John	512.00
84-CV-0282	Reyes, Linda	Denied
84-CV-0283	Tunstall, Corrine	2,000.00
84-CV-0284	Bradley, Mable	2,000.00
84-CV-0289	Suide, Joe	Denied
84-CV-0292	Common, Barbara & Common, James L.	2,000.00

84-CV-0294	Dowery, Gwendoyln	Denied
84-CV-0295	Gordon, Mary D.	346.28
84-CV-0296	Gliniewicz, Deborah	185.00
84-CV-0297	Madrigal, Alfredo	15,000.00
84-CV-0300	Williams, Yvonne	2,000.00
84-CV-0302	Hutson, Patricia Catherine	2,655.85
84-CV-0303	Jurs, Vernon E.	2,000.00
84-CV-0307	Hunter, Morton R.	448.00
84-CV-0309	Lewis, Henry T.	11,632.74
84-CV-0311	Scott, Clarye	1,095.65
84-CV-0317	Rushing, Pat & Anna	1,094.00
84-CV-0320	Hardiman, Barbara	1,911.54
84-CV-0322	Vecchi, Charles D.	3,773.80
84-CV-0323	Giles, Michael	Denied
84-CV-0325	Cooper, Noticia	160.50
84-CV-0328	Rager, Gayle	15,000.00
84-CV-0330	Robins, Doris L.	15,000.00
84-CV-0331	Rushing, Shelby K.	2,000.00
<b>84-CV-0332</b>	<b>Cerny, William L.</b>	<b>3,226.13</b>
84-CV-0333	Flowers, Barbara	2,000.00
84-CV-0334	Jakes, Georgia A.	15,000.00
84-CV-0336	Mahnesmith, Savanah, Guardian of Joshua Marsh, minor	15,000.00
84-CV-0338	Young, George R.	Denied
84-CV-0342	Cooper, Perry S.	2,000.00
84-CV-0344	Lerner, Ralph	294.80
84-CV-0347	Pyssler, Pearl	2,000.00
84-CV-0348	Gaasrnd, Brian	396.78
84-CV-0350	Howard, Katherine	2,000.00
84-CV-0353	Torres, James	2,000.00
84-CV-0354	Wilkinson, William W., IV	321.18
84-CV-0358	Ryan, Robert E.	2,000.00
84-CV-0360	Beymer, Joseph R.	1,041.09
84-CV-0362	Kleine, Mary E.	15,000.00
84-CV-0364	Andersen, Loretta E.	473.68
84-CV-0368	Kelly, Sharon G.	2,811.36
84-CV-0369	Miller, Bobby H.	220.00
84-CV-0371	Troutman, Laura A.	8,369.13
84-CV-0373	White, Dorothy	1,380.00
84-CV-0374	Yardley, Myron C.	2,000.00
84-CV-0376	Johnson, Johnny L.	5,917.80

84-CV-0378	Lary, Daniel R.	271.49
84-CV-0383	Ortiz, Ellen	2,000.00
84-CV-0385	Lee, Mabel	423.24
84-CV-0386	Betts, James C.A., Jr.	2,761.35
84-CV-0389	Bushman, James R.	230.33
84-CV-0391	Jones, McKinley	1,998.60
84-CV-0393	Morawski, Michael A., & Morawski, Martin & Morawski, Mary	2,000.00
84-CV-0394	Roscoe, Jeff	1,192.01
84-CV-0397	Lunt, Robby	845.30
84-CV-0398	Matariyeh, Khalil A.	Denied
84-CV-0402	Giglio, Karen M.	2,000.00
84-CV-0408	Silva, Alfonso L.	11,090.50
84-CV-0420	Naseef, Joseph	13,643.19
84-CV-0421	Reams, Lizzie	Denied
84-CV-0423	Stinson, Josephine	862.12
84-CV-0426	Leonard, Patricia	2,000.00
84-CV-0430	Frantz, Anna F.	2,000.00
84-CV-0431	Lee, Glen E., Sr.	43.40
84-CV-0437	Knox, Melvin	57.67
84-CV-0441	Wormley, Susan K.	2,000.00
84-CV-0443	DiBiase, Kathleen	509.48
84-cv-0445	Roman, Mary E.	535.00
84-CV-0447	Mendoza, Maririlio	Denied
84-CV-0448	Ramirez, Jesse	174.90
84-CV-0450	Watson, Michelle Lynn	98.93
84-CV-0451	Anderson, Harold MG	Denied
84-cv-0453	Kurpias, Tom	236.35
84-CV-0456	Sanchez, Paul S.	1,321.43
84-CV-0458	Winters, William	1,439.00
84-CV-0459	Becker, Mitchell S.	792.70
84-CV-0462	Walker, Frances	406.50
84-CV-0464	Dnning, Henry	1,000.00
84-CV-0465	Dunning, Henry	987.00
84-CV-0466	Dunning, Henry	1,577.00
84-CV-0467	Dunning, Henry	1,587.00
84-CV-0468	Stogsdill, Carol Ann	2,000.00
84-CV-0469	Mark, Stella	15,000.00
84-CV-0470	Kelly, George E.	1,075.00
84-CV-0472	Mumma, Marlin R.	1,609.20
84-CV-0473	Pacheco, Antonio	1,500.00

84-CV-0474	Smith, James L.	2,000.00
84-CV-0476	Williams, Pauline	Denied
84-CV-0477	Hume, June A.	2,000.00
84-cv-0478	Lozano, Guadalupe	15,000.00
84-CV-0484	Knight, Ann	2,000.00
84-CV-0485	Lynch, Melva M.	Denied
84-CV-0487	Abbott, Norman R.	Denied
84-CV-0490	Billinis, Panagiotis	Dismissed
84-CV-0494	DeLaGarza, Paula	1,430.70
84-CV-0501	Rhone, Pearl	Denied
84-CV-0502	Phillips, Dennis	804.51
84-CV-0503	Thompson, Eula	2,000.00
84-CV-0504	Thomas, Emma & Thomas, Elizabeth	1,801.24
84-CV-0506	Yunevich, Nellie	2,000.00
84-CV-0507	Adams, Lonzo, Jr.	3,693.50
84-CV-0512	Horton, Fannie	1,752.00
84-CV-0514	Jones, Abbie	1,915.00
84-CV-0516	Paulin, Richard A.	2,000.00
84-CV-0518	Taylor, Virgil	446 55
84-CV-0523	Goodin, John W.	Dismissed
84-CV-0527	Jamison, Charlene	38.00
84-CV-0529	Pawlansky, Anna	1,558.18
84-CV-0541	Langhans, Donald Kevin	180.10
84-CV-0544	Nirenski, Zanina K.	928.00
84-CV-0548	Sekuris, James S.	975.00
84-CV-0550	Cartwright, Patricia K.	2,000.00
84-CV-0551	Christ, John	15,000.00
84-CV-0552	Collins, Zelma	Denied
84-CV-0555	Kornowicz, Stanley	Denied
84-CV-0556	Mohley, Henry L.	822.72
84-CV-0557	Rose, William L.	2,000.00
84-CV-0561	Collins, Emerson	1,298.00
84-CV-0562	Culp, Wanda M.	2,000.00
84-CV-0566	Jackson, Montoria	1,522.00
84-CV-0567	Johnson, Richard H.	2,000.00
84-CV-0570	Moran, James P.	2,179.46
84-CV-0571	Norwood, Gary George	2,000.00
84-CV-0573	Roth, John C.	3,341.72
84-CV-0575	Tarnowski, Robert J.	102.25
84-CV-0578	Waite, Gertrude	551.56
84-CV-0580	Ellis, George, Jr.	Denied

84-CV-0581	Fort, Pearlle	3,462.60
84-CV-0582	Havrilka, Nancy J.	15,000.00
84-CV-0583	Myzia, Michael J.	Denied
84-CV-0588	Heneghan, Sean Thomas	Denied
84-CV-0591	Potucek, Barbara A	15,000.00
84-CV-0592	Reynolds, Bertha	Denied
84-CV-0595	Cannon, Aaron, Jr.	3,453.84
84-CV-0596	Haj, Abdel T.	58.28
84-CV-0597	Clover, Clare, Executor of the Estate of Ethel Safford	3,650.86
84-CV-0600	Ochman, Fay	243.85
84-CV-0601	Verstraete; Angela	763.32
84-CV-0605	Chung, Won-Ak	59.60
84-CV-0612	Duny, Edith	876.83
84-CV-0615	Salzburg, John J., Jr.	2,000.00
84-CV-0618	Zavala, Jose Luis	700.00
84-CV-0626	King, Ellen	2,000.00
84-CV-0630	Miller, Jim L.	1,997.20
84-CV-0633	Berman, Donna N.	569.92
84-CV-0635	Christmas, Isaiah	1,866.00
84-CV-0638	Leach, Dyanne	1,175.00
84-CV-0640	Bolden, Jeffery	1,739.00
84-CV-0643	Gilmore, George D.	Denied
84-CV-0645	Warner, Marjorie J.	2,530.00
84-CV-0647	Hendricks, Robert E.	1,797.29
84-CV-0650	Pinada, Aura	15,000.00
84-CV-0652	Tigerman, Judson Joel	393.90
84-CV-0655	Tucker, Terry & Tucker, Dee	2,000.00
84-CV-0656	Vasquez, Virginia Plagakis	2,000.00
84-CV-0658	Burzawa, Paula	560.02
84-CV-0659	Clark, Dorothy Mae	1,450.00
84-CV-0660	Lane, Priscilla	1,507.00
84-CV-0661	McKinnon, Mattie	2,000.00
84-CV-0664	Aguinaga, John T.	2,000.00
84-CV-0675	McClendon, Leatha & Eugene	1,600.00
84-CV-0676	Williams, Ardelia	2,000.00
84-CV-0678	Jackson, Christine	2,000.00
84-CV-0685	Manning, Jack A.	1,787.00
84-CV-0686	Manning, Jack A	1,025.00
84-CV-0690	Taylor, Willie Mae	2,000.00
84-CV-0691	Thomas, Emanuel, Jr.	2,900.00

84-CV-0694	Brown, Floyda	1,971.00
84-CV-0698	Wangerin, Lewana J.	2,000.00
84-CV-0702	Rios, Jesus	1,645.00
84-CV-0703	Rosado, Irma	1,800.00
84-CV-0706	Whitaker, Herman	310.71
84-CV-0717	Alport, Gerald & Harold	2,000.00
84-CV-0719	Kraerner, Gerald E.	1,944.50
84-CV-0723	Taylor, Gilene	2,000.00
84-CV-0731	Oriold, Nancy C.	902.00
84-CV-0740	Semrow, Sandra Kay	383.82
84-cv-0744	Larkridge, Delilah	15,000.00
84-CV-0745	Dancy, S. P.	1,482.00
84-CV-0746	Fitzpatrick, William C.	142.00
84-CV-0747	Grant, Annie Bell	1,850.00
84-CV-0750	Montes, Jose A.	2,000.00
84-CV-0762	Showers, Richard	2,000.00
84-CV-0770	Maldonado, Esperanza	2,000.00
84-cv-0777	Brown, Grace	Denied
84-CV-0778	<b>Buehler, Richard J. &amp; Buehler, Ann</b>	<b>4,700.19</b>
84-CV-0779	Curry, Carolyn	258.40
84-CV-0781	Morner, June	300.50
84-CV-0782	Nieves, Elizabeth	2,000.00
84-CV-0783	Thao, Xu Xu	1,901.30
84-CV-0785	Winkleman, Flo	789.33
84-CV-0786	Adams, Theresa M.	1,570.00
84-CV-0788	Battles, James E.	2,301.95
84-CV-0796	Ashford, George	329.51
84-CV-0806	Torres, Mercedes	1,674.19
84-CV-0808	Amundsen, Ragna	475.67
84-CV-0811	Prather, Gordon	Denied
84-cv-0812	Hobbs, Ronald O.	114.35
84-CV-0819	Casey, Catherine J.	2,000.00
84-CV-0823	Harris, Betty	2,000.00
84-CV-0824	James, Mary M.	1,642.20
84-CV-0827	Randle, Jesse, Jr.	2,445.44
84-CV-0834	Mann, Lola M.	737.66
84-CV-0846	Crocker, Gerry T.	2,000.00
84-CV-0847	Nieves, Tomasa O.	2,000.00
84-cv-0850	Medernach, B. Lourine	1,489.15
84-CV-0853	Ray, James A.	Denied
84-CV-0854	Amos, Gregory P.	1,616.71

84-CV-0864	Johnson, Thomas A.	2,000.00
84-CV-0868	Blackwell, Minnie	1,755.00
84-CV-0877	Kallenbach, Reggie	2,000.00
84-CV-0888	Barrow, Robert J.	180.51
84-CV-0893	Butorac, Mara	866.25
84-CV-0895	Parthidge, Martha	155.00
84-CV-0897	Sharp, Zula Mae	2,000.00
84-CV-0903	Tracz, Helen	2,209.00
84-CV-0906	Gardner, Owens	15,000.00
84-CV-0909	Crum, Elnor I.	1,770.00
84-CV-0910	Grayned, Mary C.	Denied
84-CV-0914	Yracheta, Timothy, Jr.	1,758.60
84-cv-0919	Baker, John Henry, Jr.	Dismissed
84-CV-0922	Davis, Charles, Sr.	Denied
84-CV-0930	Tompkins, John E.	2,000.00
84-CV-0931	Williams, Alyce	1,810.00
84-CV-0939	Longoria, Linda	218.00
84-CV-0942	Buss, Gerrienne	281.84
84-CV-0955	Goard, Kenneth Leon	15,000.00
84-CV-0959	Neuberg, James A.	Dismissed
84-CV-0965	Binns, Mary	1,167.18
84-CV-0968	Barnhart, Vera V.	723.20
84-CV-0971	Almanza, Dell & Evelyn	2,000.00
84-CV-1002	McDaniel, Bertha	Denied
84-CV-1005	Przybycien, Marion	15,000.00
84-CV-1009	Surber, Virgil A.	3,974.95
84-CV-1010	Surber, Virgil A.	140.40
84-CV-1025	Major, Betty R.	2,000.00
84-CV-1026	Aldridge, Barbara H.	2,000.00
84-CV-1031	Williams, Irma J.	800.00
84-CV-1040	Horwitz, Katherine	2,000.00
84-CV-1044	Wunderlich, Florence	476.44
84-CV-1046	Burris, Sally	73.00
84-CV-1047	Dunbar, George D.	2,000.00
84-CV-1051	Barker, Corrie M.	800.00
84-CV-1055	Edwards, Dorothy L.	2,000.00
84-CV-1067	Geissman, Mary & Donald	2,000.00
84-CV-1072	Rivera, Hector	2,000.00
84-CV-1084	Baranski, Steve	342.00
84-CV-1090	Seitz, Helen	88.58
84-CV-1115	Anderson, Kimberly K.	399.60
84-CV-1129	Petrone, Fay M.	1,478.79

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