

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

VOLUME 27

**Containing cases in which opinions were filed and orders
of dismissal entered, without opinion, between
July 1, 1969 and June 30, 1972**

SPRINGFIELD, ILLINOIS

1975

(Printed by authority of the State of Illinois.)



PREFACE

The opinions of the Court of Claims herein reported are published by authority of the provisions of Section 18 of the Court of Claims Act, approved July 17, 1945, as amended; Ill. Rev. Stat., 1971, Ch. 37, Sec. 439.18, et seq.

The Illinois Court of Claims hears and determines claims against the State of Illinois based on its laws and administrative regulations, other than claims arising under the Workmen's Compensation Act or the Workmen's Occupational Diseases Act.

The Court also has exclusive jurisdiction to hear and determine all claims against the State: (1) based upon any contract with the State; (2) based on tort by an agency of the State; (3) based on time unjustly served by innocent persons in Illinois prisons; (4) based on tort by escaped inmates of state controlled institutions; (5) for recovery of funds deposited with the State pursuant to the Motor Vehicle Financial Responsibility Act; and, (6) to compel replacement of a lost or destroyed state warrant.

Programs to compensate the next of kin of law enforcement officers, firemen, national guardsmen and naval militiamen killed in the line of duty are administered by the Court.

There has been a substantial increase in the number of claims arising solely as the result of the lapsing of an appropriation from which the obligation could have been paid. This is an outgrowth of the July 1, 1969, change from biennial to annual fiscal planning with the consequent lapsing of appropriations on September 30 of each year in accordance with the State Finance Act. Because of both the volume and general similarity of their content, opinions in such cases have not herein been reproduced in full.

MICHAEL J. HOWLETT
*Secretary of State and
Ex Officio Clerk of the
Court of Claims*

Officers of the Court

JUDGES

MAURICE PERLIN, *Chief Justice*
Chicago, Illinois
April 5, 1961—

JOHN M. BOOKWALTER, *Judge*
Danville, Illinois
May 7, 1969—March 9, 1970

ROBERT I. DOVE, *Judge*
Shelbyville, Illinois
May 22, 1963—January 12, 1971

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

MARION BURKS, *Judge*
Chicago, Illinois
January 13, 1971—

WILLIAM J. SCOTT, *Attorney General*
January 13, 1969—

JOHN W. LEWIS
Secretary of State and ~~Ex~~ Officio Clerk of the Court
October 13, 1970—

MELVIN N. ROUTMAN, *Deputy Clerk*
Springfield, Illinois
April 10, 1964—December 31, 1970

EARL MADIGAN, *Deputy Clerk*
Lincoln, Illinois
January 1, 1971—January 4, 1972

PETER W. McCUE, JR., *Deputy Clerk*
Sherman, Illinois
January 5, 1972—

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**CASES ARGUED AND DETERMINED IN THE COURT
OF CLAIMS OF THE STATE OF ILLINOIS**

(No. 5410—Claimants awarded \$190.00.)

WALLACE PANTENBERG AND HELEN PANTENBERG, A Limited Partnership, d/b/a MENDOTA DIESEL AND TRUCK SERVICE, Claimant, vs. DEPARTMENT OF PUBLIC WORKS AND BUILDINGS, STATE OF ILLINOIS, Respondent.

Opinion filed July 31, 1969.

BAKER AND WAGNER, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—services rendered. Where evidence showed that wreckers performed work for the respondent, they will be paid on an hourly basis for work performed.

DOVE, J.

On January 26, 1967, a severe blizzard struck Lee County, Illinois, covering the highways with snow. The Division of Highways dispatched equipment to clear the highways, including several trucks that were operating on U. S. Route 52 near Mendota, Illinois. While removing snow from the highways, one of the trucks became stuck approximately seven miles north of Mendota, Illinois, on Route 52.

Helen M. Pantenberg, one of the claimants herein, testified that at approximately 3:30 p.m. on January 26, 1967, Eugene Washburn, Field Engineer for the Dixon Highway District, called the claimants' place of business, and requested the services of claimants' wreckers on Route 52. The caller said they were having trouble with State trucks stalled on Route 52, and requested claimants to

send wreckers to assist them. Helen Pantenberg testified that she told the caller that one wrecker was already out, and that she would send the big wrecker, and, just as soon as the other wrecker got in, she would send that one up too.

The big wrecker went immediately to the spot where State truck T-7062 was stuck in the snow seven miles north of Mendota on U. S. Route 52. The large wrecker pulled State truck T-7062 from the ditch, and put it back into service. However, shortly thereafter State truck T-7062 again became stuck in a snowbank, and required the services of the big wrecker to remove it from the snowbank, and put it back into service.

The small wrecker was dispatched to assist several snowplows on Route 52 at about 5:00 p.m. on January 26, 1967. There is testimony in the record that the small wrecker pulled two highway snowplows out of snowbanks on at least two separate occasions. It appears from the record in this case that the large wrecker was engaged in assisting State Highway trucks from approximately 3:30 p.m. until at least 10:00 p.m. for a total of 6½ hours. It also appears from the record that the small wrecker was engaged in assisting State Highway trucks and snowplows from approximately 5:30 p.m. until 10:00 p.m. for a total of 4½ hours.

Wallace Pantenberg, one of the claimants in this action, testified that he has two wreckers in his business. One is a large 6-wheel drive wrecker, which rents for \$35.00 an hour, and the other is a small wrecker, which rents for **\$25.00** an hour.

Respondent has not denied that claimants were asked to assist in removing a number of State Highway trucks from snowbanks on the date in question. There is some controversy as to whether the request was for one or both of the trucks. However, there appears to be evidence in the

record that the request was for both trucks. There is also testimony in the record that claimants submitted a bill to respondent in the sum of \$570.00, and that respondent has paid to claimants the sum of \$150.00.

The issue in this case is whether claimants are entitled to compensation in excess of \$150.00 for the services rendered to the State of Illinois on the date in question.

It is the opinion of this Court that respondent should pay to claimants the rental value of the large wrecker for the 6½ hours that the large wrecker was engaged in assisting State trucks at the rate of **\$35.00** per hour, which amounts to **\$227.50**, and the rental value of the smaller wrecker for the 4½-hour period that the small wrecker was engaged in assisting State trucks at the rate of \$25.00 per hour, which amounts to \$112.50, or a grand total of \$340.00. Since respondent has already paid claimants the sum of \$150.00, the Court hereby makes an award to claimants in the sum of \$190.00.

(No. 5426—Claimants awarded \$1,550.00.)

JACQUELYNNE GILMORE AND CARMELLA JONES, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed July 31, 1969.

MINN AND AUSLANDER, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

NEGLIGENCE—*res ipsa loquitur*. Where cement block fell from a bridge striking a passing car. The doctrine of *res ipsa loquitur* applied because the respondent has the right to control of the bridge, and where there was no evidence of contributory negligence, claimant would recover.

DOVE, J.

The uncontested facts of this case are that on July 13, 1966, claimant, Jacquelynne Gilmore, was the operator of

automobile in which claimant, Carmella Jones, was a passenger. The automobile was proceeding in a southerly direction on South Shore Drive at the intersection of 23rd Street in the City of Chicago. As the automobile of claimant was passing beneath the 23rd Street overpass, a portion of the railing of the overpass fell upon it, striking and shattering the windshield, and landing on the lap of claimant, Carmella Jones.

The slab of concrete was introduced into evidence, and appeared to weigh between six and seven pounds. It was approximately eight inches in length, and six to seven inches in width. The Chicago Police took claimants to the Michael Reese Hospital for first aid. The evidence indicates that the special damages suffered by Jacquelynne Gilmore amounted to \$242.00, and the special damages for claimant, Carmella Jones, amounted to \$215.00. The special damages of both claimants included medical expenses and loss of wages.

Respondent filed a departmental report, but offered no testimony relating to the occurrence.

It is claimants' contention that the State of Illinois was guilty of negligence by reason of the doctrine of *res ipsa loquytur*. Respondent contends that the doctrine of *res ipsa loquytur* is not applicable because the claimants have failed to establish the element of control by respondent.

In the opinion of this Court the doctrine of *res ipsa loquytur* is properly invoked by claimants. In *Charles M. Kenney, Administrator, etc., vs. State of Illinois*, 22 C.C.R. 247, the Court stated:

“Under the maxim *res ipsa loquytur*, our courts have announced many times that where a thing, which has caused injury, is shown to be under the management of the party charged with negligence, an accident is such as in the ordinary course of things does not happen, if the management uses proper care. The accident itself affords reasonable evidence in the absence of an explanation by the party charged. that it arose from want of proper care.”

In the case of *McCleod vs. Nel-Co Corp.*, 112 N.E.2d 501; 350 Ill. App. 216, plaintiff rented a room in a hotel, and, while in bed, plaster fell from the ceiling, and landed on the head of the plaintiff. The court in this case invoked the doctrine of *res ipsa loquitur*, and stated:

“ . . . Requirement that before the rule of *res ipsa loquitur* can be applied it must appear that the instrumentality was under the management and control of the defendant does not mean or is not limited to actual physical control, but refers rather to the right of control at that time ”

While it might be argued in this case that the State of Illinois did not have actual physical control over the bridge from which a piece of the railing fell onto the claimants, it is the opinion of this Court that the State of Illinois did have the right of control at the time of the occurrence.

In this case there is no evidence, nor is there any contention on the part of respondent, that claimants were guilty of contributory negligence. Respondent has offered no evidence to rebut the presumption of negligence raised by the application of the doctrine of *res ipsa loquitur*. In the opinion of this Court, respondent is liable for the damages inflicted on claimants.

The Court hereby makes an award to claimant, Jacquelynne Gilmore, for her medical expenses and loss of wages, pain and suffering in the sum of \$800.00; and makes an award to claimant, Carmella Jones, for her medical expenses, loss of wages, pain and suffering in the sum of \$750.00.

(No. 5448—Claimant awarded \$1,200.00.)

GLADER CORPORATION, A Corporation, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed July 31, 1969.

SHURL ROSMARIN, Attorney for Claimant.

WILLIAM G. CLARK, Attorney General, SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACT—*Employment Agency*. Where respondent hired an employee through an employment agency and the employee worked for the respondent for more than 30 days, Ch. 48, Sec. 197(c), Ill. Rev. Stat., 1971, requires that the employment agency be paid its fee.

PERLIN, C.J.

Claimant, an employment agency, seeks the sum of \$1,200.00 for services rendered to respondent pursuant to an agreement, dated August 15, 1966. The agreement provided as follows:

“Whereas, the Office of the Secretary of the State of Illinois desires to employ a qualified Computer System Analyst with extensive experience with the Univac III Programing in Salt Language. Said person to be employed must have at least a minimum experience with NCR Optical Scanner and Optical Font adding machine input to Univac III System.

“Whereas, the Glader Corporation of 110 South Dearborn Street, Chicago, Illinois, Certified Personnel Service, desires to acquire such a person as requested by the Office of the Secretary of State, State of Illinois:

“Therefore, it is hereby agreed by and between the parties hereto that should the Glader Corporation furnish the Office of the Secretary of State with a person possessing the above stated qualifications, and who is acceptable to the Office of the Secretary of State, the Secretary of State agrees to pay the personnel fee for the services of said Glader Corporation up to and including the sum of \$1,400.00.”

The contract was signed by the Secretary of State through his agent, and by Florence Smith for the Glader Corporation.

Claimant alleges that it furnished a qualified computer system analyst to respondent, namely Ernest Smale, who commenced work as an employee of ‘respondent on September 1, 1966. Claimant further alleges that it presented a claim to respondent through his Administrative

Assistant, I. Lawrence Richardson, on or about November 21, 1966, on which date the check, which had been issued by respondent to claimant, had been stopped; and, that claimant is entitled to the amount claimed herein.

A departmental report submitted by respondent denies that Ernest Smale met the qualifications of the contract in that "he did not have the extensive experience with Univac III Programing in Salt Language, nor did he have at least a minimum experience with NCR Optical Scanner and Optical Font adding machine input to Univac III System." Respondent further contends that there was no provision in the contract as to when a decision as to acceptability must be made, and that a reasonable time, which must be inferred, would be six months.

Mr. Richardson testified that Mr. Smale worked for respondent for *two* and one-half months with six days of unexcused absences. He further testified that Mr. Smale could not program in Salt Language; that three people had to be hired to assist him, and that his work was not acceptable. Mr. Richardson stated that it would take a year to see if a man is qualified, and that Mr. Smale was not fired, but left of his own volition.

Mr. Richardson stated that payment on the check to claimant was stopped after he received notification that Mr. Smale was quitting. He also admitted that the reason for stopping payment on the check was not because Smale's qualifications were unsatisfactory, but that he sought employment elsewhere.

The matter appears to be resolved by the following provision of Ch. 48, Sec. 197(e), Ill. Rev. Stat., 1971:

"If the employer pays the fee, and the employee fails to remain in the position for a period of 30 days, such licensee shall refund to the employer all fees less an amount equal to 25% of the total salary or wages paid such employee during the period of such employment within 3 days after said licensed person has been notified of the employee's failure to remain in the employment. . ."

A further provision provides that, if the employee pays the fee, and is discharged at any time within 30 days for any reason other than “intoxication, dishonesty, unexcused tardiness, unexcused absenteeism or insubordination, or otherwise fails to remain in the position for a period of 30 days through no fault of his own, such licensee shall refund to the employee all fees. . .”

It is clear that the intent of the statute is that an employment agency is entitled to its fee from either the employer or the employee depending upon the original agreement, if the employee remains in the employment for a period of 30 days or more. The employee in the instant case worked for a period of more than **30** days. Therefore, claimant is entitled to the agreed sum of \$1,200.00.

Claimant is hereby awarded \$1,200.00.

(No. 5498—Claimant awarded \$265.80.)

CAVALIER INSURANCE CORPORATION, as Subrogee of VIRLEE BROWN, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed July 31, 1969.

E. PAUL RUSTIN, Attorney for Claimant.

WILLIAM G. CLARK, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

NEGLIGENCE—course of employment. Where truck driver for respondent was guilty of negligence in the operation of respondent's truck, in the course of his employment, and there was no evidence of contributory negligence on the part of the claimant, as subrogee, would recover.

DOVE, J.

Cavalier Insurance Corporation, as Subrogee of Virlee Brown, seeks recovery for damages to Brown's automobile in the sum of \$265.80, which were incurred in an accident on October 20, 1966.

From the evidence it appears that Virlee Brown was the owner of an automobile driven by one Clytee E. Fox;

that said automobile was standing in the line of traffic, facing south, at 5118 North Cicero Avenue in the City of Chicago; that Kenneth Zydek was employed by the State of Illinois, and was operating a 1966 International truck, license No. U-5508, in a southerly direction; and, that the truck driven by Zydek collided with the rear of Virlee Brown's automobile, causing damages thereto in the sum of \$265.80.

Cavalier Insurance Corporation paid Virlee Brown the said sum of \$265.80, and under its policy of insurance is now subrogated to the rights of the said insured.

It should be noted that no departmental report was submitted, and the respondent offered no testimony in its behalf. Before claimant makes a recovery it must be proved by a preponderance of evidence that he was free from contributory negligence, and that respondent's negligence was the proximate cause of damages suffered.

From the evidence we are of the opinion that Kenneth Zydek was guilty of negligence in the operation of respondent's truck, and was acting in the course of his employment; and, further, that there is no evidence of contributory negligence on the part of Virlee Brown, as owner of the car, or Clytee E. Fox, as driver.

Claimant, Cavalier Insurance Corporation, as Subrogee of Virlee Brown, is hereby awarded the sum of \$265.80.

(No. 5527--Claimant awarded \$55.00.)

WILLIAM S. WHITE, Claimant, *vs.* **STATE OF ILLINOIS**, Department of Children and Family Services, Respondent.

Opinion filed July 31, 1969.

WILLIAM S. WHITE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **LEE D. MARTIN**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5639—Claimant awarded \$43.00.)

W. A. NYE, Claimant, vs. STATE OF ILLINOIS, Department of Children and Family Services, Respondent.

Opinion filed July 31, 1969.

W. A. NYE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5642—Claimant awarded \$2,154.65.)

PAXTON COMMUNITY HOSPITAL, Claimant, vs. STATE OF ILLINOIS, Lincoln State School, Respondent.

Opinion filed July 31, 1969.

PAXTON COMMUNITY HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5646—Claimant awarded \$600.22.)

AMERICAN LAUNDRY MACHINERY INDUSTRIES, DIVISION OF MCGRAW-EDISON COMPANY, Claimant, vs. STATE OF ILLINOIS, Department of Mental Health, Respondent.

Opinion filed July 31, 1969.

TELLER, LEVIT AND SILVERTRUST, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant

DOVE, J.

(No. 3025—Claimant awarded \$5,245.47.)

ELVA JENNINGS PENWELL, Claimant, *vs.* **STATE OF ILLINOIS**, Respondent.

Opinion filed September 9, 1969.

GOSNELL, BENECKI AND QUINDRY, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **LEE D. MARTIN**, Assistant Attorney General, for Respondent.

AWARDS—The Court can make awards on a continuing basis when the claimant continues to have expenses as a result of compensable injury.

DOVE, J.

Claimant filed her petition for reimbursement for monies expended for nursing care and help, medical services, and expenses from February 1, 1968 to January 1, 1969, praying for an award in the sum of \$5,245.47.

Claimant was seriously injured in an accident on the 2nd day of February, 1936, while employed as a Supervisor at the Illinois Soldiers' and Sailors' Children's School at Normal, Illinois. The complete details on this injury can be found in the original cause of action, *Penwell vs. State of Illinois*, 11 C.C.R. 365.

On the 7th day of August, 1969, a stipulation between claimant and respondent was filed with the Clerk of the Court of Claims. as follows:

The petition filed by claimant seeking an award in the sum of \$5,245.47 shall be admitted into evidence in this proceeding without objection by either party.

No other oral or written evidence will be introduced by either party.

The Commissioner to which this case has been assigned and the Court may make and file their reports, recommendations, orders and decisions based upon the pleadings heretofore filed, and the evidence herein stipulated.

Neither party objects to the entry of an order in favor of claimant and against respondent in the sum of \$5,245.47.

Neither party desires to file briefs in this proceeding.

Both parties waive notice of any hearing, and agree that the aforesaid order may be entered without either party being present."

An award is made to claimant for the sum of \$5,245.47 for the period of time from the 1st day of February, 1968 to the 1st day of January, 1969. The matter of claimant's need for additional care is reserved by this Court for future determination.

(No. 4858—Claimant awarded \$19,500.00.)

HETTY ZIDEK, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed November 11, 1969.

EUGENE R. WARD, Attorney for Claimant.

WILLIAM G. CLARK, Attorney General, MORTON L. ZASLAVSKY and BRUCE J. FINNE, Assistant Attorneys General, for Respondent.

HIGHWAYS—evidence. To recover, claimant must prove by a preponderance that respondent was negligent; that such negligence was the proximate cause of her injury; and that the claimant was in the exercise of due care for her own safety.

HIGHWAYS—absence of guard rails. Where respondent knew of dangerous condition of bridge, and failed to construct guard rails or other temporary structure, the respondent did not fulfill its duty to maintain the roadway in a safe condition.

NEGLIGENCE—proximate cause. Absence of guard rails on bridge the proximate cause of claimant's injuries.

BOOKWALTER, J.

Claimant, Betty Zidek, seeks recovery in the sum of \$25,000.00 for personal injuries and related damages allegedly suffered when her automobile went out of con-

trol, and plunged over a bridge maintained by respondent.

The only testimony in this cause was given by claimant. Mrs. Zidek testified that on the morning of February 15, 1958, she was driving her automobile in a northerly direction on Harlem Avenue at or near West 69th Street in Cook County, Illinois; that she was en route to her place of employment, the National Chemical Company, which is located at 6216 West 66th Place, Clariton, Illinois. She testified that her speed at the time of the accident was approximately 15 - 20 miles per hour.

She stated that, as she was driving on the bridge over the Indiana Harbor Belt Railroad tracks at the aforesaid location, her car began to skid as a result of the icy and slippery condition of the bridge, and she skidded off of the bridge onto the railroad tracks some 75 feet below the bridge. After the car had started to skid, claimant's testimony was to the effect that she attempted to bring the car under control, but that she did not apply her brakes.

The highway in this case rises and curves as it approaches the bridge overpass, and is slightly banked. There were no guard rails on the east side of the bridge, the one over which the car plunged, and no warning signs indicating the absence of such rails. There were, however, signs to the effect that the bridge was slippery when wet. Some time after the accident, concrete guard rails were installed on both the east and west sides of the bridge in question.

As a result of this accident, claimant sustained a dislocation of her left hip; fracture of the neck of the right hip, which was repaired by open reduction surgery and the insertion of a metal screw; a fracture of the shaft of the right femur, which was repaired by open reduction surgery and the insertion of a metal plate; fracture of the left fibula; multiple fractures of the ribs, and a cerebral concussion.

Claimant's Item of Special Damages, as testified to by claimant, and as stipulated by both parties, are as follows:

Dr. Kenneth Fitzgerald	\$1,500.00
Drs. Robert Meany and F. A4. Howard	1,525.00
Arthur Wells, Physiotherapy	336.00
Little Company of Mary Hospital	1,963.74
Little Company of Mary Hospital	137.75
Little Company of Mary Hospital	249.60
Little Company of Mary Hospital	37.75
Little Company of Mary Hospital	39.00
Chicago Orthopedic Company	82.50
Dr. A. I. Valiunes (Anesthetist)	60.00
Dr. Kenneth Wang (Anesthetist)	85.00
Southwest Ambulance	28.00
Medicines	60.61
Household Help	800.00
Loss of wages as indicated by letter from Employer, National Chemical Company	1,950.00
Total	<u>\$8,854.95</u>

Claimant testified that, as a result of the accident, she is unable to bend her right knee, and that her right leg is stiff, causing her to walk with a limp.

In order for claimant to be entitled to an award she must prove the following elements by a preponderance of the evidence: (1) That respondent was negligent; (2) That **such** negligence was the proximate cause of her injury; and (3) That claimant was in the exercise of due care for her own safety. We are all aware of the fact that the State of Illinois is not an insurer of all persons who travel its highways. However, the State is bound to maintain its highways in such a manner that those using them may travel in a reasonably safe manner.

In this case respondent did nothing to fulfill its duty to the public to maintain the roadway in a safe condition. There were no warning signs and no temporary barricade even though respondent knew of the dangerous condition of the bridge when it became slippery due to moisture, and the even more dangerous condition where, as in this case,

the bridge was covered with snow and ice. There is no question that the absence of the guard rails was the cause in fact of the injuries sustained by claimant, and the proximate cause of these injuries. Had the guard rails or some other temporary structure been in place, this type of accident would never have occurred.

Respondent's emphasis on the case of *Vogt, et al*, vs. *State of Illinois*, 18C.C.R. 202 is misplaced. In that case the skidding of claimant's car was the cause of his injury, a fact for which respondent could not be held accountable, whereas in the case before us the absence of the guard rails was the proximate cause of claimant's severe injuries, and not alone the skidding of her automobile.

We are of the opinion that claimant's testimony as to the speed of her vehicle at the time of the accident and as to her attempt to bring the car under control, without evidence to the contrary by respondent, discharges her burden of proving that she was free from Contributory negligence. It is, therefore, the opinion of this Court that claimant be awarded the sum of \$19,500.00 as an award for medical expenses, **loss** of earnings, pain and suffering, and for any permanent disability or loss of use she may have sustained.

(No. 5252—Claimants awarded \$2,273.70.)

FRED C. GRONBACH, CALVIN O. GRONBACH, and BETTY GRONBACH,
his wife, **Claimants**, vs. STATE OF ILLINOIS, **Respondent**.

Opinion filed November 11, 1969.

PERONA AND PERONA, Attorneys for Claimants.

WILLIAM G. CLARK, Attorney General; MORTON ZASLAVSKY, ETTA J. COLE AND SHELDON RACHMAN, Assistant Attorneys General, for Respondent.

DAMAGES—*Consequential damages after condemnation award.* Where condemnation award did not compensate **claimants** for **loss** to possible flooding

because the loss was speculative, **claimant** could **later collect** for **said** consequential damages when the **losses** can be shown.

PERLIN, C.J.

Claimants seek recovery of the sum of \$2,888.28 for damages sustained to farm land owned by claimants after respondent took part of the land for the construction of Interstate 80. The claimants request reimbursement for monies spent to correct a flooding condition and for loss of specific crops.

The evidence shows that claimants are owners of 80 acres of land in Bureau County, Illinois, now and prior to **1963**. In **1963**, the State of Illinois built Interstate 80, which intersected claimants' farm, and caused the highway to be approximately ten to fifteen feet higher than claimants' land.

Hespondent's only witness, James McCoy, the project engineer testified that in **1963** the State of Illinois acquired claimants' land for the necessary right-of-way for the sum of approximately \$500.00 per acre. He testified that the settlement included land taken and damage for the remainder through severance and triangulation. Mr. McCoy stated that the possibility of a future drainage problem was discussed in the negotiations, but it was decided that it would be "speculative and conjecture" to determine the damages, and, if there were any, "this should be taken up with the Court of Claims". The deeds to the land are not a part of the evidence, nor was there a departmental report submitted.

Claimants' only witness, Calvin O. Gronbach, testified that the drainage of the farm before **1963** was good, but that after the road was installed, the farm was flooded and crops were drowned for two years in a row, which caused claimants to lose four acres of corn one year and seven acres the next.

Claimants submitted into evidence a plan of tiling to

correct the flooding, which was prepared for them by the United States Department of Agriculture Soil Conservation Service in cooperation with the Bureau County Soil Conservation Service, and stated that they had hired a tiler to lay the tile as specified in the plan. Claimants spent **\$1,565.70** for tile and labor, and are also seeking reimbursement in the sum of **\$180.00** for the use of their cat machine at **\$15.00** per hour. They claim **\$1,056.00** in damages for four acres of corn lost in **1963**, and seven acres of corn lost in **1964**. The loss was computed at eighty bushels per acre at **\$1.20** per bushel. On cross examination, claimant testified that the corn would bring **\$1.20** per bushel on the market, but the **cost of production was not figured in claimants' estimate**, and that cost would be between **\$0.60** to **\$0.80** per bushel.

Respondent objects to claimants' request for reimbursement on the grounds that claimants took no bids for the tile work, nor obtained prior authority from the State to hire the particular tiler; that the construction of the highway was not proven to be the sole cause for the damage; that there was no evidence that the damage was not caused by an abnormally high rainfall; that the damages are speculative, and that claimants could not rely on representations by State employees as to payment for future damages.

However, respondent has submitted no evidence that the damages were not incurred by claimants; that the amount spent to correct the flooding was not reasonable, nor that there was another cause for the flooding.

Whether claimants may seek consequential damages after having been compensated for the land was decided in the case of *Gan vs. State of Illinois*, Court of Claims No. **5201**. In that case, the right-of-way for a road built by respondent was procured, and the deed contained "the usual release from liability and damages to remaining property caused by the use, construction or opening up of

the highway.” After the road was constructed, claimants’ property, which was approximately 23 feet below the grade of the highway, was flooded. Claimants contended that the flooding was caused by the failure of the Division of Highways to provide drainage. The Court denied recovery for depreciation of property value, because claimants had knowledge of the highway’s construction when they built their home, and also granted the right-of-way in a recorded deed. However, the Court allowed reimbursement for all expenditures made to correct the flooding condition stating: “This Court holds that claimants are entitled to just compensation for consequential damages actually sustained subsequent to the taking of the property under the Eminent Domain Act, and after the construction of the highway.” (*Tenboer vs. State of Illinois*, 21 C.C.H. 359).

The instant case falls within the rules set forth in the *Gan* case, and claimants are entitled to the actual damages incurred by reason of the flooding.

Therefore, claimants may recover \$1,565.70 for tile and labor, \$180.00 for use of ‘the cat machine, and \$528.00 for loss of crops.

Claimants are hereby awarded the sum of \$2,273.70.

(No. S411—Claimant awarded \$665.00.)

DUFFY DODGE, INC., Claimant, vs. STATE OF ILLINOIS, Secretary of State, Respondent.

Opinion filed November 11, 1969.

NORMAND A. COHEN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; BRUCE J. FINNE, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5428—Claimant awarded \$800.00.)

JONES TOWING, INC., Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed November 11, 1969.

MCBRIDE, BAKER, WIENKE AND SCHLOSSER and CAMPOY AND HORNE, Attorneys for Claimant.

WILLIAM G. CLARK, Attorney General; MORTON L. ZASLAVSKY AND ETTA J. COLE, Assistant Attorneys General, for Respondent.

NEGLIGENCE—operation of bridge. Respondent was negligent in operation of bridge in lowering it after giving notice that the boat could proceed downstream.

PERLIN, C.J.

The complaint of claimant, a Louisiana Corporation, seeks recovery in the amount of \$5,119.70 for damages sustained to its Barge JONES-110 on the DesPlaines River on August 13, 1966, when a bridge owned and operated by respondent closed and struck the barge.

The record consists principally of depositions of claimant's witnesses, and a stipulation of both parties that the depositions may be received in lieu of oral testimony. Respondent offered no witnesses on its behalf, and filed no departmental report.

The evidence shows that the barge was being towed on the DesPlaines River at or near the Ruby Street bridge in Joliet, Illinois. George Durham, a mate, who was on the barge at front end during the accident, testified that the boat blew a signal whistle for the approach to the bridge. The bridge tender responded with a green light, and proceeded to open the bridge, but, when the barge was about half way under, the bridge was dropped, tearing a valve on the load line of the barge, which carried tanks on it. Mr. Durham further testified that a green light means that the bridge is opening, and was blinking at the time of the occurrence.

Claimant originally sought damages to the barge in the sum of \$5,119.70, but later testimony of Rubin Cioll, president of claimant corporation, revealed that replacement of two 8" gate valves amounted to \$790.00, and that it cost \$50.00 to test two cargo headers. A stipulation signed by the parties states: "That, if liability is established, claimant's damages do not exceed the sum of \$800.00."

There is no dispute on the question of respondent's negligent operation of the bridge in lowering it after giving notice that the boat could proceed downstream.

Claimant is hereby awarded the sum of \$800.00.

(No. 5530—Claimant awarded \$200.00.)

STEVINSON AUTO AND ELECTRICAL SCHOOL, Claimant, **vs. STATE OF ILLINOIS**, Office of the Division of Vocational Rehabilitation, Respondent.

Opinion filed November 11, 1969.

STEVINSON AUTO AND ELECTRICAL SCHOOL, Claimant,
pro se.

WILLIAM J. SCOTT, Attorney General; **LEE D. MARTIN**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

BOOKWALTER, J.

(No. 5532—Claimants awarded \$181.45.)

MARY M. WILSON AND WAYNE W. WILSON, d/b/a **HAWTHORNE DRUG COMPANY**, Claimants, **vs. STATE OF ILLINOIS**, Respondent.

Opinion filed November 11, 1969.

STUART, NEAGLE AND WEST, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General; **LEE D. MARTIN**, Assistant Attorney General, for Respondent.

NEGLIGENCE—*damage* by hospital escapee. Where patient in state hospital escaped and damaged claimant's drug store, respondent was negligent in its supervision where it was shown that the patient had escaped seven times from the hospital and could foresee that an escape by the patient could result in harm to himself or to the public.

PERLIN, C.J.

Claimants seek recovery of the sum of **\$272.45** for damages done to claimants' drug store when one Walter R. Bunge, an inmate of the Galesburg State Research Hospital, escaped on October **10, 1967**.

The action is brought pursuant to the following provision:

Whenever a claim is filed . . . for damages resulting from personal injuries or damages to property, or both, or for damages resulting from property being stolen, heretofore or hereafter caused' by an inmate who has escaped from a charitable, penal, reformatory or other institution over which the State of Illinois has control while he was at liberty after his escape, the Department of Mental Health, . . . shall conduct an investigation to determine the cause, nature and extent of the damages, and, if it be found after investigation that the damage was caused by one who had been an inmate of such institution and had escaped, the Department or Commission may recommend to the Court of Claims that an award be made to the injured party, and the Court of Claims shall have the power to hear and determine such claims. (Ch. 23, Sec. **4041**, Ill. Rev. Stat., 1967)

The evidence reveals the following undisputed facts:

On October **10, 1967**, and for approximately seven years prior thereto, Walter R. Bunge was an inmate of the Galesburg State Research Hospital, Galesburg, Illinois. The hospital is an institution operated and maintained by the State of Illinois through its Department of Mental Health.

Terry Moon, a psychiatric social worker at the hospital, testified that prior to October **10, 1967**, Mr. Bunge escaped from the hospital seven times, and that on some of those occasions he attempted to take his life. The records of the hospital showed that Bunge escaped about **7:30 p.m.** on the day in question, and returned the same evening. The hospital file also reflected that Mr. Bunge broke into the Hawthorne Drug Store in Galesburg, Illinois, at that time,

and while at the store he attempted to commit suicide by cutting his left wrist with a razor blade. Mr. Moon further testified that **Mr. Bunge** has had another unauthorized absence from the hospital since that date. Mr. Moon stated:

“Walter ruminates of suicide, and consequently suicide precautions are taken for him in the hospital, watched particularly close. However, he does not reside on a closed ward. He has freedom to move through the hospital, as most of our patients do.”

On the occasions when he escaped he just walked out of the hospital, according to **Mr. Moon**.

Wayne Wilson, claimant, testified that he and Mary M. Wilson were the owners of the Hawthorne Drug Company located at **15 East Main** in Galesburg, and that on **October 11, 1967**, he received a call from the police department in the early morning hours that someone had broken into his store. He went to the drug store, and observed that the glass in the front door had been broken. There was glass inside the store from the door, and on the east side of the store “the carpeting was saturated with blood, and the merchandise and the shelves on the north end of the prescription counter was all bloody.”

Mr. Wilson further testified that he had the door boarded up, and the carpeting was cleaned the next morning, but that the carpet cleaners could not remove all the blood stains. There were twelve square yards of carpeting, which had been installed a year before **October 10, 1967**, which remained stained. Nothing was stolen, except a **pack** of razor blades was lying on the counter, and one had been removed.

Claimant contends that respondent was negligent in not providing adequate supervision and confinement of **Mr. Bunge**; that his suicidal tendencies are such that “he should be under constant supervision, not only for the protection of the patient, but also for the safety and well-being of the person and property of others, and the public generally”; that he has escaped nine times from the hospital,

and has attempted to take his life on some occasions.

Respondent argues that on the other occasions of Mr. Bunge's unauthorized absences, he had returned the same day without incident of any kind or harm to any property or any member of the public, and it could not be foreseen that the patient would leave the hospital to break into a store, get hold of a razor blade, and attempt suicide in the store.

Respondent further notes that claimant was reimbursed in the amount of \$91.00 by his insurance carrier for some of the damage, which amount should be deducted from any award.

The Court must conclude that respondent was negligent in its supervision of a patient who had escaped seven times prior to the occasion in question, and had tried to take his life at least some of those times. Although he was watched particularly close while in the hospital, it is apparent that no precautions were taken to see that he remained in the institution to which he was confined. A finding of negligence does not necessitate a finding that the specific act committed by an escaped inmate could have been foreseen. Respondent had ample reason to foresee that an escape by the patient could result in harm to himself or to the public.

Claimants are hereby awarded the sum of **\$181.45**, being the amount claimed less the \$91.00 paid by the insurance carrier.

(No. 5555—Claimant awarded \$420.00.)

SINCLAIR REFINING COMPANY, Claimant, **vs.** STATE OF ILLINOIS,
Military and Naval Department, Respondent.

Opinion filed November 11, 1969.

SINCLAIR REFINING COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

BOOKWALTER, J.

(No. 5569—Claimant awarded \$124.60.)

SINCLAIR REFINING COMPANY, Claimant, vs. STATE OF ILLINOIS,
Department of Conservation, Respondent.

Opinion filed November 11, 1969.

SINCLAIR REFINING COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5626—Claimant awarded \$634.44.)

WENDELL NIEPAGEN, d/b/a WENDELL NIEPAGEN GREENHOUSE,
Claimant, **vs. STATE OF ILLINOIS,** Respondent.

Opinion filed November 11, 1969.

COSTIGAN AND WOLLRAB, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN,
Assistant Attorney General, for Respondent.

MOTOR VEHICLES—escheat of Financial Responsibility deposit. Evidence disclosed that claimant was entitled to a refund of monies escheated to the State pursuant to Ch. 95½, Sec. 7-503, Ill.Rev.Stat., 1971.

BOOKWALTER, J.

Claimant, Wendell Niepagen, seeks recovery in the amount of \$634.44, this being the amount of credit extend-

ed by claimant to the Illinois Youth Commission for its purchase of certain plants during the years of **1965, 1966, and 1967.**

The parties to this action have stipulated as follows:

“The report of the office of the Illinois Youth Commission, dated April 17, 1969, shall be admitted into evidence in this proceeding without objection by either party.

“No other oral or written evidence will be introduced by either party.

“The Commissioner to which this case has been assigned and the Court may make and file their reports, recommendations, orders and decisions based upon the pleadings heretofore filed, and the evidence herein stipulated.

“Neither party objects to the entry of an order in favor of claimant and against respondent in the sum of \$634.44.”

The Illinois Youth Commission in its report admits to the fact that it purchased from Mr. Niepagen certain plants comprising a total amount of **\$634.44**, and that Mr. Niepagen had supplied all of the items purchased.

Since there appears to be no dispute concerning the fact that claimant has performed all the services entitling him to payment, and the only reason for non-payment of his claim is the fact that it is not possible for the Illinois Youth Commission to make payment from its present appropriations, this Court hereby awards claimant the sum of **\$634.44.**

(No. 5634—Claimant awarded \$537.72.)

SISTERS OF THE THIRD ORDER OF ST. FRANCIS, d/b/a ST. ANTHONY HOSPITAL, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed November 11, 1969.

MILLER, HICKEY, COLLINS AND CLOSE, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

BOOKWALTER, J.

(No. 5644—Claimant awarded \$1,356.64.)

UNIROYAL, INC., A New Jersey Corporation, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF PUBLIC WORKS AND BUILDINGS, DIVISION OF HIGHWAYS,** Respondent.

Opinion filed November 11, 1969.

MARAGOS, RICHTER, RUSSELL AND GARDNER, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

BOOKWALTER, J.

(No. 5653—Claimant awarded \$200.00.)

CHARLES R. WILLIAMS, Claimant, *vs.* **STATE OF ILLINOIS,** Respondent.

Opinion filed November 11, 1969.

CHARLES R. WILLIAMS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

MOTOR VEHICLES—escheat of Financial Responsibility deposit. Evidence disclosed that claimant was entitled to a refund of monies escheated to the State pursuant to Ch. 95½, Sec. 7-503, Ill Rev.Stat , 1971.

DOVE, J.

Claimant, Charles R. Williams, seeks recovery of the sum of \$200.00, which was deposited with the Office of the Secretary of State on January 28, 1963, pursuant to the Motor Vehicle Law. (Ch. 95½, Sec. 7-503, Ill.Rev.Stat.,

1971.). The requirement of deposit arose out of an automobile accident, which occurred on October 19, 1962, and involved a vehicle driven by claimant.

The evidence shows that a suit did arise out of the accident, being Case No. 64L 3278 in the Circuit Court of Cook County, and being entitled "*Charles R. Williams vs. Percy P. Casey*". This suit was resolved on March 25, 1969, before Judge Meyer Goldstein when a not guilty verdict was rendered.

The evidence further shows that claimant made demand for said sum from the Office of the Secretary of State on May 19, 1969, which Office refused the demand on the grounds that the \$200.00 had been transferred to the General Revenue Fund on September 8, 1966.

A stipulation has been entered into by claimant and respondent as follows:

"That claimant, Charles R. Williams, had deposited the sum with the Office of the Secretary of State—Safety Responsibility Section, as alleged in the claimant's complaint.

That there is lawfully due claimant the sum of Two Hundred Dollars and No Cents (**\$200.00**).

That said sum was transferred to the General Revenue Fund of the State of Illinois on September 8, 1966, pursuant to Ch. 95½, Sec. 7-503, Ill. Rev. Stat., 1967.

That claimant continues to be the sole person interested in this claim, and that no assignment thereof had occurred.

That upon the foregoing agreed case filed herein the Court shall decide thereon, and render judgment herein according to the rights of the parties in the same manner as if the facts aforesaid were proved upon the trial of said issue."

Claimant, Charles R. Williams, is hereby awarded the sum of \$200.00.

(No. 5657—Claimant awarded \$3,752.53.)

**HAROLD ROTHERMEL, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF AGRICULTURE, Respondent.**

Opinion filed November 11, 1969.

HAROLD ROTHERMEL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

BOOKWALTER, J.

(No. 5658—Claimant awarded \$426.09.)

TUSCOLA BUILDERS SUPPLY COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC WORKS AND BUILDINGS, DIVISION OF HIGHWAYS, Respondent.

Opinion filed November 11, 1969.

TUSCOLA BUILDERS SUPPLY COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

BOOKWALTER, J.

(No. 5674—Claimant awarded \$121.25.)

ALTON MEMORIAL HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed November 11, 1969.

ALTON MEMORIAL HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5678—Claimant awarded \$350.00.)

AMERICAN LIMB AND ORTHOPEDIC COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed November 11, 1969.

AMERICAN LIMB AND ORTHOPEDIC COMPANY, Claimant,
pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5091—Claim denied.)

MELVIN H. SHOOK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1969.

CLARENCE B. DAVIS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN,
Assistant Attorney General, for Respondent.

PRISONERS AND INMATES—*wrongful incarceration.* Before an award will be made for wrongful incarceration, claimant must prove by a preponderance of the evidence (1) that the time served in prison was unjust, (2) that the act for which he was wrongfully imprisoned was not committed and (3) the amount of damages to which he is entitled.

BOOKWALTER, J.

Claimant, Melvin H. Shook, seeks recovery in the sum of \$15,000.00 as damages for the time he unjustly served in the Illinois State Prison. He was incarcerated from February 2, 1961, to September 28, 1962.

This cause of action arises under Section 8C of the Court of Claims Act, which states as follows: "All claims against the State for time unjustly served in prisons of this State where the persons imprisoned proved their innocence of the crime for which they were imprisoned; provided, the

Court shall make no award in excess of the following amounts: for imprisonment of five years or less, not more than \$15,000.00. . .”

The evidence shows that on June 9, 1958, the Phillips 66 Service Station in Sidney, Illinois, was burglarized. Mr. Clyde Walker, the operator of the station, observed an individual take two tires and flee. The minister of the Methodist Church in Sidney, Mr. Harold E. Sheriff, lived near the station, and immediately after the burglary saw a man unwrapping new tires. When this party fled, Mr. Sheriff notified the sheriff, and advised him that he could recognize the thief. Neither of these witnesses, however, were present to give testimony in this case, which means that claimant was not personally identified as the thief.

Claimant was arrested on June 10, 1958, in the St. Joseph area where he was working at the time. The arresting officer, Sheriff Everett J. Hedrick of Champaign County, had made a general investigation of the crime in the course of which he found claimant's car abandoned about one-half block from the service station. Subsequent to his arrest and in the presence of Sheriff Hedrick and Deputy Sheriff Slim Boswell, claimant signed a confession in which he admitted burglarizing the Phillips 66 Service Station. Claimant was tried *in absentia* in the Champaign Circuit Court, and upon the finding of guilty by a jury, was sentenced to an indeterminate term of not less than one year and not more than twenty years in the Illinois State Penitentiary.

Claimant's right of recovery is, of course, controlled by the Court of Claims Act. The Act states that one who feels that he has been imprisoned unjustly must prove his innocence of the crime for which he was charged in order to recover damages. It has been repeatedly held by this Court that the burden is placed on the claimant to show by a preponderance of the evidence that he was not guilty of the

“fact” of the crime. *Dirkans vs. State of Illinois*, Case No. **4904**; *Martin vs. State of Illinois*, Case No. **5136**. Claimant thus must show that he did not commit the act of burglary.

Claimant’s only evidence put forward to sustain this burden was the fact of his release by the Supreme Court of Illinois, and his uncorroborated testimony that he did not commit the crime. The Supreme Court released claimant upon a Writ of Habeas Corpus, but did not file any opinion. This in no way proves that claimant was not guilty of the crime charged, but only indicates that his constitutional rights were violated in that he was tried *in absentia*, and was deprived of his due process of law.

The uncorroborated testimony of claimant is contradicted by the confession that he signed, which was introduced by respondent.

The law in Illinois is clear that claimant must prove his innocence in order to entitle him to an award by the Court of Claims. The burden is upon claimant to prove, by a preponderance of the evidence: (1) That the time served in prison was unjust; (2) That the act for which he was wrongfully imprisoned was not committed by him; and, (3) The amount of damages to which he is entitled. *Dirkans vs. State of Illinois*, Case No. **4904**.

It is the opinion of this Court that claimant’s evidence does not sustain his burden of proving by a preponderance of the evidence that the act for which he was wrongfully imprisoned was not committed by him. Therefore, his claim for an award against the State of Illinois in the sum of **\$15,000.00** is hereby denied.

(No. 5186—Claimants awarded \$1,150.00.)

JAMES BARROW AND DENBY BARROW, a Minor, by and through his Father and Next Friend, JAMES BARROW, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1969

LIEBENSON AND RASZUS, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General; GERALD S. GROBMAN AND SAUL R. WEXLER, Assistant Attorneys General, for Respondent.

DAMAGES—evidence. Evidence introduced at trial indicated claimant was entitled to an award of \$800.00 and his son was entitled to an award of \$350.00.

PERLIN, C.J.

Claimants, James Barrow and Denby Barrow, a Minor, through his Father, James Barrow, seek recovery of \$1,000 each for damages and personal injury when a truck owned by respondent, and operated by its employee, Arzell Hyde, collided with an automobile owned and operated by claimant, James Barrow at 8:15 a.m., on March 12, 1963. The evidence reveals that Mr. Barrow's car was stopped upon the northbound entrance ramp to the Dan Ryan Expressway near 6200 south in the City of Chicago, Illinois, and was waiting behind another car to enter traffic, when the truck, which was traveling about five miles an hour, bumped into the rear of the claimant's automobile. Respondent does not deny its liability for the collision, but disputes the amount of damages requested by claimants.

Claimant, James Barrow, testified that at the time of the accident he was a professional bondsman for the Atlas Bonding Company. After his automobile was bumped from the rear by respondent's truck, he did not feel the effects of the accident "until the next morning or late that night." On March 14, two days after the accident, claimant then went to his family physician, Dr. George Barnett, also taking his son, Denby, who was with him in the automobile at the time of the collision.

Mr. Barrow testified that at the time he complained of stiffness of the neck and headaches. The doctor examined

him, and gave him approximately thirteen or fourteen treatments. Medical reports submitted into evidence for Denby Barrow and James Barrow supported Mr. Barrow's testimony, and showed bills outstanding for Denby Barrow of \$119.00 and for James Barrow of \$145.00. Claimant testified that as of the date of the hearing the bills had not been paid.

Mr. Barrow stated that he did not suffer any permanent injuries from the occurrence, but that he lost a week's work as a result. He testified that he saw Dr. Barnett every day during that week, and that his son accompanied him for treatment and examination.

Claimant also testified that, based upon his average salary, he lost at least \$200.00 in wages. He further testified that he was a licensed bondsman for the State of Illinois, and worked for the Atlas Bonding Company on commission. He stated that he made at least \$14,000 during the year of 1963, and never made less than two hundred dollars per week, although sometimes he made four or five hundred dollars 'per week.

The repair bill for the automobile for \$103.00 was submitted in evidence. Claimant testified that he paid the bill, and that all the damage was the result of the accident.

Denby Barrow, thirteen years old at the time of the hearing, testified that he felt no effects of the accident, but at the time his head hurt, as did his right leg, and that the doctor gave him about fifteen treatments of heat and massage.

Dr. Barnett's report of the "Objective Symptoms" of Denby Barrow, then aged 11, includes the following:

"This patient entered the examination room with a right sided limp. On examination of this patient's skull, there was tenderness in the left occipital region of the skull on palpitation. . . There was a slight swelling in the right popliteal area of the leg. There was tenderness in his right thigh."

The doctor's report of the "Objective Symptoms" of James Barrow includes the following:

"This patient entered the examination room holding his head and neck in a rather stiff position. His head and neck were turned slightly to the left. Examination of the neck muscles revealed spasms in the left posterior neck muscles. These muscles were very tender on palpitation. It felt as if there were fibrous nodules within the bodies of the left paravertebral neck muscles. This patient had limited range of motion on rotating his head and neck to the right. He had trouble and alleged pain when rotating his head and neck to the left. The muscles of his left shoulder were spastic. The left deltoid muscles were tender on palpitation. There was limitation of range of motion in the left shoulder. There was only 90 degrees of abduction of the left shoulder and 110 degrees of forward flexion of the left shoulder. . ."

Respondent argues to the request for medical expenses, because there was no corroborating testimony as to reasonableness. However, respondent did not raise the question of reasonableness during the trial, and the report of the claimants' doctor and the itemized medical bill for treatments, which were submitted by claimants in their "Answer to Interrogatories", would corroborate claimants' position.

Therefore, claimant James Barrow is awarded the sum of \$800.00, and Denby Barrow, a Minor, through his father and next friend, James Barrow, is awarded the sum of \$350.00.

(No 5198—Claim denied)

RALPH E. WILHOIT, JOHN OWEN WILHOIT and MARGARET JEAN STANFIELD, Claimants, vs. STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1969

BRUNSMAN, BEAM AND CRAIN and JACK AUSTIN, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

DAMAGES—condemnation Where the owner conveys property for public use, the consideration received therefore covers all damages except those that were not a nature that would have been reasonably produced

DAMAGES—*reasonably produced* Where claimant could not show the natural drainage pattern was changed, any damages could be said to be reasonably produced

BOOKWALTER, J.

This is a group of claims against the State of Illinois for alleged consequential damages to crops and the value of farm land in Edgar County, Illinois, and for alleged consequential damages to a dwelling in the Village of Kansas, Illinois, by reason of certain alleged acts and omissions of the State of Illinois in the widening and improving of Illinois State Highway 16 in the spring of 1962.

It is claimants' contention that the improvements were so constructed as to cause a change in the flow of surface waters, and an increase in the flow of water over the properties of claimants, resulting in damages to crops on approximately ten acres in 1962 in the amount of \$370.00, 1963 in the amount of \$184.00, and 1964 in the amount of \$224.28; and damages to the village property of \$5,478.00.

Claimants further contend that, if the State is allowed to leave certain ditch blocks installed in the ditches along Route 16, claimants will continue to suffer annual crop damage. An element of damages, therefore, is claimed to be loss in land value on ten acres of land at \$200.00 an acre, or an additional \$2,000.00.

On July 1, 1961, Ralph Wilhoit executed warranty deeds for certain parcels of property that were needed by the State for construction of the improvements on Highway 16. Contained in the warranty deeds was the following clause: "The Grantor, without limiting the fee simple interest above granted and conveyed, do hereby release the Grantee or any agency thereof forever, from any and all claim for damages sustained by the Grantor, heirs, executors or assigns by reason of the opening, improving and using the above described premises for highway purposes." Respondent gave consideration for the deeds executed.

Release clauses, as the one found in the conveyance from Ralph Wilhoit, have been construed many times by this Court, and their effect has been compared to releases of future damages found in condemnation proceedings. In *Lepski Adrn., Etc.*, vs. *State of Illinois*, 10C.C.R. 170, the Court stated:

“As we view the facts herein, no award can be allowed in this case because of the conveyance by claimant’s intestate to the State of the right of way, that having the same effect as a condemnation of the same land for such public use would have had, the one being a voluntary conveyance made for public use, and the other amounting to a statutory conveyance for public use, the rule being that the appraisal of damages in a case of condemnation embraces all past, present and future damages, which the improvement may thereafter reasonably produce.”

Again, in *Sauerhage vs. State of Illinois*, 16C.C.R. 217, this Court pointed out that, where an owner conveys property for public use, the consideration received for such conveyance covers all damages for property taken and also damages for injury to adjacent property not taken, the same as an assessment of damages for property taken through a condemnation proceeding would cover.

Claimant may only recover if it is shown that the damages produced were not of a nature that would have been “reasonably produced”, *Lepski, Adrn., Etc.*, vs. *State of Illinois*, 10C.C.R. 170, or, if there was fraud involved in the securing of the deeds from the claimant, *Cole, et al.*, vs. *State of Illinois*, 23 C.C.R. 74.

From a review of the testimony, it is the decision of this Court that claimant has not met his burden of showing that the natural drainage pattern of the area was substantially changed, and, therefore, any damages, which may have occurred, could be said to be reasonably produced.

The only fact, which would weigh against such a decision by this Court, has to do with the installation of ditch blocks in the ditches along the north and south side of Route 16. Testimony by claimant and respondent’s engineers was completely contradictory on this point. In

the record, however, it will be noted that two other property owners in the area, Messrs. Brown and Pinnell, objected to the fact that, when the State lowered the depth of the ditches to three feet, they removed certain natural high points in the ditches, and that this caused water to be diverted from its natural flow. In order to remedy that situation it was necessary for the State to put in the ditch blocks, and maintain the natural course of the waters.

There was no fraud alleged in the securing of the deeds, and, therefore, it will be conclusively presumed that claimants transferred all rights to their property past, present and future, voluntarily.

Having found the release clause to be controlling, an award, therefore, is denied.

(No. 5355—Claimant awarded \$3,000.00.)

BEATRICE MARKLEY, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1969.

MEYER AND IRVING H. WEINSTEIN, Attorneys for Claimant.

WILLIAM G. CLARK, Attorney General; MORTON L. ZASLAWSKY, PHILLIP ROCK, and SAUL, R. WEXLER, Assistant Attorneys General, for Respondent.

STATE PARKS, FAIR GROUNDS, MEMORIALS AND INSTITUTIONS—*Condition of premises.* Respondent owed a paying patron at state fair a duty to maintain the area in a reasonably safe condition.

BOOKWALTER, J.

This is a claim for the sum of \$20,000.00 as damages for injuries sustained by claimant when an iron fence surrounding the swine pen on the Illinois State Fairgrounds fell on claimant's right foot.

Beatrice Markley, the claimant, testified that she was a paying patron at the Illinois State Fair, and that, while she was in the swine shed at the Fair, one of the swine bumped

against an iron fence causing it to be toppled over onto her right foot. Claimant further testified that she was taken to St. John's Hospital in Springfield, Illinois, where x-rays of her right foot were taken; that she received treatment in the hospital, and remained there for three days. She developed an infection in her foot, and Dr. Bom, her physician, placed her in the Hinsdale Sanitarium and Hospital, Hinsdale, Illinois, where she remained for ten days. The evidence indicates that claimant was absent from her job for a period of eight weeks, and incurred medical expenses of **\$761.57**.

It was the duty of respondent to maintain the swine exhibit area in a reasonably safe condition. As the evidence points out, respondent failed to exercise this duty of care. An iron fence such as the one surrounding the swine pen would not have been knocked over had it been in a repaired and safe condition.

From the transcript of the evidence it may be seen that claimant was acting with due care for her own safety at the time of the accident.

This Court accordingly awards claimant the sum of **\$3,000.00**.

(No. 5399—Claimant awarded \$2,297.76.)

JOSEPH KRIEGER, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1969.

MORGAN, BRITTAIN, KETCHAM AND IMMING, Attorneys for Claimant.

WILLIAM G. CLARK, Attorney General; MORTON L. ZASLAVSKY and BRADLEY M. GLASS, Assistant Attorneys General, for Respondent.

NURSING HOME—license effective retroactively. Where claimant operated a nursing home without a license, but the Department of Public Health, in issuing the license, indicated that it had retroactive effect. There was no statutory bar to payment by the Department of Public Aid for services rendered during the period no actual license in effect.

BOOKWALTER, J

This is a claim for nursing services allegedly rendered to Public Aid recipients during the months of January and February of 1966 in the Hampshire Nursing Home, Hampshire, Illinois. Claimant received \$959.60 from the Department of Public Aid, but is seeking to recover the additional amount of \$2,297.76. The essential facts are not in dispute.

Joseph Krieger, claimant, was the owner and operator of the Hampshire Nursing Home during 1965 and 1966. Sometime prior to October, 1965, the Department of Public Aid placed twelve Public Aid recipients in the Hampshire Nursing Home at the rates of between \$190.00 and \$225.00 per month, which were set by the Department of Public Aid. At the time the patients were placed in the home it was fully licensed with the Department of Public Health of the State of Illinois.

The right to operate a nursing home in the State of Illinois, and the manner in which it is operated is controlled by statute: Ch. 111½, Sec. 35.16 thru Sec. 35.17, Ill. Rev.Stat., 1969. This statute provides in Sec. 35.17 that no person shall operate a nursing home unless he is duly licensed by the Department of Public Health.

Claimant's license was subject to renewal on October 4, 1965, but, because of various failures to comply with minimum standards set by the Department of Public Health, the license was not immediately renewed. As of October 4, 1965, claimant did not shut down his nursing home even though he was operating without a license, nor was he ordered to close by the Department of Public Health.

During a period from October 4, 1965, to February 15, 1966, claimant sought to bring the Hampshire Nursing Home up to the minimum standards required by the Department. The Department, through an inspection conducted on February 15, 1966, determined that the nursing

home did meet its minimum standards. Claimant's attorney received the following letter from the Department of Public Health under date of March 4, 1966:

"Thank you for your March 3rd letter transmitting copies Nos. 1 and 2 of the application for renewal of the home's license. Enclosed please find the renewal certificate Annual No. NH 1448, which renews nursing home license No. NH 1448 for the period October 4, 1965, to October 4, 1966. It was determined by Mrs. Wiener, Miss Heide and Mr. Wilson during their February 15, 1966, inspection that the home did meet minimum licensing standards.

We certainly appreciate your cooperation."

As the letter indicates, the Department considered the license as being effective from October 4, 1965. On May 11, 1966, however, the Department of Public Health sent a letter to claimant indicating that the statement, "which renews nursing home license No. NH 1448 for the period October 4, 1965, to October 4, 1966," was not meant to imply retroactive approval.

Claimant, upon payment of the required \$50.00 fee, was issued a renewal certificate, which is effective for a period of one year. The expiration date appearing on this certificate issued by the Department of Public Health was October 4, 1966.

It is the opinion of this Court that, from the fact of the record and from a careful reading of the statute involved, the license issued to the Hampshire Nursing Home should be considered effective as of October 4, 1965. Both the renewal certificate and the letter of the Department of Public Health made it plain to claimant that the license was to run from October 4, 1965, to October 4, 1966. The agency clothed with the power to grant, revoke, reissue and renew licenses for nursing homes saw fit on March 4, 1966, to renew claimant's license for the period October 4, 1965, to October 4, 1966.

The Department of Public Aid pays for care provided Public Aid recipients in facilities subject to licensing only

when the facility is currently licensed by the Department of Public Health. (See Ch. 23, Sec. 3.2, Ill. Rev. Stat., 1969, and Rule 7.03.2 of the Department of Public Aid.)

The Department of Public Aid's refusal to pay claimant for nursing services rendered during January and February of 1966 was based on the fact that claimant's license had not been renewed. However, the Department had paid claimant for the services rendered from October 4, 1965, to January 1, 1966, and they at no time attempted to remove the recipients, whom they had placed in the hospital, even though a demand was made to do so by claimant. At no time, according to the testimony given, did the Department of Public Aid object to the treatment and care given Public Aid patients in the nursing home.

Since this Court has held the effective date of the license to be October 4, 1965, and has found that the nursing services were rendered by claimant's nursing home, there is no longer a statutory bar to payment by the Department of Public Aid for services rendered by claimant's nursing home. It is, therefore, the judgment of this Court that claimant be awarded the sum of \$2,297.76.

(No. 5503—Claimant awarded **\$807.40.**)

EDWARD P. ALLISON COMPANY, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed December 18, 1969

EDWARD P. ALLISON COMPANY, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

BOOKWALTER, J.

(No. 5673—Claimant awarded \$276.87.)

GULF OIL CORPORATION, Claimant, vs. STATE OF ILLINOIS, AUTO INVESTIGATION DIVISION, Respondent.

Opinion filed December 18, 1969.

GULF OIL CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

BOOKWALTER, J.

(No. 56%—Claimant awarded \$115.00.)

CENTRAL ILLINOIS BARBER COLLEGE, Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed December 18, 1969.

CENTRAL ILLINOIS BARBER COLLEGE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5686—Claimant awarded \$862.50.)

CENTRAL ILLINOIS BARBER COLLEGE, Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed December 18, 1969.

CENTRAL ILLINOIS BARBER COLLEGE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5687—Claimant awarded \$500.00.)

MARIO L. GOSPODINOFF, Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed December 18, 1969.

MARIO L. GOSPODINOFF, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

ROOKWALTER, J.

(No. 5690—Claimant awarded \$260.00.)

EVANSVILLE ASSOCIATION FOR THE BLIND, INC., Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed December 18, 1969

EVANSVILLE ASSOCIATION FOR THE BLIND, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5694—Claimant awarded \$10,120.01.)

THOMAS PLUMBING AND HEATING COMPANY, A Corporation,
Claimant, **vs.** STATE OF ILLINOIS, SECRETARY OF STATE,
Respondent.

Opinion filed December 18, 1969.

BARASH AND STOERZBACH, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5180—Claimants awarded \$12,751.00.)

CLINTON G. ORTGIESEN, RILLA ORTGIESEN, GRACE HANSON, EDITH
ROBBINS LEIDER, ALICE MARGARET THOMPSON, ELLEN LUCILLE
ROBBINS, WARREN G. ROBBINS AND UNITED STATES FIRE INSURANCE
COMPANY OF NEW YORK, Claimants, **vs.** STATE OF ILLINOIS,
Respondent.

Opinion filed February 26, 1970.

GUNNER AND KELLER and ALBERT H. HANNEKEN, At-
torneys for Claimants.

WILLIAM J. SCOTT, Attorney General; ETTA COLE and
BRUCE J. FINNE, Assistant Attorneys General, for Respon-
dent.

DAMAGES—extent of damages. Where three inmates who escaped from Dixon State School set a fire which destroyed claimant's house, the loss to claimant was \$11,500.00.

PERLIN, C.J.

Claimants seek recovery of \$21,572.80 in damages to real and personal property, which were incurred by them as a result of a fire set by three inmates, who had escaped from the Dixon State School on August 4, 1963. The liability of respondent was established in the case of Jones vs. State

of *Illinois*, No. 5141. The only issue in dispute in the instant case is the amount of damages.

The fire destroyed a house owned by claimants. The evidence reveals that the house, which **was** located on 100 acres of ground, contained fourteen to fifteen rooms, and was approximately 125 years old. It had no plumbing or central heat, but it did have storm windows and wiring. All but four rooms of the house were rented to a family for forty dollars per month. The remainder was used by claimants for storage of personal items.

Five witnesses testified for claimants as to the amount of loss to the real property: LaVerne John, a **building** contractor, testified that the replacement value of the house would be \$46,325.07. However, it is well established that the proper measure of damages for a dwelling destroyed by fire is the difference in market value of the property before and after the fire when the cost of restoration exceeds the value of the property. *J. W. Curran, et al. vs. State*, 21 C.C.R. 278; *Clark vs. Public Service Co.*, 278 Ill. App. 426; *Hubele vs. Baldwin*, 332 Ill. App. 330; *Johnson vs. Pagel Klikeman Co.*, 343 Ill. App. 346; *Dixon vs. Montgomery Ward and Co.*, 351 Ill. App. 75.

Claimant, Clinton G. Ortgiesen, testified that in his opinion the value of the property before the fire was \$850.00 per acre, and the fair market value immediately after the fire on August 4, 1963, was between \$300.00 and \$400.00 per acre, which amounts to a **loss** of approximately \$45,000.00 to \$55,000.00 for the 100 acre farm. Mr. Ortgiesen stated that the farm was sold after the fire for slightly under \$38,500.00. Claimant further testified that he received \$4,000.00 in insurance, money for the loss of the house, which was the full value of the policy.

John W. King, a former real estate broker who owned

the property across the road from claimants' property, testified that the value of the property immediately before the fire was \$600.00 per acre, and immediately after the fire was \$385.00 per acre, which would be a loss of \$21,500.00.

Dorothy Rutler testified that she was the Secretary and Managing Officer of the First Federal Savings and Loan of Dixon, and was responsible for the company's loans. She had been a real estate salesman for 15 years. She testified that she saw the Ortgiesen house frequently, and had been in it about two years before it burned. In her opinion the fair market value of the property was \$50,000.00 before the fire and \$35,000.00 after the fire, which amounts to a loss of \$15,000.00.

Another witness had not seen the house before it **burned**, and estimated that the **loss** was \$22,472.00.

Claimant, Clinton G. Ortgiesen, was the only person who testified as the value of the personalty. Although claimant, Rilla Ortgiesen, claimed a loss of \$268.30, claimant, Clinton Ortgiesen, testified that he did not have personal knowledge of the contents and a box belonging to her, and the claimants in their brief concede that proof of only a \$181.00 loss was made. Respondent, in its brief, objected to claimants listing of objects as antiques, which would presumptively add more value to them. Mr. Ortgiesen testified that he prepared the list of property which was allegedly destroyed in the fire from memory, and that there was no insurance carried on the furniture and other chattels owned by himself, Grace Hanson, or Rilla Ortgiesen, although Edith Leider's insurance covered her personal property.

The Court concludes, from the foregoing testimony, that the fair market value of the property was \$50,000.00 before the fire and \$38,500.00 after the fire, leaving claimants with a loss of \$11,500.00 for the real property.

The award for the realty is apportioned as follows:

United States Fire Insurance Company of New York	\$ 4,000.00
Clinton G. Ortgiesen	1,875.00
Rilla Ortgiesen	1,875.00
Grace Hanson	1,875.00
Edith Robbins Leider	468.75
Alice Margaret Thompson	468.75
Ellen Lucille Robbins	468.75
Warren C. Robbins	<u>468.75</u>
Total:	\$11,500.00

The award for personalty is as follows:

Clinton G. Ortgiesen	\$1,000.00
Grace Hanson	70.00
Rilla Ortgiesen	<u>181.00</u>
Total:	\$1,251.00

Therefore, claimants are awarded the sum of \$12,751.00, as set forth above.

(No. 56%—Claimant awarded \$997.40.)

**LIVINGSTON SERVICE COMPANY, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC WORKS AND BUILDINGS, Respondent.**

Opinion filed February 26, 1970.

LIVINGSTON SERVICE COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN,
Assistant Attorney General, far Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5697—Claimant awarded \$462.87.)

DRAUGHON'S BUSINESS COLLEGE, Claimant, *os.* **STATE OF ILLINOIS,
DEPARTMENT OF VOCATIONAL EDUCATION AND REHABILITATION**,
Respondent.

Opinion filed February 26, 1970

DRAUGHON'S BUSINESS COLLEGE, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; **LEE D. MARTIN**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5701—Claimant awarded \$77.12.)

RAMBO FUNERAL HOME, Claimant, *vs.* **STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH**, Respondent.

Opinion filed February 26, 1970.

RAMBO FUNERAL HOME, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5717—Claimant awarded \$35.00.)

JAMES E. COEUR, M.D., Claimant, *os.* **STATE OF ILLINOIS,
DEPARTMENT OF VOCATIONAL REHABILITATION**, Respondent.

Opinion filed February 26, 1970.

JAMES E. COEUR, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; **LEE D. MARTIN**,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 3025—Claimant awarded \$5,861.49.)

ELVA JENNINGS PENWELL, Claimant, *us.* STATE OF ILLINOIS,
Respondent.

Opinion filed July 9, 1970.

GOSNELL, BENECKI and QUINDRY, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

AWARDS—The Court can make awards on a continuing basis when the claimant continues to have expenses as a result of compensable injury.

DOVE, J.

Claimant filed her petition for reimbursement for monies expended for nursing care and help, medical services, and expenses from January 1, 1969, to December 31, 1969, praying for an award in the sum of \$5,861.49.

Claimant was seriously injured in an accident on the 2nd day of February, 1936, while employed as a Supervisor at the Illinois Soldiers' and Sailors' Children's School at Normal, Illinois. The complete details of this injury can be found in the original cause of action, *Penwell vs. State of Illinois*, 11 C.C.R. 365, in which an initial award was made, and at which time jurisdiction was retained to make successive awards in the future. This Court has periodically made supplemental awards to claimant to cover expenses incurred by her, the last award covering the time period from February 1, 1968, to January 1, 1969.

A joint motion of claimant and respondent was filed herein requesting leave to waive the filing of briefs and arguments. This motion was granted, and no further pleadings have been filed herein.

Since the Attorney General does not contest the veracity nor the propriety of the items and amounts set forth in claimant's petition, this Court must assume that the Attorney General agrees with the amounts thus set forth.

The Court, therefore, enters an award in favor of claimant in the sum of \$5,861.49 for the period of time from January 1, 1969, through December 31, 1969. The matter of claimant's need for additional care is reserved by this Court for future determination.

(No. 5215—Claimant awarded \$20,000.00.)

RONEY R. NUNES, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed July 9, 1970.

JAMES P. CHAPMAN, Attorney for Claimant.

WILLIAM G. CLARK, Attorney General; PHILIP ROCK and SHELDON K. RACHMAN, Assistant Attorneys General, for Respondent.

PRISONERS AND INMATES—*wrongful incarceration.* Where claimant introduced business records indicating he could not have been at the scene of the crime. He proved himself innocent of the crime for which he was charged and was entitled to an award.

PERLIN, C.J.

Claimant seeks recovery of the sum of \$30,000.00 in this action brought pursuant to Ch. 37, Sec. 439.8(c), Ill. Rev. Stat., 1969, which provides as follows:

“The Court shall have exclusive jurisdiction to hear and determine the following matters:

(c) All claims against the State for time unjustly served in prisons of this State where the persons imprisoned prove their innocence of the crime for which they were imprisoned; provided, the Court shall make no award in excess of the following amounts: . . . for imprisonment of **14** years or less but over 5 years, not more than \$30,000.00. . .”

Claimant contends that he was unjustly imprisoned for nine years after being convicted of taking indecent liberties

with Mary Lee Hill, a minor, and contributing to her delinquency.

The record reveals the following evidence:

After his trial and conviction claimant became a pauper, and was unable to employ counsel to seek review of his conviction until the Supreme Court of the State of Illinois appointed counsel to represent claimant in the prosecution of a writ of error. On January 22, 1964, the Illinois Supreme Court reversed the judgment of the Circuit Court of Lake County, Illinois, and, on February 20, 1964, claimant was released from the Illinois State Penitentiary, having been discharged.

In the instant proceeding, claimant must prove by a preponderance of the evidence that he was innocent of the crime for which he was imprisoned. The opinion of the Illinois Supreme Court in the case of *People of the State of Illinois vs. Roney R. Nunes*, 30 Ill. 2d 143, 195 N.E. 2d 706 (1964), is part of the record in this proceeding as follows:

"The People of the State of Illinois, Defendant in Error, vs. *Roney R. Nunes*, Plaintiff in Error, 30 Ill. 2d 143, 195 N.E. 2d 706 (1964).

"Mr. Justice Underwood delivered the opinion of the court

"The defendant, Roney Nunes, was tried by jury in the Circuit Court of Lake County, and convicted of the crime of taking indecent liberties with a 12-year-old girl. He was sentenced to the penitentiary for a term of not less than 4 nor more than 12 years. We have issued a writ of error to review the judgment of conviction.

"The defendant contends that the evidence was insufficient to establish his guilt beyond a reasonable doubt. Mary Lee Hill testified that on Sunday, April 3, 1954, she and Frances Kelly, another 12-year-old girl, went to the office of the Veterans Cab Company where the defendant was working as a dispatcher. After some conversation between the two girls and the defendant, the defendant asked Mary Lee to take off her sweater because it was warm in the office. She told the defendant she was not warm, and did not remove her sweater. The defendant then asked her to sit on his lap, and after first refusing, she did so when Frances told her to go ahead. The defendant put his arm around her, kissed her, and fondled her, and induced her to touch his private parts. The defendant asked her to go in the other room with him, but she told him she could not, because of her menstrual period. Frances Kelly was in the same room with the defendant and

Mary Lee at the time these acts took place. She testified that she was sure that these events occurred on April 3. On cross-examination the witness testified that she and Frances Kelly went downtown looking for the cab office. The office was on the second floor, and the defendant called out of the window, told the girls to go around to the back of the building, and come up the stairs. She and Frances were in the office for about 4 hours except for a short time after the alleged indecent acts when they went to a drug store, and returned with coffee for the defendant and soda for themselves. During the time they were in the office the defendant was busy answering the phone, and talking to cab drivers on the radio. He also talked to a girl and a cab driver who came up to the office, and talked through the window to cab drivers on the street. The defendant was seated at his desk during all the time the girls were in the office. Mary Lee testified that she had never been in the cab office before the day in question, and that she never went back there. She did not tell her mother about these incidents until a week or two later. The defendant was indicted for the offense in July, and Mary Lee testified that in August, with her mother's consent, she worked as a baby sitter in the defendant's home while the defendant's wife was out of town.

"Frances Kelly testified that she could not remember the exact date of the alleged offense but remembered that it was a Sunday in April. She testified that she saw Mary Lee sit on the defendant's lap, saw him kiss Mary Lee, and perform some of the other acts to which we have referred. On cross-examination she testified that the defendant was busy answering the telephone and dispatching cabs over the radio. The defendant remained seated at the desk in the cab office during the time the girls were there. The desk was near a large front window, and people on the street in front of the office could look up and see the defendant. Frances did not tell her mother about the events in the cab office until about a week later. After she told her mother she also worked as a baby sitter for the defendant. She testified that she and Mary Lee had been in the cab office together two or three times.

"For the defendant, one Nick Perusky testified that at the time in question he was the owner of the cab company. The defendant was his brother-in-law, and he occasionally employed the defendant as a dispatcher on a part-time basis. After referring to a record, which had been kept in compliance with regulations of the Federal Communications Commission, Perusky testified that April 3 was a Saturday. According to the record the defendant had not worked at the cab office on either April 3 or April 4, and the last time prior to April 3 that the defendant worked in the office was on March 24.

"The defendant testified that on Saturday, April 3, he went to work as a bus driver at about 4:15 p.m., and did not work in the cab office at any time during that day. On Sunday, April 4, he also worked for the bus company, and was not in the cab office. He testified that neither Mary Lee Hill nor Frances Kelly had ever been in the cab office while he was there.

"It is axiomatic that a charge of indecent liberties is an accusation easily made, hard to be proved, and harder to be defended by the party accused. (People vs. *Hinton*, 14 Ill. 2d 424.) In such cases reviewing courts are especially

charged with the duty of carefully examining the evidence, and, while due weight must be given to the judgment of the jury as to the credibility of the witnesses, it is our duty to reverse the judgment if the evidence is not sufficient to remove all reasonable doubt of the defendant's guilt and create an abiding conviction that he is guilty of the crime charged. In our opinion the testimony of the two girls was not sufficient to remove all reasonable doubt as to the defendant's guilt. The testimony of the complaining witness as to the date of the occurrence was obviously incorrect, since both girls testified that the incidents occurred on a Sunday, and April 3, the date alleged in the indictment and the date referred to by the complaining witness, fell on a Saturday. The testimony of the complaining witness that she had never been in the cab office before or after the occurrence was contradicted by the testimony of her friend that both girls had been there several times. The testimony of both the complaining witness and her friend that they did not tell their parents about these incidents until more than a week later in itself tends to create some doubt as to whether these events occurred. Even more significant is the fact that after these supposed indecent acts by the defendant, and after these acts had been reported to the parents of the girls, the parents permitted the girls to work as baby sitters in the defendant's home while the defendant's wife was out of town. According to the testimony of the complaining witness she worked as a baby sitter for the defendant for several days, even after the indictment had been returned against him. The alleged indecent acts were supposed to have taken place in a busy cab office where the defendant was constantly answering the telephone, talking to other people, and dispatching cabs on the radio, and supposedly occurred while the defendant was seated at a desk in front of a large window in the office. The combination of all of these circumstances is sufficient to create a reasonable doubt as to whether the defendant is guilty of the crime alleged in the indictment. It cannot be said in the face of contradictions and the improbabilities in the testimony of the two girls that the evidence creates an abiding conviction of the defendant's guilt.

"It does not appear that any additional evidence could be produced on a new trial, and, therefore, the cause will not be remanded. The judgment of the Circuit Court of Lake County is reversed.

Judgment reversed."

In addition to the evidence presented at the original trial, claimant produced the following at the trial before the Commissioner of the Court of Claims:

Claimant's testimony as to his work schedule for April 3 and 4, 1954, was corroborated by records of the Waukegan-North Chicago Transit Company and the testimony of Kenneth E. Johnsen. Johnsen testified that in April, 1954, he was the station supervisor of the company. He produced station reports and run reports maintained by

the company in its usual course of business. Johnsen testified that the reports have been kept continuously in the company files since April, 1954, and that they showed that on April 3, 1954, claimant operated Bus No. 57 from 5:03 p.m. until 8:42 p.m.; bus No. 51 from 9:12 p.m. until 12:42 a.m.; and, that on April 4, 1954, he operated bus No. 59 from 4:50 p.m. until 8:57 p.m.; and bus No. 62 from 9:27 p.m. to 12:43 a.m.

William D. Moore testified that he was employed by the Waukegan Veterans Cab Company as a driver and dispatcher prior to and at the time of the occurrence in question; that on April 3 and 4, 1954, he was working at the dispatcher's office of the Waukegan Veterans Cab Company as a dispatcher. His duties as a dispatcher were to answer the telephone, write down incoming calls, the time the drivers cleared, their destination, and similar information. He entered this information on a desk or master sheet. Moore produced two master sheets dated April 3 and 4, 1954. The writing on the sheet for Saturday, April 3, 1954, was all in his handwriting for the time period between 1:00 p.m. and 7:00 p.m. His examination of the master sheet, dated April 4, 1954, indicated to him that he had been on duty from at least 11:00 a.m. to 11:00 p.m.

Linton Godown, an expert on questioned documents, testified that he had examined the handwriting on the desk or master sheets of the Waukegan Veterans Cab Company for April 3 and 4, 1954, and had compared entries made on those sheets with a standard of claimant's handwriting. He concluded that none of the entries on the sheets were made by claimant.

The testimony of Nick Perusky, the owner of the Veterans Cab Company, at the original trial was made part of the record by stipulation. At the trial he testified that he employed claimant when he needed help rather than on a

steady basis. He produced a record book, which the Federal Communications Commission requires be kept. His dispatchers had to use the book to sign in and out when they got on or off work. From his refreshed recollection he testified that six different persons had worked as dispatchers on April **3, 1954**, and that claimant was not one of them. He himself had worked from **2:45 to 6:00** p.m. that day. He testified that William Moore had worked all afternoon on the day of April **4, 1954**. He stated that it was unlikely that any dispatcher could have been relieved by somebody for a short time. The only time Nunes apparently worked during the general time in question was March **24, 1954**.

Mrs. Lillian Lorraine Humphrey testified that she was married to claimant in **1945**, and divorced from him in **1958**. In **July, 1954**, she went to Rhode Island with two of her children, and left the other two children with her husband. She had been away from Waukegan for three or four days when she received a telegram that her husband had been arrested. Before she left she had made arrangements for baby sitting for the children with Frances Kelly, who lived next door. Frances Kelly had sat for the Nunes' children many times on prior occasions, and Mary Hill usually sat with her. Mrs. Kelly knew that Frances was going to sit for the Nunes' children. The witness had never learned from the Kelly or Hill girls, or their parents, that her husband was supposed to have taken indecent liberties with either of them, and in the three or four month period prior to going to Rhode Island the Kelly and Hill girls were the only baby sitters she had.

The witness had also worked at The Waukegan Veterans Cab Company prior to the time her husband was arrested, and had seen both of the girls at the cab company offices. The uncle of Frances Kelly also worked there. Dur-

ing the six month period, which preceded her husband's arrest, his days off from the bus company were Thursday and Friday. He was required to wear freshly laundered uniforms twice a day when he worked at the bus company. During the six month period prior to the time he was arrested he could not have worked for the cab company a portion of the day on Saturday or Sunday, because his hours were too irregular, and he would sleep when he was home. She further testified that she was home on April 3 and 4, 1954, that she was present at the original trial, but was not called to testify.

Nunes testified that Frances Kelly lived next door to him, and Mary Lee Hill lived a block away. The girls were frequently baby sitters in his house. The first time he had knowledge of a charge being brought against him by Mary Lee Hill was on July 22 or 23, four months after the alleged occurrence, when he was asked to come to the State's Attorney's office. He was accused of taking indecent liberties with Mary Lee Hill, and remained in jail for three months when his bond was reduced. He was tried on March 15, 1955, the same date that the verdict was entered, and he was sentenced on April 6, 1955. He was then taken to the penitentiary where he remained at the Statesville and Menard branches until February 22, 1964.

On April 3 and 4, 1954, he was working for the bus company, arriving there about 4:10 p.m. and working until 12:42 a.m. on April 3, and arriving at the same time on April 4, 1954, and working until 12:43 a.m.

On the day before he was arrested (July 22, 1954), and while his wife was in Rhode Island, Nunes came home during a break in his bus run shortly after noon when the Hill and Kelly girls were sitting with his two children. When he entered his house, he saw that one of the girls was holding a lighted cigarette to the mouth of his seven year old child,

and the other girl was talking on the telephone. Nunes discharged the girls, paid them, and they left the house. He then put the children in the back yard where he asked a neighbor to watch them, and returned to the bus company to complete his bus run, which extended for over two more hours. After Nunes was finished with his work, he drove by his house to take a fellow employee's car to downtown Waukegan as a favor, and saw his children walking with Mary Lee Hill and Frances Kelly. He stopped the car, told the girls to leave his children alone, and instructed his children to return home. He then delivered the car and returned home, but his children were not there. He went to the Kelly home where he was told his children were at the home of Mary Lee Hill. He went to the Hill home, but no one answered. He was again told his children were at the Hill home, and, when he returned Mrs. Hill answered the door, he took his children. Nunes then testified as follows:

"Yes. I called Mrs. Hill on the phone immediately after—shortly after I arrived home and told her that my daughter had said she had been given beer to drink by Mrs. Hill. while I was at the door Mrs. Hill held my oldest daughter on her lap, and her daughter held my youngest with her hand over her mouth so when my child heard my voice she couldn't call out to me.

So I told Mrs. Hill I was going to have her arrested the next day for kidnaping, for giving my child intoxicating liquor, and living 'common law, with someone that she wasn't married to'."

Claimant then stated he never had any further conversations with Mrs. Hill, and that the next day he was called down to the State's Attorney's office; that he did not at any time take any indecent liberties, or do any other improper acts to Mary Lee Hill. His testimony also established that he had his own limousine service with six cabs, which netted him about \$125.00 per week, and he was also employed at the Waukegan-North Chicago Transit Company as a bus driver for two years up to **July 21, 1954**, when he was arrested.

Mary Lee Hill testified that on April 3 or 4, 1954, she was going to be 13 in May; that she went to the cab office

with Frances Kelly on the day she thinks was a Sunday in the afternoon; that she thinks she babysat once for Roney Nunes and his family; that she didn't remember whether she sat before or after the events, which happened at the cab office on that Sunday; that she had never gone to the cab office at any time except April 3 or 4, 1954; that she did not remember much of the testimony at the original trial; that she did not tell her mother about what happened when she got home, but probably did a week or more after she was in the office. At the original trial, Mary Lee Hill testified that on Sunday, April 3, 1954, she and Frances Kelly were present at the offices of the cab company from about 2:00 p.m. until 6 or 6:15 p.m. when the alleged acts took place; and that she babysat for the Nunes' children at various times with her mother's knowledge.

Mary Furman, who did not testify at the original trial, stated that she was the mother of Mary Lee Hill; that in August, 1954, she called the Lake County State's Attorney subsequent to the following conversation with her daughter:

"Well, did he ever try anything with you or anything?" So then she told about his inviting the two girls to this cab company, and I says, "Well, did you go?," and she says they did. She said he tried to kiss them, and this, that and the other, and I says, "Was that all there was to it?" She claimed it was."

The record continues:

Q. "To the best of your recollection was this the first and the only occasion on which you talked to your daughter about her relationship . . . any occurrence with Roney Nunes?"

A. "Yes."

Q. "So that from April, when the alleged event took place, until August when your daughter told you about it, you had no knowledge of these things?"

A. "No, I didn't."

Mrs. Furman did not refute the conversation, which Roney Nunes claimed took place between them over the phone, and her testimony apparently refers to the incident. The testimony of Mrs. Furman also contradicts that of Mary Lee Hill as to when Mary Lee Hill told her mother of Nunes' alleged misconduct.

Respondent argues that the testimony of witnesses, who had not been called at the original trial (in this case, Kenneth E. Johnsen, William Moore, Linton Godown, and Lillian Lorraine Humphrey), should be barred, since all the witnesses and the records of the bus company could have been produced at the original trial.

Respondent cites the case of *Dirkans vs. State of Illinois* Case No. **4904**, in support of its proposition. In that case the claimant, who had been found guilty of armed robbery, produced an alibi witness at the Court of Claims hearing. The witness had been available at the original trial, but was not called. The Court found that Dirkans had failed to prove his innocence of the crime for which he was imprisoned.

The production of such a witness at a Court of Claims hearing raises a question of credibility of that witness. In the instant case, no one has questioned the credibility of either the witnesses or the two sets of documents, which have clearly established that claimant was present at his job with the bus company, and was not present as a dispatcher in the office of the Waukegan Veterans Cab Company on either April **3** or **4, 1954**, during the hours charged. The records were kept in the regular course of business of the two companies, and not one scintilla of evidence has been presented which would refute their accuracy.

Claimant has proved himself innocent of the crime for which he was imprisoned by the *de-novo* hearing, which is contemplated under **Sec. 439.8 C** of the Court of Claims Act.

Claimant has suffered a substantial loss during his nine years of imprisonment. Claimant is hereby awarded the sum of \$20,000.00.

(No. 5234—Claimant awarded \$2,299.45.)

GIBSON ELECTRIC CO., INC., Claimant, **us.** STATE OF ILLINOIS,
Respondent.

Opinion *filed* July 9, 1970.

MCBRIDE, BAKER, WIENKE and SCHLOSSER, Attorneys for
Claimant.

WILLIAM G. CLARK, Attorney General; GERALD S.
GROBMAN, Assistant Attorney General, for Respondent.

CONTRACTS—*rescission*. A right to rescind a contract must be exercised promptly on discovery of facts which confer the right to rescind, must indicate his intention by an affirmative act, and must give notice thereof to the other party.

CONTRACTS—*impossibility of performance*. Impossibility of performance or the inability of the promisor to perform does not discharge a duty created by the contract, especially where the impossibility arises from the act of the promisor himself.

CONTRACTS—*damages*. Where claimant was unable to perform contract with respondent because of his own acts, he was nonetheless entitled to recover the difference between the actual damage to respondent and the amount of claimant's deposit.

PERLIN, C.J.

Claimant, Gibson Electric Company, seeks recovery of a deposit of \$24,190.45 made in conjunction with a bid for **work** to be performed on the Charles F. Read Hospital-Clinic.

Claimant presented *two* witnesses, James B. Sassman, an employee of Gibson Electric Company, who prepared the estimated costs on jobs, which Gibson was to perform; and, Thomas Gibson, President of the Company at the time of the hearing. Humphrey Gibson, who had been President at the time the bid in question was pending, had died prior to the hearing.

Respondent presented one witness, Lorentz A. Johanson, Supervising Architect of the Department of Public Works and Buildings.

The record reveals the following sequence of events:

1. On April 24, 1963, an advertisement was published in the Illinois State Register giving notice that bids would be received by the State of Illinois, Department of Public Works and Buildings, Division of Architecture and Engineering, for work to be performed on the Charles F. Read Hospital-Clinic. The pertinent portion of the advertisement reads as follows:

"Proposals for the following will be received by the State of Illinois, Department of Public Works and Buildings, Division of Architecture and Engineering, Tuesday, May 28, 1963. . . .

"1. General; Heating, Air Conditioning and Temperature Control, Ventilating, Plumbing; Covering for Piping, Ductwork and Equipment; Electrical Work; Food Service Equipment. . . .

"All proposals to be in accordance with plans and specifications, which may be obtained from the Division of Architecture and Engineering. . . Mailing of plans and specifications will be discontinued one week before bid opening date. Affidavit of Availability required on all trades."

2. A letter, dated April 24, 1963, was addressed to the Gibson Electric Company from Lorentz A. Johanson, Supervising Architect, stating that plans, specifications, and bidding documents on the Read project were being sent, under separate cover, with an enclosed Affidavit of Availability to be signed by Gibson at least seven days prior to the bid opening date. The pertinent portions of the documents tendered to claimant read as follows:

(a) "CALL FOR BIDS"

"ISSTRUCTION TO COSTRACTORS ESTIMATING THE ELECTRICAL WORK FOR CHARLES F. READ HOSPITAL-CLINIC. . . ."

"If any person contemplating submitting a bid for the proposed contract is in doubt as to the true meaning of any part of plans, specifications, or other proposed contract documents, he may submit to the Supervising Architect a written request for the interpretation thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation of the proposed documents will be made only by addendum duly issued, and a copy of such addendum will be mailed or delivered to each person receiving a set of such documents. *The Supervising Architect will not be responsible for any other explanations or interpretations of the proposed documents.*"(Emphasis supplied.)

(b) "PROPOSAL SHEETS FOR ELECTRICAL WORK, CHARLES F READ HOSPITAL-CLISIC. . . ."

“All’proposalsshall be accompanied by a certified check, cashier’s check or bank draft made payable to the Department of Public Works and Buildings of the State of Illinois in the amount of five per cent (5%) of the *total of all proposals upon which the Contractor is bidding*. Failure of the Contractor to submit the *full amount in his check to cover all proposals bid upon* shall be sufficient cause to reject his bid. *The Bidder agrees that the proceeds of the check or draft shall become the property of the State of Illinois, if for any reason the Bidder within sixty (60) days after official opening of bids withdraws his bid, or, if on notification of award, refuses or is unable to execute tendered contract, and provide an acceptable performance bond within fifteen (15) days after such tender.*” (Emphasis supplied.)

3. In a designated space on page one of the proposal sheets, dated May **27, 1963**, Gibson Electric Company signified that it subscribed to the Instructions to Contractors, Notice to Contractors, General Conditions of the Contract, Supplement to the General Conditions, and the Drawings and Specifications of Material and Workmanship for the **“Interior Electrical Work for the Charles F. Read Hospital-Clinic. . . .and, having examined the premises and conditions affecting the work, agreed to furnish all labor and material, implements, etc., as provided in the above Instructions to Contractors, Notice to Contractors, General Conditions of the Contract, Supplement to General Conditions, Specifications,as follows: *This proposal consists of six pages for Electrical Work for Charles F. Read Hospital-Clinic. . . .*”**(Emphasis supplied).

Pages two and three of said proposal sheets provide as follows:

“**PROPOSAL NO. 1:** For the complete Interior Electrical Work for the Charles F. Read Hospital-Clinic, Zone 2, Chicago, Illinois, as shown on the Drawings. . . .”

(Claimant’s figure is \$483,809.00)

(PROPOSALS NOS. 1-A through 1-D are deductions in case the Owner elected to order certain omissions or additions in case of a substitution.)

“**PROPOSAL NO. 2:** For the complete Exterior Electrical Work for the Charles F. Read Hospital-Clinic, Zone 2, Chicago, Illinois,”(Claimant’s figure is \$130,935.00.)

“**PROPOSAL NO. 3:** For the complete Interior and Exterior Electrical

Work for the Charles F Read Hospital-Clinic, Zone 2, Chicago, Illinois,
 . (Claimant's figure was \$614,74400)

Page 4 of the Proposal provided that Gibson Electric would perform and complete their work in progress with the work of the other contractors, and that all work would be performed in a manner which would not cause delays.

Gibson listed three Surety Companies, who would write its surety bond if the contract was awarded it, the names of three insurance companies for Contractor's Builder's Risk Insurance, and one insurance company for Contractor's Workmen's Compensation and Public Liability Insurance.

Page 5 contains the corporate name and initials of the President, Secretary and Treasurer. Page 6 states that a certified check, cashier's check, or bank draft in the amount of \$31,150.00 is enclosed.

(c) An Affidavit of Availability, dated April 25, 1963, was signed by H. M. Gibson for Gibson Electric Company. The Affidavit listed three jobs: the State of Illinois Eye and Ear Infirmary, Chicago, Illinois; Western Illinois University, Macomb, Illinois; and E. J. Marhoefer, Jr., Inc., for construction of West Side High School, Lockport, Illinois; and also attached thereto was a declaration that this was a true statement "relating to *all* uncompleted contracts. . . .and *all* pending low bids not yet awarded or rejected." (Emphasis added).

4. A letter, dated June 27, 1963, to Gibson Electric Company, Inc., from Lorentz A. Johanson stated in part as follows:

"SUBJECT: The Charles F. Read Hospital-Clinic, Zone 2, Chicago, Illinois—InteriorElectrical Work."

"I have been directed to notify you of the acceptance of your proposal for this project. A formal contract will be sent you later for signature, but pending its receipt please consider this letter your authority to proceed with the work, as soon as your indemnity bond and insurances have been approved by this division."

The letter then states approval of particular companies to

furnish the indemnity bond, Workmen's Compensation and Builder's Risk insurances.

"Description of work under pour contract: Date of opening of Proposals: Tuesday, May 28, 1963. Proposal No. 1: FOUR HUNDRED EIGHTY-THREE THOUSAND EIGHT HUNDRED NINE AND 00/100 DOLLARS (\$483,809.00)."

"Time of Completion: In progress with General Work and work of other contractors engaged on the project. . . ."

"ALL CORRESPONDENCE IN CONNECTION WITH THIS PROJECT SHOULD REFER TO SUBJECT TITLE AND CONTRACT NUMBER 72830."

5. Mr. Johanson testified that there was no request from any of the contractors as to an interpretation of plans and specifications, and no conversation or correspondence between Gibson Electric Company and the Department from June 27, 1963, until July 15, 1963. On that date, Mr. Johanson met with Mr. Humphrey Gibson, two men from the Department of Public Works and Buildings, and two men from Gibson Electric Company. Mr. Johanson further testified as follows:

"Mr. Gibson told me he was in a very unenviable position of being the contractor with too much work rather than the normal position of not having enough work, and presented me a rundown of jobs he had been the bidder on and subsequent being the apparent low bidder on my job."

"This caused him difficulty in getting a bond for my job. I had given him over fifteen days at that time."

Mr. Johanson then identified a document, which was given to him by Mr. Gibson at the conference showing that the Gibson Electric Company had become involved in four additional jobs since he had signed the Affidavit of Availability showing three jobs, thus bringing the number of jobs in progress on July 15, 1963, to seven. Mr. Johanson stated that the other jobs, amounting to about \$400,000, caused Mr. Gibson to be overextended so that he could not get a bond on the job for the Charles F. Read Hospital-Clinic. The other participants in the conference did not testify at the hearing.

6. Mr. Johanson further testified that on July 16, 1963, a contract was tendered to Gibson Electric Company, but was never signed. No further conversations or correspondence took place between his office and the Gibson Electric Company at that time.

7. A letter, dated July 19, 1963, from the Department of Public Works and Buildings to Mr. H. M. Gibson, Gibson Electric Company, stated as follows:

“Pursuant to our conversation in my office on Monday, July 15, in the company of Messrs. Van Ciesen and Evans of Architecture and Engineering Division, I have reviewed the data you gave me regarding the approximate \$400,000.00 worth of work you have been awarded subsequent to the award on the Charles Read Clinic for the State of Illinois.”

“As at the foregoing meeting, we did not feel that the information supplied by you is sufficient to cancel our letter of intent on the Read Clinic, and, if you do not accept the award of this contract, we will require you to forfeit your certified check.”

Mr. Johanson testified that the Department did not receive an indemnity check within the fifteen days after the tender of the contract, as agreed by claimant under the Proposal Sheets, nor did he receive any notification from Gibson Electric Company as to any intention they had regarding the job.

8. In September the contract for interior work was awarded to the second lowest bidder at a cost of \$21,891.00 higher than the Gibson Electric Company's bid.

9. Claimant's combination bid had been the lowest total bid.

10. A letter, dated November 13, 1963, to the Attorney General from Gibson Electric Company contains the following:

“RE: The Charles F. Read Clinic
Zone 2. . . Chicago, Illinois

Dear Sir:

With reference to the electrical work on the above project, we wish to submit the following facts:

The bid form called for the proposal to be in three parts. . .one quotation for the wiring of the interior of the building, on which we quoted \$483,809.00; one quotation for the exterior wiring on which we quoted \$130,935.00; and a combined quotation, on which we bid the sum of the above two quotations. . .or **\$614,744.00.**

Inasmuch as electrical jobs historically are never let in sections, we were led to believe the entire job would be awarded as a unit, assuming that the breakdown was wanted for accounting purposes. Had we been aware that the job possibly would be awarded in sections, we obviously would have bid the same on the total, but would have had to increase our bids on the component parts, due to overhead expenses.

We were awarded the interior wiring, and the exterior wiring was awarded to another contractor.

In view of the foregoing, we feel that forfeiture of our bid deposit under these circumstances is confiscatory, and that our bid deposit bond should be returned to us.

Very truly yours,

Gibson Electric Company, Inc.

H. M. Gibson"

According to Thomas Gibson, the foregoing letter written in November was the first indication to the State of Illinois that Gibson refused to perform on the grounds set forth therein.

The issues which are presented to this Court are: (1) whether a contract was in fact entered into by the parties; (2) whether claimant has proved by a preponderance of the evidence that the contract was properly rescinded; and, (3) whether respondent has a right to forfeit claimant's entire deposit or only its actual damages.

Claimant contends that a contract was never entered into between claimant and respondent, since claimant offered to furnish the complete interior and exterior electrical work for **\$614,744.00.** Respondent rejected the offer, and countered with an offer to permit the installation of the complete interior electrical work at a cost of **\$483,809.00.** Claimant was forced to reject this offer because of the im-

possibility of meeting expenses on only the interior section of the work.

Claimant further contends that it submitted an offer based on the bidding method, which was the industry-wide practice. To support this claim, it submitted the Compilation of Final Bids, which was prepared by respondent, showing that ten out of thirteen bidders submitted bids for Proposal No. **3**, which were totals of Proposals Nos. **1** and **2**. Claimant alleges that, if it were known in the industry that bids would be accepted on individual proposals, then the total of the separate proposals would be a greater amount than the aggregate bid submitted for the award of the whole job. Therefore, claimant argues, that the mistake precluded mutual assent to the terms of the contract, and consequently that it **is** non-existent, and the parties should be placed in status quo.

Thomas Gibson, President of the Company at the time of the hearing, testified that the mark-up would have been **5** to **8%** different if the bids had been made on each individual item, and that they would have submitted two certified checks in the amount of the individual bids instead of one. Gibson stated that he had no documents to verify the fact that there would not have been sufficient profit if he had undertaken only Proposal No. **1**.

Respondent's witness, Lorentz Johanson, testified that the reason for breaking down the proposal for electrical bids into three components was to attract contractors that are more conversant with the particular type of work called for, and that the intent of the Department of Public Works and Buildings was to let the contract to the lowest combination of bids. He stated that the Proposals, which were broken down into Interior, Exterior and Combination (Proposals No. **1**, **2**, and **3**) were in the standard form used for this type of work.

Where the contracting parties have reduced an agreement to writing, it is presumed that the agreement expresses their mutual intentions. *Hardy vs. Greathouse*, 406 Ill. 365, 94 N.E. 2d 134.

An examination of page one of the Proposal Sheets, signed by Gibson Electric, shows that it specifically refers to "Interior" electrical work, to wit:

"The UNDERSIGNED hereby subscribing to the Instructions to Contractors, Notice to Contractors, General Conditions of the Contract, Supplement to General Conditions, the Drawings and Specifications of Material and Workmanship for the Interior Electrical Work for Charles F. Read Hospital-Clinic, Zone 2, Chicago, Illinois, and having examined the premises and conditions affecting the work AGREES to furnish all labor and material, implements, etc. as provided. . ." (Emphasis supplied).

This statement refers only to the INTERIOR electrical work. There is no such statement in regard to the Exterior Electrical work. Therefore, it would seem that claimant specifically agreed to perform the INTERIOR electrical work according to instructions and specifications. Had claimant been awarded only the Exterior job, its contention that it did not agree to accept only the Exterior job might have had merit due to the industry practice of awarding contracts as a whole, and the statement appearing on the form that "This proposal consists of 6 pages for Electrical Work."

Accepting, arguendo, claimant's contention that industry practice led it to believe Gibson Electric was bidding on a single proposal instead of three separate proposals, let us examine whether the contract was properly rescinded. As a general rule, a right to rescind a contract must be exercised promptly on discovery of facts which confer the right to rescind.

In *Mound City Distilling Co. vs. Consolidated Adjustment Co.*, 152 Ill. App. 155 at 159, the Court stated:

“One who has a right to rescind must act with reasonable promptness in rescinding, otherwise he will have waived his right to rescind. *Williston's Wald's Pollack on Contract*. 2.345-6.”

Claimant knew of the alleged mistake as soon as it received the letter, dated June 27, 1963. However, there was no notification to respondent of either the mistaken understanding or of claimant's intention to rescind on these grounds until November 13, 1963.

As a general rule, a party who desires to rescind a contract must, in order to effect a rescission, indicate his intention by an affirmative act, and give notice thereof to the other party. (12 I.L.P. Contracts, Sec. 351.)

Claimant alleges in its complaint that in the conference on July 15, 1963, Mr. Humphrey Gibson conferred with Mr. Johanson in Mr. Johanson's office, and advised him that Gibson's bid had been computed on the assumption that the award for electrical work on the Hospital-Clinic would be made under Proposal No. 3, that Gibson was for that reason unable to accept an award based only on Proposal No. 1, and demanded return of his certified check. Not one scintilla of evidence supporting these allegations was presented in the hearing. In fact, the testimony of respondent establishes that claimant had been unable to obtain the required performance bond because it had overextended itself with too many additional jobs, and that this was the reason for its inability to perform.

In the alternative, claimant alleges that Gibson made a bona fide error in the preparation of its bid, which error would have given rise to a substantial loss to Gibson, and that it should have been allowed to withdraw its bid. No proof was offered that acceptance of the Interior award would have given rise to a substantial loss. As a matter of fact the Exterior work was ultimately awarded at a cost to the State of \$935.00 less than Gibson's bid. It is difficult to see how the awarding of the exterior work to claimant

would have prevented this alleged "substantial loss" inherent in its acceptance of the Interior contract.

That the time lapse of almost five months after discovery of the "mistake" was not a reasonable time in which to rescind is readily ascertainable from the circumstances of the case. It would appear that claimant should have acted to rescind on the grounds of mistake at least by its meeting of July 15th with respondent, having had ample notice since June of respondent's interpretation of the contract.

This Court has allowed rescission of a contract for mistake in the cases of *Allen vs. State*, 2 C.C.R. 404, and *English vs. State*, 3 C.C.R. 80. The standards for such rescission are set forth in the *Allen* case at p. 407 thusly:

"and for the further reason that we are convinced that claimants did not try to rescind their contract for any other reason than the mistakes made by them in the preparation of their several estimates, we believe it would be unjust and inequitable to compel them to suffer a loss as would be occasioned by the forfeiture of their. . . checks."

In both of these cases it was established that claimants made the mistake, and that their refusals to proceed with the contracts were in fact based on the mistake. No such showing has been made in the instant case.

Claimant has not proved by a preponderance of the evidence that its refusal to proceed before the time for forfeiture of its check was occasioned by a mistake. On the contrary, respondent has presented documentary evidence to show that claimant's refusal was based on the fact that it had taken on too many jobs. Impossibility of performance or the inability of the promisor to perform does not discharge a duty created by the contract, especially where the impossibility arises from the act of the promisor himself. (*Pioneer Life Ins. Co. vs. Alliance Life Ins. Co.*, 374 Ill. 576, 30 N.E. 2d 66; *Chicago, M. & St. P. Ry. Co. vs. Hoyt*, 13 S. Ct. 779, 149 U.S. 1, 37 L. Ed. 625.)

In the alternative, claimant requests the difference

between its deposit and actual damages allegedly suffered by respondent in the amount of \$2,299.45, which is the difference between claimant's deposit and the next lowest bid on the Interior work.

Respondent cites the case of *Warner Construction Co. vs. State of Illinois*, 8 C.C.R.92, to the effect that, although forfeiture was not generally favored in law, a forfeiture by the State was an exception to the general rule where the State has fully performed its part of the contract.

Claimants argue that the standards set in the more recent case of *Bauer vs. Sawyer*, 8 Ill. 2d 351, 134 N.E. 2d 329, are controlling. In the *Bauer* case, the Supreme Court reviewed a forfeiture clause and declared it to be an invalid penalty. It approved the rule stated by the Restatement of the Law of Contracts, Section 339 (1) which provides as follows:

"An agreement made in advance of breach fixing the damages therefor is not enforceable as a contract and does not affect the damages recoverable for the breach unless (a) the amount so fixed is a reasonable forecast of just compensation for the harm that is caused by the breach, and (b) the harm that is caused by the breach is one that is incapable or very difficult of accurate estimation."

Claimants further argue that respondent *has* recognized that the deposit made by claimant would **only** be used to satisfy the expenses incurred. In a letter dated August 8, 1963, Mr. Johanson **stated** in part to claimant:

"This leaves us no alternative but to declare your proposal guarantee forfeited in the amount required to cover our expense to accept the next lowest bidder."

In the instant case, the deposit was not a reasonable forecast of just compensation as is required by *Bauer*, and the actual damages were readily ascertainable. Therefore, claimant is entitled to recover the difference between the actual damages suffered by respondent (\$21,891.00) and the amount of the deposit retained (\$24,190.45).

Claimant **is** hereby awarded the sum of \$2,299.45.

(No. 5247—Claimant awarded \$22,580.95.)

MEYER MACHINE, INC., A Corporation, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed July 9, 1970.

SMITH, PENNIMAN AND MCGREEVY, Attorney for Claimant.

WILLIAM J. CLARK, Attorney General; MORTON L. ZASLAVSKY and ETTA COLE, Assistant Attorneys General, for Respondent.

CONTRACTS—*contracts in plans.* Where claimant did not prove by preponderance of the evidence that certain expenses pertained to the job performed, claim would be denied.

CONTRACTS—*payment for extra work.* Where extra work by claimant contractor was occasioned solely by the respondent's failure to properly plan the work. Claimant was entitled to payment on the basis of the price of labor, material and equipment, rather than on the unit price stated in the contract.

PERLIN, C.J.

Claimant's action arises out of a contract entered into between claimant and respondent on August 21, 1963, which provided that claimant furnish and erect certain traffic signs and concrete foundations therefore on Route 55 in Sangamon County, Illinois. The undisputed evidence shows that claimant completed the work required by the contract in February or March, 1964.

In Count I of its amended complaint claimant seeks recovery for sixty-four items of work performed by it in completing the original contract, and requests an additional **\$14,862.66**. The parties have stipulated that the amount owed to claimant should take into account a penalty of \$1,000.00 for claimant's failure to meet the completion date of the contract. It was, therefore, agreed by both parties that respondent owes claimant \$13,812.66 under Count I.

The questions remaining arise under Counts II, III and IV of claimant's complaint.

As part of the original contract a sign had been erected on concrete foundations. After claimant had moved all of its men, materials, and equipment out of the area, and its work was complete except for minor maintenance work, respondent decided that the location of the sign was unsatisfactory, and that it should be moved to a new location. On April 2, 1964, respondent authorized claimant to proceed with changing the plans. Its written authorization specifies quantities of additional work and unit prices therefore. The additional work is described as follows: "Force account work for removing overhead truss, re-erecting on new foundation, and removing portions of old foundation."

Count II is claimant's claim for such portion of additional work detailed as items 75 through 176. Respondent admits that it owes \$4,037.64 under Count II, but disputes items 168 through 175 in the amount of \$1,737.75, which are listed as follows:

"168. Costs incurred by Contractor due to the Force Account and Revisions: work within the Contract during the period of April 1 thru June 25, 1964:

169 Administrative Executive Salary	
96 hours at \$6.50	\$624.00
170 Secretary	
33 hours at \$4.85 an hour	160.05
171 Telephone Bills, misc.	206.20
172 Field Foreman's living expenses	
47 days at \$10.00 a day	470.00
173 Truck on job site (Inactive)	
15 days at \$8.50 a day	127.50
174 Field Office Rent	
2 months \$75.00 per month	150.00
	<u>150.00</u>
Total	<u>\$1,737.75</u>

Article 9.4 of the agreement provides for payment for extra work:

ARTICLE 9.4 PAYMENT FOR EXTRA WORK. . .

1. Extra work will be paid for as follows:

(a) Labor. The Contractor will be paid the actual amount of wages for all labor and foreman in direct charge of the specific work for each hour that said

labor and foreman are actually engaged in such work, to which costs shall be added 15 per cent of the sum thereof. A foreman shall not be used when there are less than 2 laborers employed, except with the written consent of the Engineer.

(b) Bond, Insurance, Tax, Welfare Fund and Other Payments. The Contractor will receive the actual cost of contractor's bond, public liability and property damage insurance, workmen's compensation insurance, social security tax, welfare fund and other payments, if any, in accordance with agreements applicable to the contract, required for force account work, to which no percentage shall be added. The Contractor shall furnish satisfactory evidence of the rate or rates paid for such bond, insurance, tax, welfare fund and other payments.

(c) Materials. The Contractor will receive the actual cost for all materials which are an integral part of the finished work, including freight charges as shown by the original receipted bills, to which shall be added 15 per cent of the sum thereof.

The Contractor will be reimbursed for any materials used in the construction of the work, such as sheeting, falsework, form lumber, curing materials, etc., which are not an integral part of the finished work. The amount of reimbursement shall be agreed upon in writing before such work is begun and no per cent shall be added. The salvage value of such materials shall be taken into consideration in the reimbursement agreed upon.

Respondent contends that Article 9.4 specifies that the Contractor will be paid the actual amount of wages for all labor and foremen "in direct charge of the specific work", and that neither the administrative executive nor the secretary (items 169 and 170) were directly involved in the specific work of re-erecting Truss No. 2 (the support for the sign). Respondent contests the amount in item 172, because the contract expressed hourly compensation for foremen, but was silent as to other compensation, and, therefore; respondent argues it must be implied that this is excluded. Respondent states that there is no category in Article 9.4, which would provide for telephone calls in item 171.

Item 173 concerns a claim for the rental of a truck on the job site, which was described by claimant as "inactive". Respondent claims that the rent for the field office (item 174) was already paid for by the State under the original contract. (Rec. II pp. 14 and 15)

Claimant contends that the expenses enumerated in items 168 through 175 are actual damages incurred because

of the change in plan and the errors of the State, and the claimant should be reimbursed. Claimant argues that the amount of **\$1,737.75**, which was incurred for these items would have been absorbed in the bidding of the original contract.

Claimant cites *Divane Brothers Electric Co., A Corporation*, vs. *State of Illinois*, 22 C.C.R. 546, which allowed actual expenses for delay occasioned by change in plans made by the State. In that case recovery was allowed for expenses not originally anticipated, including overhead, labor increases and insurance, material increases, lost time, and supervision. However, in the instant case, claimant did not prove by a preponderance of the evidence that items **169** (the administrative executive), **170** (the secretary), or **171** (the telephone and xerox paper charge) pertained to the particular job. There was no proof that the truck was needed at the site because it was never used (item **173**). However, claimant is entitled to be compensated for the living expenses of the field foreman and rent for the field office, (items **172** and **174**) for a total of **\$620.00** of the disputed items under Count 11.

Under Count III, claimant is requesting an additional award of **\$4,110.65** for the additional concrete foundations. Respondent argues that, since concrete foundations appear in the original contract at a unit price basis of **\$60.00** per cubic yard of concrete, payment for the additional concrete foundations should also be made at the unit price. Claimant takes the position that it should be allowed the difference between the unit price and the price computed on a labor, materials and equipment basis under Article 9.4 as "Payment for Extra Work."

The evidence leads to the inescapable conclusion that, since the request to move the signs was not made until all of claimant's men and equipment had been moved out of the

area, and the original contract had been completed, there was a substantial and material variation from the original contract requiring payment to the contractor on a force account basis rather than a unit price basis.

The extra work was occasioned solely by the State's failure to properly plan the location of the sign in the first instance. The Court has frequently awarded additional payments where changes in plans by the State have resulted in extra expenses to the contractor. *Matthew M. Walsh and John J. Walsh, a Co-Partnership, d/b/a Walsh Construction Company, vs. State of Illinois*, 24 C.C.R. 441; *Hyre Electric Company, An Illinois Corporation, vs. State of Illinois*, 22 C.C.R. 554; *Chism, Inc., A Delaware Corporation, vs. State of Illinois*, No. 5313; *Mass Construction Company, A Delaware Corporation, vs. State of Illinois*, No. 5254.

The Court has never awarded interest, which is also requested by claimant, and there seems to be no basis in the Mechanic's Lien Act for levying interest on the State of Illinois. Therefore, claimant's request for \$5,677.17 in interest must be rejected.

Claimant is hereby awarded the following:

Count I	\$13,812.66 (stipulated)
Count II	4,037.64 (stipulated)
	620.00
Count III	<u>4,110.65</u>
Total	\$22,580.95

(No. 5659—Claimant awarded \$322.00.)

VIRGIL SKINNER, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed July 9, 1970.

KLEIMAN, CORNFIELD AND FELDMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

DAMAGES—stipulation. Where claimant and respondent stipulate to facts and damages, an award will be entered accordingly.

DOVE, J.

Claimant, Virgil Skinner, has filed his complaint against respondent for the sum of **\$322.00** for damages incurred as a result of a fire, while he was in the employ of the Illinois Youth Commission of the State of Illinois.

A stipulation was thereafter entered into by claimant and respondent as follows:

“That the facts as set forth in claimant’s complaint are substantially correct.”

“That there is lawfully due claimant the sum of THREE HUNDRED TWENTY-TWO DOLLARS AND NO CENTS (\$322.00).”

“That upon the foregoing agreed stipulation filed herein the Court shall decide thereon, and render judgment herein according to the rights of the parties in the same manner as if the facts aforesaid were proved upon the trial of said issue.”

The claimant, Virgil Skinner, is hereby awarded the sum of **\$322.00**.

(No. 5704—Claimant awarded \$400.00.)

THE CHICAGO LIGHTHOUSE FOR THE BLIND, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed July 9, 1970.

THE CHICAGO LIGHTHOUSE FOR THE BLIND, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

Comas — lapse d appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J

(No. 5707—Claimant awarded \$90.50.)

SOUTHERN ILLINOIS UNIVERSITY, Claimant, *vs.* STATE OF ILLINOIS,
Respondent.

Opinion filed July 9, 1970.

SOUTHERN ILLINOIS UNIVERSITY, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN,
Assistant Attorney General, for Respondent.

CONTRACTS—*services* rendered. Where it appears that claimant, Southern Illinois University, rendered services to the Division of Vocational Rehabilitation, an award for said services with fee rendered.

HOLDERMAN, J.

On November 19, 1969, claimant, Southern Illinois University, filed a complaint in this Court seeking an award in the amount of \$90.50 for services rendered to the Division of Vocational Rehabilitation.

The record consists of the following:

1. Complaint
2. Stipulation
3. Joint motion of claimant and respondent for leave to waive the filing of briefs
4. Order of the Chief Justice granting the joint motion of claimant and respondent for leave to waive the filing of briefs

The facts appear to be that claimant, Southern Illinois University, rendered services to the Division of Vocational Rehabilitation to one Janet C. Conley of Alton, Illinois. Claimant contends that the amount due is for tuition and fees for the Spring Quarter of 1969.

The Court, therefore, finds that services were rendered at the request of the Division of Vocational Rehabilitation, and that respondent has agreed to pay the said amount of \$90.50.

An award is, therefore, made herewith to claimant, Southern Illinois University, in the amount of \$90.50.

(No. 5708—Claimant awarded \$105.74.)

JOHNSON OFFICE SUPPLY, INC., Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed July 9, 1970.

FRED CARMAN, Attorney for Claimant.

WILLIAM J. SCORN, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5711—Claimant awarded \$5,296.85.)

ST. JOSEPH HOSPITAL, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed July 9, 1970.

ST. JOSEPH HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5713—Claimant awarded \$46.20.)

THE FIELD AND SHORB COMPANY, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC WORKS AND BUILDINGS, Respondent.

Opinion filed July 9, 1970.

THE FIELD AND SHORB COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **LEE D. MARTIN**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5719—Claimant awarded \$1,571.10.)

MERCY HOSPITAL, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed July 9, 1970.

MERCY HOSPITAL, Claimant, pro se.

WILLIAM J. SCORN, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5720—Claimant awarded \$248.70.)

RICH TRUCK SALES AND SERVICE, INC., Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed July 9, 1970.

RICH TRUCK SALES AND SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

DAMAGES—stipulation. Where claimant and respondent stipulate to facts and damages, an award will be entered accordingly.

HOLDERMAN, J

On December 4, 1969, Rich Truck Sales and Service, Inc., filed a complaint in this Court seeking an award of \$248.70 for work done on a truck of the Division of Highways.

The record consists of the following:

1. Complaint
2. Stipulation
3. Joint motion of claimant and respondent for leave to waive the filing of briefs
4. Order of the Chief Justice granting the joint motion of claimant and respondent for leave to waive the filing of briefs

The facts of the case appear to be that claimant did certain work on truck T **6617**, and the charges for such work, according to the invoice submitted, was **\$248.70**.

The stipulation provides that said amount of **\$248.70** is correct, and it is the amount due claimant.

The Court, therefore, finds that the work for which claimant has billed the State has been performed at the request of the State, particularly the Department of Public Works and Buildings, and that it should be paid.

An award is, therefore, made herewith to claimant, Rich Truck Sales and Service, Inc., in the amount of **\$248.70**.

(No. 5721—Claimant awarded \$710.15.)

BARNES HOSPITAL, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed July 9, 1970.

BARNES HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5722—Claimant awarded \$100.00.)

JAMES E. COWER, M.D., Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed July 9, 1970.

JAMES E. COUER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5724—Claimant awarded \$405.00.)

MILDRED HAYSBERT, Claimant, *os.* STATE OF ILLINOIS, DEPARTMENT OF LABOR, Respondent.

Opinion filed July 9, 1970

KLEIMAN, CORNFIELD AND FELDMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5726—Claimant awarded \$292.01.)

ROBERT LINDNER, Claimant, *os.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed July 9, 1970.

KLEIMAN, CORNFIELD AND FELDMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5727—Claimant awarded \$91.00.)

MARINE DRIVE MEDICAL GROUP, LTD., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed **July 9, 1970.**

MARINE DRIVE MEDICAL GROUP, LTD., Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5731—Claimant awarded \$840.00.)

THE CHICAGO SCHOOL FOR RETARDED CHILDREN, Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed **July 9, 1970.**

THE CHICAGO SCHOOL FOR RETARDED CHILDREN, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

(No. 5733—Claimant awarded \$600.00.)

**THOMAS V. CASSIDY, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed July 9, 1970.

THOMAS V. CASSIDY, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5736—Claimant awarded \$87.50.)

**SHARON HAROLD, Claimant, vs. STATE OF ILLINOIS, DIVISION OF
VOCATIONAL REHABILITATION, Respondent.**

Opinion filed July 9, 1970.

SHARON HAROLD, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5739—Claimant awarded \$324.00.)

**ROGERS PARK MANOR, INC., Claimant, vs. STATE OF ILLINOIS,
Respondent.**

Opinion filed July 9, 1970.

ROGERS PARK MANOR, INC., Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

DAMAGES—stipulation. Where claimant and respondent stipulate to facts and damages, an award will be entered accordingly.

HOLDERMAN, J.

On December **31, 1969**, Roger Park Manor, Inc., filed a claim in the amount of **\$324.00** for room and board for one Steve Beran, who was a Boarding-Out resident of the Dixon State School at Dixon, Illinois. The amount of the services, namely room and board, was for the month of June, **1969**.

The record consists of the following:

1. Complaint
2. Departmental Report
3. Stipulation
4. Joint motion of claimant and respondent for leave to waive the filing of briefs.
5. Order of the Chief Justice granting the joint motion of claimant and respondent for leave to waive the filing of briefs.

The facts of the case are as follows:

The Dixon State School at Dixon, Illinois, boarded out one Steve Beran to the Rogers Park Manor, Inc., at **1512 West Fargo, Chicago, Illinois**, and incurred an obligation in the amount of **\$324.00**, which is the amount being claimed by claimant for the month of June, **1969**.

The Court, therefore, finds that the obligation is one that was incurred by respondent, and should be paid.

An award is, therefore, made herewith to claimant, Rogers Park Manor, Inc., in the amount of **\$324.00**.

(No. 5753—Claimant awarded \$279.25.)

ST. JOSEPH HOSPITAL, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion fled July 9, 1970.

ST. JOSEPH HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5755—Claimant awarded \$102.25.)

SIDNEY J. MARX, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF
PUBLIC AID, Respondent.

Opinion filed July 9, 1970.

SUTH AND PETERS, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; BRUCE J. FINNE,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J

(No. 5768—Claimant awarded \$162.18.)

DANIEL E. McCARRY, Claimant, vs. STATE OF ILLINOIS, ILLINOIS
RACING BOARD, Respondent.

Opinion filed July 9, 1970.

DANIEL E. McCARRY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5770—Claimant awarded \$80.00.)

**RONALD WAINER, d/b/a 3441 WESTJACKSON BUILDING, Claimant,
vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.**

Opinion filed July 9, 1970.

RONALD WAINER, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5771—Claimant awarded \$1,074.59.)

**ANN C. LIMERICK, EXECUTOR OF THE ESTATE OF GEORGE F.
LIMERICK, Claimant, vs. STATE OF ILLINOIS, ILLINOIS PATTERN JURY
INSTRUCTION COMMITTEE, Respondent.**

Opinion filed July 9, 1970.

**HATCH, CORAZZA, BAKER AND JENSEN, Attorney for
Claimant.**

**WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5774—Claimant awarded \$450.00.)

**BIAGIO FRISINA, Claimant, vs. STATE OF ILLINOIS, DRIVERS
EXAMINATION STATION, Respondent.**

opinion filed July 9, 1970.

ROBERT D. MCWARD, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5775—Claimant awarded \$125.00.)

HAROLD GORDON, M.D., Claimant, vs. **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH**, Respondent.

Opinion filed July 9, 1970.

HAROLD GORDON, M.D., Claimant, *pro se*.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5776—Claimant awarded \$112.60.)

FLORENCE BERGMAN, Claimant, vs. **STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID**, Respondent.

Opinion filed July 9, 1970.

FLORENCE BERGMAN, Claimant, *pro se*.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5782—Claimant awarded \$836.75.)

NORTHEAST COMMUNITY HOSPITAL, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed July 9, 1970.

NORTHEAST COMMUNITY HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5784—Claimant awarded \$170.00.)

SHEPARD'S CITATIONS, INC., Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed July 9, 1970.

ROY GEIBE HILL, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

APPROPRIATIONS—*exhausted* appropriation. Where goods are received but claimant is not paid because the appropriation was exhausted, an award will be entered.

HOLDERMAN, J.

On March 4, 1970, Shepard's Citations, Inc., filed a complaint against the State of Illinois in the amount of \$170.00.

The record consists of the following:

1. Complaint
2. Stipulation
3. Joint motion of claimant and respondent for leave to waive the filing of briefs
4. Order of the Chief Justice granting the joint motion of claimant and respondent for leave to waive the filing of briefs

The facts are that claimant provided the Supreme Court Library at Springfield, Illinois, with certain legal periodicals and books in the amount of \$170.00. It also appears that the General Assembly made an appropriation of \$1,000.00 to the Judicial System to pay certain obligations incurred by the Supreme Court Library for prior expenses. Some of these bills were paid, but the appropriation was exhausted before the instant bill was paid.

The Court, therefore, finds that the items for which the bill was submitted were ordered and received by the Supreme Court Library, and would have been paid except that *the* appropriation was exhausted.

An award is, therefore, made herewith to claimant, Shepard's Citations, Inc., in the amount of \$170.00.

(No. 5787—Claimant awarded \$515.55.)

**THE MEMORIAL HOSPITAL, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.**

Opinion filed July 9, 1970.

THE MEMORIAL HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5790—Claimant awarded \$264.45.)

**THEODORE R. BECK, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT
OF MENTAL HEALTH, Respondent.**

Opinion filed July 9, 1970.

THEODORE R. BECK, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5791—Claimant awarded \$115.00.)

POLK BROS., INC., AN ILLINOIS CORPORATION, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed July 9, 1970.

CRANE AND KRAVETS, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5277—Claimants awarded \$4,900.00.)

PACIFIC INSURANCE COMPANY OF NEW YORK, AS SUBROGEE OF CPC, INC., AND CPC, INC., Claimants, vs. STATE OF ILLINOIS, Respondent.

Opinion filed February 18, 1971.

EPTON, MCCARTHY, BOHLING AND DRUTH, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General; **BRADLEY M. GLASS**, Special Assistant Attorney General, for Respondent.

HIGHWAYS—duty of state. The State of Illinois is not an insurer of every accident that occurs on its public highways, but does have the duty 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.

SAME—same. The rule applied on liability of municipalities by our courts is applicable to state highways.

HIGHWAYS — negligence. Evidence indicated that respondent was negligent in the maintenance of an overpass where evidence showed a warning sign indicating a clearance of 13' 7" when, in fact, the clearance was lower, and this negligence was the proximate cause of personal injuries and property damage sustained by claimants.

HOLDERMAN, J.

On February 18, 1966, Pacific Insurance Company of New York, as subrogee of CPC, Inc., and **CPC, Inc.**, filed their verified complaint in this Court seeking a recovery in the amount of \$5,799.53.

The record consists of the following:

1. Complaint
2. Transcript of evidence taken on October 19, 1966
3. Commissioner's Report
4. Stipulation
5. Joint motion of claimants and respondent for leave to waive the filing of briefs
6. Order of the Chief Justice denying the joint motion of claimants and respondent for leave to waive the filing of briefs
7. Motion of claimants for an extension of sixty days in which to file brief
8. Order of the Chief Justice granting the motion of claimants for an extension of sixty days in which to file brief
9. Brief of claimants
10. Motion of respondent for an extension of time to and including February 1, 1970, in which to file brief
11. Brief and argument of respondent
12. Reply brief of claimants
13. Order of the Chief Justice granting the motion of respondent for an extension of time to and including February 1, 1970, in which to file brief

The facts of the case appear to be that on March 2, 1964, Chicago Pool Car Company was the owner of a Diamond T Tractor and Strick Refrigeration Trailer combination, which was being driven by its agent or employee, Richard Farmer. He was proceeding in a westerly direction on and along North Avenue at or near the Lake Street overpass or viaduct at a speed of approximately 40 miles per hour. He was passing under said overpass when, at a point about 3 feet from its front, the trailer struck an electrical conduit attached to the underside of said overpass, and was thereby severely damaged.

Richard Farmer, claimant's driver, testified that the markings on his trailer read 13'6". He further stated that the trailer was loaded with approximately 70,000 pounds of material, which would lower the trailer by some two or three inches. He also stated that there was a sign on the viaduct stating that the clearance was 13'7", and that he was approaching said viaduct at a speed of approximately 40 miles per hour.

Another witness, Fred Willis, a police officer of the City of Northlake, testifying in an evidence deposition, stated that he investigated the accident in question. He described how the top of the trailer was ripped off, and stated that there appeared to be damage done to the conduit and the underside of the overpass. He also testified that there were two signs in this vicinity, ~~one approximately fifty to one hundred feet east of the overpass, which read "Clearance 13'7"~~, and another on the overpass, which also read "Clearance 13'7". He did not know whether this sign was on the overpass on the date of the accident. He further testified that sometime after the accident he observed men working to raise the overpass by means of piling and jacks.

It was stipulated by the parties hereto that the damage to claimant's trailer amounted to \$5,799.53, and that of this amount the sum of \$4,900.00 was paid by The Pacific Insurance Company of New York, who is also a claimant herein as subrogee of CPC, Inc.

It was further stipulated that CPC, Inc., has disposed of its license and business to another company, and is not presently available to prosecute its claim; and, that, therefore, the total amount in controversy is the sum of \$4,900.00, which is the amount of the loss paid by claimant, Pacific Insurance Company of New York.

This is the second claim involving similar circumstances at this overpass. The other claims are *Lester R. Borum and Emmco Insurance Company vs. State of Illinois*, Court of Claims Case No. 5225, and *Great American*

Znsurance Company, A Corporation, et al., vs. State of Illinois, Court of Claims Case No. 5429.

It is rather interesting to note that there was no testimony by either respondent or claimant as to any measurements taken at or about the time of the accident showing the actual or true height of the overpass.

It is also interesting to note that Officer Willis testified that he had traveled this route two nights before his testimony was taken, and that the sign had been removed. He could see that the hangers which held the conduit had been damaged and one of them was broken off. Officer Willis further testified that he was present when workmen were using railroad ties and scaffolding to jack this overpass up with big hydraulics.

He further stated that he did not make any measurements when he arrived at the scene of the accident, but went strictly by the measurements stated on the trailer and the sign.

In order for the claimant to recover, he must prove three distinct elements, namely:

1. That he was in the exercise of due care and caution for his own safety.

2. That the State of Illinois was negligent, as charged in the complaint, and that the negligence of the State of Illinois was the proximate cause of the damage done to the truck.

3. That damages were sustained.

This Court has repeatedly held that the State does not insure against all accidents which may occur upon its sidewalks and streets.

In the case of *Neil Beenes vs. State of Illinois*, 21 C.C.K. 83, the Court stated:

“The rule adopted on liability of municipalities by our

courts is applicable to this situation. In the case of *Storen vs. City of Chicago*, 373 Ill. 530, the court, on page 534, held:

A municipal corporation is not bound to keep its streets and sidewalks absolutely safe for persons passing over any part of them, its duty being to exercise ordinary care. (*Brennan vs. City of Streator*, 256 Ill. 468; *Boender vs. City of Harvey*, 251 id. 228; *Kohlof vs. City of Chicago*, 192 id. 249.) Municipal corporations, not being insurers against accidents, are not liable for every accident occurring within their limits from defects in the streets, but the defects must be such as could have been foreseen and avoided by ordinary care and prudence on the part of the municipalities.

In the case of *Boender vs. City of Harvey*, 251 Ill. 228, the court, on page 231, held:

The obstructions or defects in the streets or sidewalks of a city, to make the corporation liable, must be of such a nature that they are in themselves dangerous, or such that a person exercising ordinary prudence cannot avoid danger or injury in passing them,—in general, such defects as cannot be readily detected.

As stated in *Thien vs. City of Belleville*, 331 Ill. App. 337, on page 345:

Municipal corporations are not insurers against accidents, and the only duty cast upon the city is that it shall maintain the respective portions of the street in a reasonably safe condition for the purposes to which such portions of the street are devoted. It is only bound to use reasonable care to keep its streets reasonably safe for ordinary travel thereon by persons using due care and caution for their safety. (*Molway vs. City of Chicago*, 239 Ill. 486; *Kohlof vs. City of Chicago*, 192 Ill. 249; *City of Salem vs. Webster*, 192 Ill. 369.)

The first question of this case is whether or not the driver of claimant's vehicle was guilty of any contributory negligence. The only possible negligence, which he may have been guilty of, was the speed at which he was traveling, but there is nothing in the records to indicate that this speed was the cause of the accident, and it does appear that he was misled by the two signs in regard to the height of the viaduct.

It appears reasonable to assume that the State should have had knowledge of the condition, which existed at the viaduct, and that results such as this accident would naturally follow, as it was an error in the differential between the actual height of the viaduct and the figures stated on the signs.

The State did not offer any evidence of any kind or character to offset the evidence of claimant, particularly the evidence to the effect that on the same day of the accident the driver of the trailer in question had used the other lanes of this viaduct with the same type of trailer without any accident.

The facts as heretofore stated in this case are very similar to the *Borum* and the *Great American Insurance Company* cases in which awards were made, and we feel that those decisions are of considerable importance, and should be followed in this particular case.

An award is, therefore, made to claimant, Pacific Insurance Company of New York, as subrogee of **CPC, Inc.**, in the amount of **\$4,900.00**, said award representing the amount paid by the said insurance company under its insurance policy for damages to its insured's trailer.

(No. 5317—Claimant awarded \$35,060.67)

KANELLA CANAKIS, Individually and as Executrix of the Last Will and Testament of JOHN CANAKIS, Deceased, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed February 18, 1971

BERRY AND O'CONNOR, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; BRADLEY M. GLASS, Assistant Attorney General, for Respondent.

STATE PARKS, FAIR GROUNDS, MEMORIALS AND INSTITUTIONS—leases Where instrument specifically provides that cancellation may only be upon mutual agreement of the parties, the instrument is a lease not a license

LEASES—specificity of description of property Where a lease refers to specific concession stands by number, they sufficiently referred to parcels of real estate which were known to the parties

LEASES—restrictions on use Where lease puts restriction on use to which property could be used, did not render the leasor mere licensee

LEASE—personal services Instrument required concessionaire to sell

sandwiches, etc., and provided for delegation of duties, the instrument was a lease and not a contract for personal services.

DOVE, J.

This is a cause of action brought by Kanella Canakis, Individually and as Executrix of the Last Will and Testament of John Canakis. Claimant alleges that her late husband, John Canakis, and the State of Illinois entered into a concession lease, whereby the State leased certain concession buildings located at the Starved Rock State Park, as well as the right to conduct a concession business there, to John Canakis, for a term beginning December 1, 1960, and ending November 30, 1970. Claimant alleges that John Canakis was continuously in possession of said premises from December 1, 1960, until his death on June 4, 1965. It is further alleged by claimant that she was in possession of the premises as owner thereof and as successor to John Canakis until May 15, 1966, when the State wrongfully terminated the said lease thereby damaging claimant in the amount of \$156,626.64.

The respondent, State of Illinois, filed no answer or any other pleading in this matter, but takes the position stated in an opinion of the Attorney General dated May 24, 1966, that John Canakis occupied the premises in question as a licensee of the State, and not as a lessee, and by reason thereof, his right to possession was subject to termination at the will of the State of Illinois at any time. The State further asserts in its brief that the contract was a personal service contract which terminated with the death of the decedent.

A hearing was held on June 1, 1967. The State stipulated to Paragraphs 1, 2 and 3 of the Complaint filed by claimant, thereby admitting that claimant's Exhibit No. 1 was an authentic copy of the lease in question; that John Canakis was in possession of the premises in question until his death on June 4, 1965; that claimant was in possession of the premises thereafter until May 15, 1965; that claimant's

Exhibit B is an authentic copy of the Last Will and Testament of John Canakis; that claimant is the widow of John Canakis and the Executrix of his Estate; and that claimant's Exhibit C is an authentic copy of Letters Testamentary so appointing claimant.

Claimant testified that she worked at the concession stands in question from 1960 until October, 1965; that John Canakis, her husband, managed the concession business until his death on June 4, 1965; and that, thereafter, for the remainder of the 1965 season, claimant operated the concession with her son, Nick Panacos, and her daughter, Cola Penn. The operation of the concession subsequent to the death of John Canakis was carried on without any complaint by the State until May of 1966, at which time the respondent ordered the premises vacated.

Nick Panacos testified that from 1962 until 1965 he and John Canakis were partners in the operation of the concession, but that he was not a party to the lease; that subsequent to the notice to vacate, he inventoried the fixtures and merchandise of the concession operation, and sold such of it as he could. Panacos further testified to a loss of \$5000.00 on the sale of merchandise, and of \$1000.00 on the sale of the fixtures.

Paul F. Kiersch testified that he was the accountant for the concession operation for the years 1962, 1963, 1964 and 1965. He identified the financial and profit and loss statements for those years, copies of which had been submitted to the State at the end of each year. Kiersch further testified that accounts had always been kept in partnership form, the partners being John Canakis and Nick Panacos. The concession partnership also maintained a joint bank account which Kiersch reconciled at the end of each year. The exhibits introduced into evidence showed the profits for the concession operation as follows:

<u>Year</u>	<u>Profit</u>
1962	\$26,843.23
1963	26,485.27
1964	27,347.98
1965	29,060.67

The decision in this case depends upon the construction of the "Concession Lease" which is set forth in claimant's Exhibit No. 1. The question is whether the concessionaire's rights created by the instrument in question terminated at his death or could be terminated at will by the State.

The first issue raised is whether the instrument is in fact a license or a lease. If a mere license, the rights of the concessionaire terminated at the death of John Canakis, and in any event, were terminable at the will of the State. If a lease, the concessionaire's rights passed to his heirs at his death.

A leading case in Illinois on this point is *Holliday vs. Chicago Arc Light & Power Co.*, 55 Ill. App. 463 (1886), wherein the Court said:

"Whether a tenancy is created or not depends upon the intention of the parties, although this intention must in most cases be inferred from the circumstances which attend the case. 'In general, the question of possession will determine the matter.'"

"An instrument that merely gives to another the right to use premises for a specific purpose, the owner of the premises retaining the possession and control of the premises confers no interest in the land and is not a lease, but a mere license."

"A license is an authority to do some act on the land of another, without passing an estate in the land, and 'being a mere personal privilege, it can only be enjoyed by the licensee himself, and is not therefore assignable so that an under-tenant can claim privileges conceded to a lessee.'"

"Exclusive possession is essential to the character of a lease."

In another Illinois case, *Gustin vs. Barney*, 250 Ill. App. 209 (1928), the Court stated:

"We held in the Senachwinr Club Case (246 Ill. App. 629) that the instrument could not be construed to be a mere license simply because the premises were to be used only for certain purposes. We also held that the

instrument, being for a definite term and based on a valuable consideration, carried with it an interest in the land and could not be revoked at will.”

No case has been cited, nor is the Court aware of any case construing a document exactly like the one in question. However, based upon available tests and authorities, it is the opinion of this Court that claimant’s Exhibit No. 1, the ~~contractual instrument in question,~~ was no mere license granted to claimant’s decedent, terminable at the will of the State. The instrument specifically provides that cancellation may be at any time “upon the mutual agreement of the party of the first part and the party of the second part.” In fact, one and one-half pages of the lease instrument are devoted to an elaborate discussion of when cancellation may occur. If the parties had intended to enter into a mere license agreement, none of these provisions would have been required, since the State would have retained the ~~power to cancel at will.~~

The State also argues that the claimant’s decedent was ~~given~~ **BO** exclusive possession of any real property because **(1)** no specific real property was reserved to him, and **(2)** the State reserves certain supervisory powers with respect to the use of the premises.

The first page of the lease provided that certain designated areas shown on a designated plot plan and known as “concession stand number one” and “concession stand number two”, as well as any temporary stands which the State authorized, were the subject matter of the lease. From the language of the lease, it is evident that the ~~*premises, properties and improvements thereon~~ known as “concession stand number one” and “concession stand number two” were specific parcels of real estate which were known to the parties and which were being leased to John Canakis.

The restrictions imposed upon the uses to which the property could be put were not sufficient to keep the

interest created from being a leasehold. Clauses limiting the uses to which premises may be put are common in all types of leases, including both residential and commercial leases.

The construction which the State of Illinois seeks to place upon the contract would require portions of it to be disregarded and other portions to be considered mere surplusage. The rule of law is that meaning should be ascribed to every clause and phrase of a contract with nothing rejected as meaningless or surplusage. *Correy vs. Rockford Life Insurance Company*, 67 Ill. App. 2d 395, 214 N.E. 2d 1, 3 (1966). Furthermore, any ambiguities in the lease must be construed most strongly against the State of Illinois, since the State of Illinois drafted the lease. *Donahue vs. Rockford Showcase & Fixture Co.*, 87 Ill. App. 2d 47, 230 N.E. 2d 278, 280 (1967).

The second issue to be decided in this case is whether or not the contract in question was one for the personal services of John Canakis. If the lease was dependent upon the availability of the personal services of John Canakis, the death of John Canakis would have terminated the contract.

The services contemplated by the contract in question were certainly not of the portrait-painting or book-writing variety. The lease provided that the concessionaire was to sell sandwiches, snacks, souvenirs, tobacco products and beverages. While the lease provides for quality and cleanliness in the operation of the concession, there is no suggestion that any unique service was expected, or that any unusual foods were to be prepared.

The lease not only permitted the delegation of duties by the concessionaire, but required that persons employed be fully authorized to represent concessionaire in "all matters pertaining to the operation and management of the concession". This clearly precludes the notion that the services, either operational or managerial, were to be

rendered by John Canakis only, or that personal service by Canakis was promised.

It is the opinion of this Court from a consideration of the evidence in this case, and based upon the rule that any ambiguity in a contract must be resolved against the party drafting such contract, that the contract in question was a lease and was not a contract for personal services of John Canakis, and, therefore, did not terminate upon the death of John Canakis, and was not terminable at the will of the respondent.

The final question to be decided in this case is the amount of damages to which claimant is entitled. The uncontested evidence is that claimant suffered a loss of \$5000.00 on the sale of the inventory and a loss of \$1000.00 on the sale of the fixtures. The Court, therefore, finds claimant's damages with respect to the liquidation of inventory and fixtures to be the sum of \$6000.00.

The respondent contends that claimant is not entitled to recover damages for loss of profits. This position appears to be based on three theories: (1) that profits are too speculative as a measure of damages; (2) that loss of profits were not contemplated to be a measure of damages by the parties; and (3) there is insufficient proof of claimant's attempt to mitigate damages.

With respect to the first theory, it is clear that the business in question had been in operation for at least five years prior to the eviction. The income tax returns for the four years prior to the eviction are in evidence and show the concession had earned profits. While the general rule is that evidence of expected profits from a new business are too speculative, uncertain and remote to be considered, the same prohibition does not apply to an established business with an experience of profits. In the case of an established

business, evidence of lost profits can be shown with the requisite certainty, and otherwise meets the standards of proof required in such situations.

The respondent correctly states that the loss of profits should not be considered as a measure of damages unless it was understood by the parties to the contract, at least by implication, that a party would be liable for lost profits in case of breach of contract. In a lease of non-commercial property, or of property which is not uniquely situated, or of property out of which profits arise only collaterally, lost profits would not properly be considered as damages. However, the situation in this case is that profits were contemplated, even to the extent that rent was based upon income. The parties clearly intended a commercial purpose for this property, and the State's eviction was the direct cause of claimant's loss of profits.

The respondent's notification of the eviction, coming on March 21, 1966, was clearly at a time when it was too late for claimant to start up a similar concession during the 1966 season. It is the opinion of this Court that claimant's loss of profits for the 1966 season was directly attributable to the wrongful eviction by the respondent, and the Court finds the loss of profits for the year 1966 to have been in the sum of \$29,060.67.

There is no showing by claimant that it would have been impossible to have re-established a concession business in some other location for the years 1967 and thereafter. This Court, therefore, finds that claimant has failed to prove that profits **lost** subsequent to the 1966 season were a direct result of the State's breach of the contract.

For the foregoing reasons, an award is made to the Claimant herein in the sum of **\$6000.00** for damages

suffered by reason of the liquidation of inventory and fixtures, plus the further sum of \$29,060.67 for loss of profits for the 1966 season, making a total award of \$35,060.67.

(No. 5403—Claimant awarded \$12,000.00.)

LILLIAN ROSS, Claimant, vs. **STATE OF ILLINOIS**, Respondent.

Opinion filed February 18, 1971.

JACOBSON, LIEBERMAN, LEVY AND BARON and **HARRY B. ROSENBERG**, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **MORTON L. ZASLAVSKY** and **BRUCE J. FINNE**, Assistant Attorneys General, for Respondent.

STATE PARKS, FAIR GROUNDS, MEMORIALS AND INSTITUTIONS—*duty to guest.* Where claimant was a guest for consideration, and where stairway maintained by state had been unlevel for some period of time. The state was liable for its failure to warn claimant of the hazardous condition.

HOLDERMAN, J.

Claimant has brought action against the State of Illinois to recover from damages allegedly suffered as a result of a personal injury sustained on June 17, 1966, in The Starved Rock State Park. The damages claimed are in the amount of \$25,000.00.

The complaint recites that on and prior to June 17, 1966, the State of Illinois maintained a certain foot trail and stairway at the Starved Rock State Park leading from the area behind the "Lodge" to a lower area.

It further recites that on said date claimant was visiting The Starved Rock State Park. She had been and was there at the invitation of the State of Illinois, and was a guest for consideration at the Starved Rock State Park Lodge.

Claimant further contends that the stairway on said premises, which was owned and maintained by the State of Illinois, had for some time prior to the accident been

unevel, so that it tilted forward creating a dangerous condition for persons using the said stairway.

Claimant also alleges that the State was negligent in failing to provide a proper hand rail, which could be held onto by a person using the stairway, and that the State had failed to inspect the stairway in time, prior to the occurrence claimed of herein, to learn of the unsafe condition of one of the steps of the said stairway. The State further failed to inform claimant and others of the unsafe condition of the said stairway, and repaired the said step as to leave it in an unsafe condition.

Claimant at the time of the accident was a retired woman, seventy years of age, who had been active in collecting spiders and insects. On the morning of the accident, she and her companions were starting on a hike from the Lodge at the Park. She was wearing shoes with heavy rubber corrugated soles and flat heels, and she started down the wooden steps leading from the upper part of the Park to the lower level. She is alleged to have stumbled on a broken step, and injured her left extremity as a result of the fall.

She was taken to St. Mary's Hospital in LaSalle where x-rays revealed a complete oblique fracture of her left femur. She was operated on, and the fractured fragments of the bone were fixed into position with the insertion of rush rods. She was discharged after two months confinement in the hospital.

After returning to Chicago, she was treated by another doctor, who rendered follow-up care.

Claimant testified that, as she was going down the steps, she fell on the second wooden step. She further testified that she tried to grasp the side railing, but it was too big for her to grasp, so she fell after her right foot slid, and finally landed with the left leg doubled up under her.

Her companion, Miss Cotterill, testified that she was present when the accident happened, and that the second step slanted downward and to the right, and that there was some sand upon the step.

Miss Cotterill further testified that a man came along immediately after the accident, picked claimant up, and straightened her leg out. She was then removed in an ambulance to the hospital. Miss Cotterill further testified that she stayed in LaSalle all during the period of time that claimant was confined to the hospital, and helped take care of her by bathing her, feeding her, and performing similar services.

A Park employee, Mr. John Baima, testified that these steps would be swept approximately once a week, which was necessary because of the accumulation of very fine sand. Mr. Baima further testified that the second step in question was tilted forward, and that he repaired the same by putting in a temporary brace, and also informed the Superintendent of the Park that the brace underneath the stairway had rotted away, and would need replacement. He stated that he did not see any signs or warnings that the steps were slippery. He also testified that before he put the brace in the step was a little loose and in not too good a shape. Part of the step had rotted away, including a piece of the brace holding the step.

The evidence seems uncontradicted that there was sand upon the step in question, and that the stairway, and particularly the step on which claimant is alleged to have sustained her fall was defective due to the slant, the sand, and the rotting away of part of the brace. The pictures introduced by claimant indicate that new material had been placed under the step after the accident in question.

The expenses testified to as a result of the accident are as follows:

St. Mary's Hospital **\$2,671.25**; Dr. Doyle's bill **\$1,035.00**; Dr. Sickley, one of the doctors in the hospital, who gave claimant care, **\$35.00**; **\$12.00** for x-rays at The Michael Reese Hospital; \$25.00 to Dr. Leonard Weinstein, for work and examination of claimant's leg; **\$10.00** leg x-ray at The Michael Reese Hospital; **\$12.00** leg x-ray at The Michael Reese Hospital; and \$20.00 additional for Dr. Weinstein. These were claimant's expenses in 1966. In 1967, claimant had an additional **\$12.50** for x-rays on her leg at The Michael Reese Hospital; \$48.00 to Dr. Irving Mack; **\$10.00** additional to Dr. Weinstein; another **\$12.50** for x-rays at The Michael Reese Hospital; and another **\$29.00** to Dr. Mack.

Claimant also testified that she paid Miss Cotterill, her companion who lived with her, and was on vacation with her, the sum of **\$493.62**, which was the amount of expenses incurred by Miss Cotterill while she stayed in LaSalle during the period of time claimant was confined to St. Mary's Hospital.

It appears that claimant was exercising ordinary care for her own safety at the time of the accident. She had on corrugated rubber-soled walking shoes, and was attempting to use the rail on the stairway, but was unable to do so because of its size. Her fall was occasioned either by the sand on the step, the slant of the step, or a combination of the two circumstances.

We have carefully considered the record in this case, and the authorities cited by both parties. It is our opinion that this case, as far as the facts are concerned, corresponds greatly to two other cases, namely: *Alberta Hansen, Admr., Etc. vs. State of Illinois*, 24 C.C.R. 103, in which the rule was laid down that respondent has a duty to warn of a danger that exists along a trail; and *Elizabeth Ann Murray, a Minor, Etc., vs. State of Illinois*, 24 C.C.R. 399, in which the rule that the State owes a duty to the public to exercise reasonable care in establishing, maintaining and supervising its parks is set forth.

It is our opinion that the dangers in the case were the rotted support of the step, and the slanting of the step, which could not be discovered except by minute examina-

tion, and the failure to warn claimant of this hazardous condition caused the result complained of.

In this case claimant **was** retired **so** there was not any loss of earnings, but we believe that she is entitled to recover for medical expenses and disability in pain and suffering, which occurred as a result of said accident. The Court, therefore, finds that claimant sustained damages in the amount of **\$12,000.00**.

An award is, therefore, made herewith to claimant, Lillian **Ross**, in the amount of **\$12,000.00**.

(No. 5416—Claimant awarded \$1,500.00)

CHARLOTTE PALECKI, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed February 18, 1971.

WOLFBERG AND KROLL, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General, MORTON ZASLAVSKY and SAUL, J. WEXLER, Assistant Attorneys General, for Respondent.

HIGHWAYS—*constructive notice of defects.* Where hole in street existed for at least six months and state did not post any warning signs, nor make any repairs. The State did not use reasonable care in maintaining its highways, and was negligent. This negligence was the proximate cause of the claimant's injuries.

DOVE, J.

Claimant, Charlotte Palecki, brings this action to recover for injury to her person, which she sustained on October 13, 1966, in a fall on a public highway known as 87th Street near the corner of South Francisco Avenue in Evergreen Park, Illinois.

The facts are relatively undisputed, and are as follows:

On October 13, 1966, at about 5:15 p.m. claimant **was** walking south on Francisco Avenue on the east side thereof. At the point where Francisco Avenue intersects with 87th Street claimant crossed to the southwest corner of

Francisco Avenue and 87th Street for the purpose of boarding an eastbound 87th Street CTA bus to go to work at the Evergreen Plaza. While crossing 87th Street at its intersection with Francisco Avenue on her way to the bus stop on the southwest corner of said intersection, claimant stepped into a deep hole adjacent to a sewer cover on 87th Street. The hole was near the south crosswalk of 87th Street and to the west crosswalk of Francisco Avenue. Claimant testified that she did not see the hole before she stepped into it, as she had been watching the oncoming traffic and looking for the bus; that the hole in question was approximately four or five inches deep and about a foot and a half in diameter; and, that upon stepping into the hole she fell to the pavement injuring her left foot. Claimant further testified that she was able to go to the bus stop, approximately eight or ten feet away, where she boarded her bus, and went to work. While at work that night, she experienced great pain especially when she had to stand on her feet.

The next day claimant called Dr. Gregory N. Hernandez, and was told to meet him at The Little Company of Mary Hospital in Evergreen Park, Illinois, where x-rays were taken, and a boot-size cast was put on her left foot. She wore the cast for approximately **six** weeks, and used crutches and a walking chair to get about her home. Her injury was a complete fracture of the fifth metatarsal bone. The evidence indicates that the time claimant lost from work because of her injury amounted to approximately six weeks, totaling \$195.00 in lost wages. Hospital bills amounted to \$57.00, and doctor bills, including bills for physical therapy at the South Side Physical Medical Center, amounted to the sum of \$167.00, for a total out-of-pocket expense of **\$399.00**.

The testimony of Lillian Wise, called as a witness for claimant, was introduced into evidence by stipulation. Her

testimony was that the hole in the street in question existed to her knowledge for approximately six months before the accident.

This Court has held on numerous occasions that the State of Illinois is not an insurer of every accident that occurs upon its public highways. *Link vs. State of Illinois*, 24 C.C.H. 69; *Bloom vs. State of Illinois*, 22 C.C.H. 582. The law in the State of Illinois is clear that, in order for a claimant in a tort action to recover, she must prove that the State was negligent; that such negligence was the proximate cause of the injury; and, that claimant was in the exercise of due care and caution for her own safety. *Link vs. State of Illinois*, 24 C.C.R. 69; *McNary vs. State of Illinois*, 22 C.C.R. 328; *Bloom vs. State of Illinois*, 22 C.C.H. 582. The State has a duty to exercise ordinary care to maintain its highways in a reasonably safe condition for public travel. *Garrett, Et Al., vs. State of Illinois*, 22 C.C.H. 343.

In *Di Orio, Et Al., vs. State of Illinois*, 20 C.C.R. 53, this Court applied the same rules of law pertaining to notice in suits against the State involving defects in highways, as pertained to suits against municipalities involving injuries caused by defective sidewalks. In this respect the law in Illinois is clear. Before a municipality can be held liable for injuries, it is necessary that there be evidence showing that the city had actual or constructive notice of the alleged unsafe condition. The unrebuted testimony of Lillian Wise, a witness for claimant, was that the hole in question existed to her knowledge for approximately six months before the accident.

This Court has held that there cannot be any hard or fast rule in determining when it can be said that the State had "constructive notice" of a dangerous condition, and each case must be decided on its own particular facts. *Visco vs. State of Illinois*, 21 C.C.H. 480.

It is the opinion of this Court that the hole **in** question existed for a sufficient length of time so that the State of Illinois can be held to have had constructive, if not actual, notice of the defect.

From the evidence, it is apparent that the State did not post any warning signs nor make repairs for a period of at least six months. This leads the Court to the conclusion that the State did not use reasonable care to maintain its highways, and that it was negligent in allowing said hole to remain for so long a period of time. It is the further opinion of this Court that such negligence was the proximate cause of the injuries suffered by claimant. Contrary to the contention of respondent, this Court finds no evidence in the record that claimant was guilty of contributory negligence. An award is, therefore, made to the claimant, Charlotte Palecki, in the amount of \$1,500.00.

(No. 5431—Claimant awarded \$40,000.00.)

PATRICIA K. HOFFMAN, Special Administratrix of the Estate of **JOHN M. HOFFMAN, JR.**, deceased, and **PATRICIA K. HOFFMAN**, Individually, Claimant, vs. **STATE OF ILLINOIS**, Respondent.

Opinion filed February 18, 1971.

FRANK E. GLOWACKI & RICHARD J. PETRARCA, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **ETTA J. COLE**, Assistant Attorney General, for Respondent.

HIGHWAYS—notice of defect. Where stop sign was down at busy intersection for three days, and the area was regularly patrolled by state police. The State had sufficient notice of the defect.

DOVE, J.

This is a cause of action brought by Patricia K. Hoffman as Administratrix of the Estate of John M. Hoffman, deceased, for the wrongful death of the deceased

and for injuries to herself, arising out of a collision between an automobile driven by the deceased and another automobile on October 29, 1966, at the intersection of Exchange Road and State Route 1 in Will County, Illinois. Patricia K. Hoffman was a passenger in the automobile being driven by her husband, John M. Hoffman. Claimant alleges that the absence of a "Stop" sign at the intersection of Exchange Road and State Route 1 was the proximate cause of the accident.

Exchange Road is a public highway running in a generally East-West direction, and State Route 1 (The Calumet Expressway) is a public highway running in a generally North-South direction. At the time of the accident, the deceased, John M. Hoffman, was driving his automobile in a westerly direction on Exchange Road. Ivan Krapac, the driver of the other car involved in the accident, was driving in a northerly direction on State Route 1. At the time of the accident, the evidence clearly indicates that the "Stop" sign ordinarily in place at the Northeast corner of the intersection to stop westbound traffic on Exchange Road was down.

Claimant called Wayne D. Zipsie, a State Trooper, under Section 60 of the Illinois Practice Act. Zipsie testified that the intersection in question was part of his territory in Will County, Illinois; that State Route 1 is a two-lane highway with a 65 mph speed limit; and that thousands of automobiles use this highway at high speeds every day. Zipsie further testified that several hours prior to the accident he had reported by radio to his district headquarters that the "Stop" sign in question was down and requested the Highway Department to put up a new sign, and that he passed this intersection approximately five times in a nine-hour shift, and that there were three nine-hour shifts maintained by the State Patrol each day.

Dr. Lawrence G. Clark, a witness for claimant, testified that at 8:30 a.m. on Saturday, October 29, 1966, he passed through this intersection, and that the "Stop" sign was down at that time.

Ted Kloeckner, a witness for claimant, testified that on Saturday morning, October 29, 1966, he traveled Exchange Road to the Calumet Expressway and that at the intersection in question the "Stop" sign for traffic traveling westbound on Exchange Road approaching the Calumet Expressway was down.

William S. Landske, witness for claimant, testified that on Thursday morning, October 27, 1966, he noticed that the "Stop" sign in question was down. He further testified that the intersection in question is in a rural area and that there were cornfields to the left and right as one is traveling west on Exchange Road.

Theresa K. Rumas, a witness for claimant, testified that the "Stop" sign for westbound traffic on Exchange Road at the intersection with State Koute 1 was missing on Wednesday, October 26, 1966.

Aloys J. Petry, another witness called by claimant, stated that on Thursday morning before the accident he came through this intersection driving westbound on Exchange Road and, not seeing a "Stop" sign, "almost slid into the intersection."

Patricia Hoffman testified that prior to the accident her husband had been working at a bakery of which he was a part owner, and that he went to work at 2:00 o'clock in the morning and returned home about noon. She testified that he had dinner, laid down and took a nap, and that when he awoke he shaved, dressed and went back to the bakery to check out. She further testified that, with her husband driving the automobile, about 40 miles per hour, they left their house about 5:00 o'clock p.m.; that she was sitting on

the passenger side in the front seat; and that visibility that night was fairly good. She further testified that as they approached the place of the accident, they seemed to slow down, but that she was observing the scenery and that the next thing she knew she was in the back seat of the car and had not heard any signals or horns or anything of that nature.

Ronald L. Youngblood was called as a witness for respondent. He testified that he is a Field Engineer for the Illinois Division of Highways, and that on October 29, 1966, he held the position of Field Traffic Engineer, and that the area of the accident was in his territory. Among other things, his testimony indicated that there was a warning sign "Stop Ahead" approximately 400 feet east of the intersection in question. He further testified that there was no corn field at the site of the intersection, and that there was no obstruction to his view of the Calumet Expressway as he traveled westbound on Exchange Road.

Carl F. Kowalski was called as a witness for respondent and testified that he was the District Traffic Engineer for District No. 10, and that the "Stop" sign in question was first reported down at 12:05 p.m. on October 29, 1966, approximately five hours prior to the accident. He testified that the report was received by the dispatcher, and that numerous attempts were made to contact employees of the Highway Division to re-erect the "Stop" sign in question. However, they were unable to reach anyone and the sign was not re-erected until approximately 11:00 o'clock p.m. on the evening of October 29, 1966.

Dr. Irwin I. Feinberg testified that Patricia Hoffman, as a result of the accident, suffered a fracture at the base of the fifth metacarpal in the left hand, a fracture of the superior and inferior ramus of the pubis bone; that her left lung was collapsed due to contusion, and she had swelling

and pain in her left foot. She also had a contused bladder, and there was a paralytic ileus to the bowel because of the trauma to her groin area. He further testified that as far as permanency of the injuries was concerned, Mrs. Hoffman would have pain from time to time in the groin area, particularly with weather changes. Mrs. Hoffman testified that as to her present physical condition, she tires more quickly than she used to, and that certain movements are restricted, and that she cannot lift objects as she used to. There is evidence in the record that Mr. Hoffman was 35 years old when he died; that his life expectancy was 36.2 years; and that his average earnings for the five years preceding his death exceeded \$13,000.00 per year.

Claimant contends that the State of Illinois was negligent in permitting and allowing a "Stop" sign for west-bound traffic on Exchange Road at its intersection with State Route 1 to remain in a neglected and knocked-down condition, although the respondent knew, or in the exercise of ordinary care should have known, of the condition of the "Stop" sign.

The law in the State of Illinois is well settled that the State of Illinois is not an insurer of every accident that occurs on its public highways. *Riggins vs. State of Illinois*, 21 C.C.R. 434; *Gray vs. State of Illinois*, 21 C.C.R. 177. The State of Illinois does have the duty to exercise reasonable care in the maintenance and care of its highways, in order that defective and dangerous conditions likely to injure persons using the highway shall not exist. *Crouchet vs. State of Illinois*, 21 C.C.R. 157; *Moran vs. State of Illinois*, 24 C.C.R. 219.

In *Di Orio vs. State of Illinois*, 20 C.C.R. 53, this Court applied the same rules of law pertaining to notice in suits against the State involving defects in highways, as pertained to suits against municipalities involving injuries

caused by defective conditions in sidewalks. The law in Illinois is clear that before a municipality can be held liable for injuries caused by the defective condition of a sidewalk, it is necessary that there be evidence showing that the City had actual or constructive notice of the alleged unsafe condition. *Arnett vs. City of Roodhouse*, 330 Ill. App. 524; *Coffin vs. City of Chicago*, 254 Ill. App. 29.

The crucial question in determining the responsibility of the State of Illinois for the accident is whether or not the State of Illinois had sufficient notice of the defect, namely the fact that the "Stop" sign was down at this busy intersection, and was negligent in allowing this condition to remain uncorrected. There is testimony in the record that the "Stop" sign in question was down on Wednesday, October 26, 1966, three days before the accident. There is also testimony in the record that the State Highway Patrol regularly patrolled this area, and that the State Police ordinarily passed this intersection approximately 15 times each day, and that other employees of the State Highway Division patrol the highways regularly. Carl F. Kowalski, District Traffic Engineer, testified that the sign was first reported down at 12:05 p.m. on October 29, 1966, approximately five hours before the accident. It appears from the evidence that even though the sign was reported down there was no effective procedure for getting a repair crew to the site to re-erect the "Stop" sign.

From the evidence it appears that the respondent had sufficient actual and constructive notice of the dangerous condition existing at the intersection in question, and we are of the opinion that the State was negligent in allowing this condition to exist, and in not having established an effective procedure to correct such emergency situations within a reasonable period of time.

This Court has taken notice of the opinion in *Shirar vs. State of Illinois*, #5124, filed November 9, 1965. In that case

the claimant contended that the failure of the State of Illinois to maintain a "Stop Ahead" warning sign approximately 1000 feet from the intersection in question constituted negligence and was the proximate cause of an accident. The evidence disclosed that there was a "Junction-Information" sign 500 feet from the intersection, a directional sign **300** feet from the intersection, and a "Stop" sign at the intersection. There was further testimony that the "Stop" sign at the intersection was visible from 500 to 1000 feet from the intersection. In the Shirar case the Court denied any recovery finding that claimant failed to prove that respondent was negligent, or that Respondent's negligence was the proximate cause of the accident. The Court stated that it appeared that the negligence of the driver of the automobile in which the claimant was riding was the proximate cause of the accident.

The Shirar case differs from the instant case in at least one important respect. In this case the sign that was down was the "Stop" sign at the intersection, rather than a "Stop Ahead" warning sign. In the Shirar case the Court pointed out that there were two warning signs up which should have warned the driver of any vehicle approaching the intersection, plus the fact that the "Stop" sign at the intersection was up and was clearly visible from a distance of 500 to 1000 feet. In this case the sign which was down and which the State failed to replace was the "Stop" sign at the intersection, rather than the "Stop Ahead" sign as in the Shirar case. It is the opinion of this Court that claimant's husband did not have adequate warning of the approaching intersection as did the driver of the automobile in the Shirar case.

We are of the opinion that the claimant has sustained the burden of proof that she and her husband, John M. Hoffman, were free from contributory negligence, and that the negligence of the respondent was the proximate cause of the accident.

An award is made to Patricia **K.** Hoffman, Special Administratrix of the Estate of John **M.** Hoffman, Jr., deceased, in the amount of \$25,000.00. A further award is made to Patricia **K.** Hoffman for injuries sustained by her in the amount of \$15,000.00.

(No. 5454—Claimant awarded \$52.02.)

DES MOINES TRAVELODGE, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed February 18, 1971.

DES MOINES TRAVELODGE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

DAMAGES—stipulations Where claimant and respondent stipulate to facts and damages an award will be entered accordingly

HOLDERMAN, J.

On January **10, 1968**, claimant, Des Moines Travelodge of 2021 Grand Avenue, Des Moines, Iowa, filed a complaint in the amount of \$52.02.

The record consists of the following:

- 1 **Complaint**
2. **Joint stipulation between claimant and the State of Illinois**

It appears that claimant rendered services to the State of Illinois, and that said amount is due and owing claimant.

An award is, therefore, made to claimant, Des Moines Travelodge, in the amount of \$52.02.

(No. 5471—Claimant awarded \$89,564.94.)

THOMAS M. MADDEN COMPANY, a Corporation, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed February 18, 1971.

HEALY, MCGURN AND O'BRIEN, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; BRUCE J. FINNE and SAUL R. WEXLER, Assistant Attorneys General, for Respondent.

CONTRACTS—*ambiguity*. Where document is ambiguous, it will be construed against the party who prepared it.

CONTRACTS—*ambiguity*. Where contract called for claimant excavating contractor to “merely transport and dump” excavated material, the contractor was entitled to be reimbursed for the cost of leveling that material.

DOVE, J.

This is a claim for the sum of \$112,648.97 allegedly expended by claimant in connection with dumping approximately 920,000 cubic yards of excavated material at a dump site on the shores of Lake Calumet.

The claim is made specifically for equipment and labor used to level, grade and compact the dumped material.

It appears that the facts in this case are not disputed and are as follows:

On July 11, 1961, claimant, as the successful bidder, was awarded a contract by the State of Illinois, Department of Public Works and Buildings, Division of Highways, for the construction of a section of the Dan Ryan Expressway between 59th Street and 63rd Street in the City of Chicago. A major element in the performance of this contract consisted of the excavation and disposal of approximately one million cubic yards of earth from the construction site. The contract was fully performed and there appears to be no issue concerning said contract except for claimant's claim which arises under the Special Provisions of the Specifications relating to the disposal of the excavated material. The applicable provisions of the contract are as follows:

“Disposal of Surplus Excavated Material: All surplus excavated material shall be transported, deposited and compacted where necessary as hereinafter specified, in the areas described herein and in accordance with the applicable provisions of Section 16 of the Standard Specifications, except as otherwise specified herein or ordered by the Engineer.

Prior to placing any excavated materials in the areas hereinafter specified, the Contractor shall secure approval of the proposed embankment area involved. Surplus excavated material shall be all material from ‘Special Excavation’ and ‘Class A Excavation for Structures’ which is designated as surplus by the Engineer.

Surplus excavated material which the engineer designates as suitable for roadway embankment shall be transported, placed and compacted in the East Frontage Road embankment on the South Expressway (East Leg) between 107th Street and 127th Street before any material is placed in Sections 1, 2 and 3 designated herein.

Location plans and cross sections for the proposed embankment in this area will be furnished to the Contractor by the Department immediately after the award of the contract. This Contractor shall remove all unsatisfactory debris from within the limits of the proposed embankment area before placing any new embankment as and when directed by the Engineer. Such debris shall be stockpiled in locations designated by the Engineer. This embankment shall be placed and compacted in accordance with the applicable provisions of Section 16 of the Standard Specifications, unless specifically otherwise authorized by the Engineer.

This contract for the proposed East Frontage Road (Section 0912-707.1) Project I-90-5(73) (114) has been let and work should be in progress by the time this contract is awarded. Since work on the East Frontage Road will be under way, it is imperative that this Contractor place the necessary suitable surplus excavated material for the embankment for this road at the earliest possible date after the award of this project. Arrangements shall be made with the Engineer to excavate the required amount of material even though it may involve excavating in Stage I, areas designated to be removed in later stages in the Special Provisions titled ‘Construction Procedure and Maintenance of Traffic’.

The Contractor shall dispose of the remainder of his surplus excavated material in the following approximate areas, all within the general limit of the Chicago Regional Port District at Lake Calumet.

Section 1. The extension of Stony Island Avenue from 112th Street to 122nd Street. This embankment area will be approximately 150 feet wide and will accommodate approximately 440,000 cubic yards of material.

Section 2. All remaining surplus excavated material shall be deposited in an area east of and parallel to the proposed East Frontage Road to be constructed under the previously mentioned contract. This embankment area will extend from 110th Street to 116th Street and will be approximately 700 feet wide.

Section 3. All unsuitable material shall be disposed of in accordance with Article 14.8 of the Standard Specifications.

More detailed locations and cross sections for Sections 1 and 2 above will be furnished to the Contractor at the time he is ready to start his excavation operations. This Contractor will be required to merely transport and dump the surplus excavated materials in the locations described as Sections 1 and 2.

The hauling, placing and compacting, where specified, of surplus excavated material, the construction of any required cross roads and ramps and the removing and stockpiling of unsuitable debris, all as described above, will not be paid for separately, and the cost thereof shall be included in the contract unit prices bid for the excavation items involved."

Of the approximately one million cubic yards excavated by claimant during the performance of the contract, about 80,000 yards of excavated material was placed and compacted on the East Frontage Road embankment. About 920,000 cubic yards were removed to the dump site on the shores of Lake Calumet designated by the contract as the Section 2 Dumping Site. The problems encountered by claimant during the removal of the excavated material to the Section 2 Dumping Site gives rise to its claim.

The record in this case indicates that Robert J. Madden, Vice-president of claimant, made an inspection of the dumping sites prior to claimant submitting its bid. From his inspection of the dumping area, Mr. Madden knew that the great bulk of excavated material dumped at the Section 2 Dumping Site would actually be dumped into Lake Calumet and that bulldozers and workers would be required to spread and level the excavated material as it was dumped by the trucks at this particular site.

Claimant in preparing its bid made no effort to compute or to include the costs for the necessary leveling and spreading of excavated material at the Section 2 Dumping Site because claimant interpreted the contract phrase "to merely transport and dump" to mean that managing the dirt as the trucks dumped it at the Section 2

Dumping Site would be the obligation of some other party and that its sole obligation would be to dump the excavated material at the site. Claimant apparently did not inquire of either the State of Illinois or the Chicago Regional Port District as to whether its assumption that some other party or person would be responsible for managing the dirt was correct.

On August 14, 1961, dumping began at the Section 2 Dumping Site. That same day claimant discovered that four other contractors were also dumping in the same area and that none had been assigned specific locations. Claimant also discovered that no one from the Port District or the State of Illinois was managing the dirt and that claimant, like the other contractors, was going to have to provide its own equipment to level and move the excavated material.

On August 14, 1961, claimant made inquiry for the first time of the State of Illinois and the Port District as to who was going to level the dirt. The Port District had no plans to handle the material. The construction engineer for the State told Mr. Madden to write him a letter. The following day, August 15, 1961, claimant wrote to the District Engineer asking for reimbursement for the expenses being incurred. The State did not answer claimant's letter of August 15, and on September 19, 1961, he wrote the State of Illinois again. The fact that none of the contractors dumping in the Section 2 dumping area had any specific areas assigned to them in which to dump became a problem. Claimant demanded that there be a meeting of the contractors and the State so that dumping areas could be assigned. Such a meeting was held on September 21, 1961. Claimant was specifically assigned the area from 113th Street to 116th Street. With respect to claimant's demands for reimbursement for the costs being incurred daily in leveling and spreading the

excavated material, claimant never received any written response from the State of Illinois until March 8, 1962, at which time he was notified that the State of Illinois was rejecting his claim. The excavating work was finished in July or August of 1963.

Claimant continued to pursue its demands for reimbursement, and there is some indication in the record that in 1966 the Department of Public Works and Buildings was seriously considering a compromise payment to claimant in the amount of \$89,564.94. It appears that the death of claimant's attorney was a factor in this settlement not being effected.

Claimant takes the position that there is no ambiguity in the contract and that the provision of the contract providing that claimant would be required to "merely transport and dump" the surplus excavated materials in the Section 2 Dumping Site means, on its face, that letting the dirt fall out of the truck was the extent of claimant's contractual obligation. Claimant also contends that if the contract is ambiguous, it should be construed against the respondent who prepared the contract. Respondent argued that since the dirt could not be dumped without leveling, other than in a vast open prairie, it was implied in the contract that claimant would do all leveling necessary to permit him to carry out his contractual obligations to dump.

The issue in this case is the meaning of the phrase "merely transport and dump". In connection with the meaning of the word "dump", the testimony of respondent's own witness, Henry M. Yamanaka, District Design Engineer, should be noted. He testified that the contract in question was prepared by a consulting firm and submitted to him for approval. He further testified, in answer to a question as to what was to be done with the excavated material that was dug up, that under the terms of

the contract the Contractor was merely to transport and dump the material at locations specified in the Lake Calumet area.

It is the opinion of this court that if the respondent intended for the Contractor to be responsible for leveling and compacting the excavated material at the Section 2 Dumping Site, that it should have so provided in the contract. The contract as written, stated that with respect to the Section 2 Dumping Site, the Contractor would be required to “merely transport and dump” the surplus excavated material. It should be noted that with respect to the East Frontage Road embankment area, the Contractor was specifically directed to transport, place and compact the excavated material. It would have been a simple matter for the respondent to draft the contract in such a way that the claimant would have been expressly advised of the fact that it was expected to not only transport and dump the excavated material at the Lake Calumet dumping site, but was also responsible for leveling and compacting the excavated material. For the foregoing reasons, and considering the well-established rule that if an instrument is ambiguous, it will be construed against the party who prepared it, *Donahue vs. Rockfort Showcase and Fixtures Company*, 87 Ill. App. 2d 47, 230 NE 2d 278; *Gothberg vs. Nemerovski*, 58 Ill. App. 2d 372, 208 NE 2d 12, and considering Mr. Yamanaka’s testimony with respect to his interpretation of the contract and considering the evidence in the record that the Department of Public Works and Buildings, through certain of its employees, was considering authorizing a payment to claimant in the amount of **\$89,564.94**, this court hereby makes an award to claimant in the amount of **\$89,564.94**.

(No. 5492—Claimant awarded \$12,000.00.)

HUGH R. ASHMORE, Administrator of the Estate of JAMES C. ASHMORE, Deceased, Claimant, vs. THE BOARD OF GOVERNORS OF STATE COLLEGES AND UNIVERSITIES, Respondent.

Opinion filed February 18, 1971.

EVA L. MINOR AND PAUL F. DAVIDSON, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General, for Respondent.

NEGLIGENCE—*duty of care*. Where university student was instructed to swim, drowned in doing that, and his disappearance was not noticed by lifeguard or instructor, the negligence of the respondent was the proximate cause of the death of claimant.

DOVE, J.

This is a cause of action brought by, Hugh R. Ashmore as Administrator of the Estate of James C. Ashmore, deceased, for damages for the wrongful death of James C. Ashmore.

On October 26, 1967, James C. Ashmore, then 22 years of age, was a student at Western Illinois University, Macomb, Illinois. About 2:00 p.m. on October 26, 1967, James C. Ashmore reported for instructions at the beginning swimming class conducted by the University. James C. Ashmore, with ten other members of the class, was instructed to swim three lengths of the swimming pool, each length being approximately 75 feet. In attempting to follow such instructions, James C. Ashmore entered the pool, and began to swim about 2:15 p.m. At approximately 2:45 p.m. he was found at the bottom of the pool, and shortly thereafter was pronounced dead.

Pursuant to a joint stipulation of the parties herein, the investigation report of the Western Illinois University's Security Office was submitted into evidence as the joint exhibit of claimant and respondent. It was further

stipulated by the parties herein that such report shall constitute the evidence on the question of liability.

At the time of the incident there were present at the pool, James C. Ashmore, his ten fellow class members, the instructor, a lifeguard, and three members of the water polo team.

The following constitutes pertinent portions of the investigative report:

"At 2:10 p.m. attendance was taken by Paul Hutinger, the instructor, and his attendance book indicated that the Subject was present . . . total attendance for the class numbered eleven.

The instructor stated that after the class attendance was taken several general items were discussed, including the skills learned at the last class session and items to be covered for this period. The class was instructed to swim three lengths of the pool (75' 1" each length) starting at the shallow or east end, and they were to follow each other at intervals of five yards starting in lane five. Upon reaching the west or deep end, they were to move over to their left into lane six, and swim back to the shallow end . . . The instructor stationed himself at the shallow end by lanes five and six, while a guard, Patrick Doud, was standing on the deck at the south side of the pool up toward the deep end.

The class consisted of advanced and beginner swimmers. The Subject was classified as a beginner along with David Holmes, Mike Hughes, Keith Bartlow, and John Fritz . . .

It was David Holmes, of the beginner group, who had the last known verbal contact with the Subject. According to Holmes, after the instructor gave directions, the students moved over to lane five, and commenced swimming at approximately 2:15 p.m. Holmes stated that the Subject and he were the last two members of the class to start swimming. Holmes recounted that the Subject and he had a short discussion at this point as to who should go first. It was agreed that, since the Subject was already in position, he should lead off, which he did. Holmes indicated that the Subject dove in and initially swam rapidly, almost catching the swimmer in front of him. However, before Holmes dove in he noticed that the Subject appeared to be struggling, and was definitely having difficulty. Holmes did not think the Subject's difficulty warranted calling to the instructor, so he dove in, and, since he also was a beginner, turned his full attention to his own swimming. After Holmes left the pool, he did not remember to check for the Subject throughout the remainder of the class . . .

. . . The instructor then moved to the north side of the pool for diving instructions at approximately 2:25 p.m. It was at this time according to another student, Keith Bartlow, that Bartlow actually counted the group at the diving session, since it appeared smaller than usual. Also, he was curious to see how evenly divided the groups were that the guard had put them in. He counted five students in each group, including himself.

“The students were given a few minutes of diving instructions by the guard, Patrick Doud, and were watched individually by the instructor and Doud, as the students singularly attempted the skill. At no time did two students dive in together. They waited for each member to return before the next swimmer proceeded. The students then tried their skills, one at a time off the low diving board on the same side of the pool. The class was dismissed at 2:40 p.m. Within a short time (less than two minutes) after the diving session, a student, Douglas Dirks, shouted to Doud that there was someone in the water. The Subject was located toward the south side of the pool, near lane five at the 10' level, near the bottom of the pool”

The record contains no explanation as to why the instructor and the lifeguard failed to see the deceased struggle and go down. He apparently sank from sight within seconds after he entered the pool, and was not **missed by the instructor or the lifeguard at any time during** the balance of the class, a period of about thirty minutes, even though the instructor was allegedly grading each student individually on his swimming skills. His absence was not noticed when the class moved to the other side of the pool for individual diving instruction. Only after the class was dismissed did a student notice the deceased, James C. Ashmore, lying at the bottom of the **pool**.

It is the opinion of this Court that the negligence of respondent was the proximate cause of the death of James C. Ashmore. No evidence was introduced which tended to show that James C. Ashmore was guilty of any contributory negligence.

An award is hereby made to Hugh R. Ashmore, Administrator of the Estate of James C. Ashmore, deceased, in the amount of \$12,000.00.

(So. 5529—Claim denied.)

**RICHARD WAGONER, d/b/a WAGONER'S MOTORAMA, Claimant, vs.
STATE OF ILLINOIS, Respondent.**

Opinion filed February 18, 1971.

J. H. WEINER, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

NEGLIGENCE—*issuance of auto title*. Where Secretary of State acted pursuant to statute in issuing a certificate of title, it is the opinion of the court that the Legislature did not intend to compensate persons for any loss they may have sustained by reason of their relying upon such certificate of title.

DOVE, J.

This is a cause of action brought by Richard Wagoner, d/b/a Wagoner's Motorama, for damages allegedly resulting from the negligence of the State of Illinois in issuing a Certificate of Title to a certain 1967 Ford Galaxie 500 automobile. Claimant alleges that he is the owner of a used car business in the City of Springfield, Illinois, and that on February 15, 1967, he purchased a 1967 Ford Galaxie 500, registered number 7W55C114223, from one Ronald M. Harris for \$2,100.00. Claimant alleges that at the time of purchase he was a bona fide purchaser for value, relying upon a Certificate of Title issued by the State of Illinois to Ronald M. Harris. On February 20, 1968, claimant was advised by the Illinois State Police that the 1967 Ford Galaxie 500 had been stolen from the Avis Rent-A-Car System, and claimant subsequently paid the sum of \$1,750.00 to Avis Rent-A-Car System, the legal owner of the automobile.

The claimant alleges negligence on the part of the respondent in placing in the possession of Ronald M. Harris a Certificate of Title upon which he relied, and seeks damages in the amount of \$1,750.00.

The only evidence introduced on behalf of respondent was a departmental report consisting of a letter from the Secretary of State to the Attorney General of the State of Illinois, dated July 17, 1968, in which it appears that when Mr. Harris made his application for a Certificate of Title for the 1967 Ford Galaxie 500, and submitted a fee, he surrendered certain documents including a purported bill

of sale for the 1967 Ford, by Lendrum & Hartman Ltd. to a Richard M. Harris of Canterbury, Kent, England. The departmental report neither admits nor denies any negligence.

In the case of *Rice vs. Galkowski*, 333 Ill. App. 652, the Appellate Court held that mere possession of an automobile with Certificate of Title thereto was not sufficient indicia of the possessor's ownership so as to be relied upon by one subsequently purchasing the automobile from such possessor.

It is the opinion of this Court that the claimant has failed to prove by a preponderance of the evidence that the respondent, State of Illinois, was in fact negligent or careless in issuing a Certificate of Title to the 1967 Ford Galaxie 500 to Ronald M. Harris, and that such negligence was the proximate cause of claimant's loss. It appears from the evidence in this case that the Secretary of State acted properly and pursuant to statute in issuing the Certificate of Title, based on the documents presented to the Secretary by Harris.

The Uniform Motor Vehicle Anti-Theft Act provides for the issuance of Certificates of Title for motor vehicles and regulates various matters pertaining to such Certificates. If a Certificate of Title to an automobile is mistakenly issued by the Secretary of State, it is the opinion of this Court that the Legislature did not intend that the State of Illinois compensate persons for any loss they may have sustained by reason of their relying upon such Certificate of Title.

For the foregoing reasons claimant's claim is hereby denied.

(So.5617—Claimant awarded \$88.00.)

LOUIS J. FOLEY, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed February 18, 1971.

LOUIS J. FOLEY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE J.

(No. 3706—Claimant awarded \$209.95.)

D. G. HUELSKOETTER, M.D., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed February 18, 1971.

D. G. HUELSKOETTER, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C. J.

(So.5761—Claimant awarded \$140.00.)

GARFIELD PARK MOVING AND STORAGE COMPANY, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed February 18, 1971.

WARREN KRINSKY, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; BRUCE J. FINNE, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has **lapsed**, the Court will enter an award for the amount due claimant.

DOVE, J.

(So. 5764—Claimant awarded \$115.00.)

KATY CORPORATION, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed February 18, 1971.

CHARLES KRAUT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has **lapsed**, the Court will enter an award for the amount due claimant.

DOVE, J.

(So. 5797—Claimant awarded \$443.50.)

TRANSWORLD VAN LINES, INC., a/k/a MAJESTIC WAREHOUSES, INC., Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed February 18, 1971.

TRANSWORLD VAN LINES, INC., a/k/a MAJESTIC WAREHOUSES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

DAMAGES—stipulation. Where claimant and respondent stipulate to facts and damages, an award will be entered accordingly.

HOLDERMAN, J

On **April 1, 1970**, Transworld Van Lines, Inc., a/k/a Majestic Warehouses, Inc., filed a claim against the State of Illinois for services rendered the Cook County Department of Public Aid in the amount of \$719.00.

The record consists of the following:

1. Complaint
2. Joint Stipulation

It appears that claimant did furnish services to the State of Illinois in the amount of **\$443.50**.

An award is, therefore, made to claimant, Transworld Van Lines, Inc., a/k/a Majestic Warehouses, Inc., in the amount of **\$443.50**.

(No. 5815—Claimant awarded \$1,025.00.)

HAZEL C. CASE, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed February 18, 1971.

EDWARD H. ENRIGHT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

DOVE, J.

(No. 5850—Claimant awarded \$24,869.03.)

A. EPSTEIN AND SONS, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC WORKS AND BUILDINGS, DIVISION OF HIGHWAYS, Respondent.

Opinion filed February 18, 1971.

RICHARD H. ROGERS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5880—Claimant awarded \$100.35.)

**WOLFORD MORRIS SALES, INC., Claimant, vs. STATE OF ILLINOIS,
SENATE MAINTENANCE COMMISSION, Respondent.**

Opinion filed February 18, 1971.

WOLFORD MORRIS SALES, INC., Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5955—Claimant awarded \$6,927.07.)

ANGELO BASTONE, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed February 18, 1971.

RICHARD F. MCPARTLIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General, for Respondent.

ILLINOIS STATE POLICE—back pay. Where stipulated by claimant and respondent, claimant shall be awarded back pay for period claimant was under suspension.

ILLINOIS STATE POLICE—retirement system. Where stipulated by claimant and respondent, the Illinois State Retirement System shall accept an amount equal to 8% of claimant's back pay, and make his benefits retroactive.

PERLIN, C.J.

This matter coming to be heard on the joint stipulation of the parties, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED:

1. That claimant shall be awarded the sum of **\$6,927.07** in full satisfaction of all claims against the State of Illinois resulting from his suspension from the Illinois State Police;

2. That claimant is herewith authorized to pay into the Illinois State Retirement System an amount equal to 8% of the back salary he would have received had he worked from the date of July 3, 1962, through February 4, 1970;

3. That the Illinois State Retirement System shall accept said payment, and apply it retroactively, so that, when claimant becomes eligible for a pension, he will receive that amount to which he would have been entitled had he been actually working from February 5, 1948, through February 4, 1970.

(So.5956—Claimant awarded \$5,215.80.)

EDWIN J. DVORAK, SR., Claimant, vs. STATE OF ILLINOIS,
Respondent.

Opinion filed February 18, 1971.

RICHARD F. MCPARTLIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General.

ILLINOIS STATE POLICE—*back pay*. Where stipulated by claimant and respondent, claimant shall be awarded back pay for period claimant was under suspension.

ILLINOIS STATE POLICE—*retirement system*. Where stipulated by claimant and respondent, the Illinois State Retirement System shall accept an amount equal to 8% of claimant's back pay, and make his benefits retroactive.

PERLIN, C.J.

This matter coming to be heard on the joint stipulation of the parties, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED:

1. That claimant shall be awarded the sum of \$5,215.80 in full satisfaction of all claims against the State of Illinois resulting from his suspension from the Illinois State Police;

2. That claimant is herewith authorized to pay into the Illinois State Retirement System an amount equal to 8% of the back salary he would have received had he worked from the date of July 3, 1962, through April 24, 1967;

3. That the Illinois State Retirement System shall accept said payment, and retroactively award claimant a pension commensurate with the amount of his total payment into the retirement fund.

(So. 5412—Claimant awarded \$4,000.00.)

WILLIAM A. DIVIS, JR., A MINOR, by LILLIAN DIVIS, His Mother and Next Friend, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed December 18, 1969.

Claimant's motion to reconsider issue of damages denied April 13, 1971.

COONEY AND STENN, Attorneys for Claimant.

WILLIAM G. CLARK, Attorney General; ETTA J. COLE, Assistant Attorney General, for Respondent.

STATE PARKS, FAIR GROUNDS, MEMORIALS AND INSTITUTIONS—*duty to maintain*. State owes a duty to public to exercise reasonable care in establishing, maintaining and supervising its parks.

STATE PARKS, FAIR GROUNDS, MEMORIALS AND INSTITUTIONS—*evidence*. Where State knew slide was broken, but failed to remove it or repair it, it was negligent, and its negligence was the proximate cause of claimant's injury.

BOOKWALTER, J.

This is a claim for personal injuries sustained on July 3, 1966, as a result of a fall by claimant from a partially dismantled slide located at a play area in the Illinois State Park, Marseilles, Illinois.

Claimant alleges that respondent was negligent in maintaining the premises of the Illinois State Park in a dangerous condition, and more specifically that respondent was negligent in allowing the slide to remain on the premises in a defective condition without either giving warning of the condition or repairing or replacing the slide. From the testimony and the departmental report it may be seen that the slide in question was of the typical variety of slides, but that the portion, which children use to slide down, had been removed, leaving only the ladder and supporting poles standing.

The ranger at the Park, Mr. Glenn R. Hott, had put a chain with a "closed" sign across the ladder, but this had been removed by someone other than park officials, and thrown in a trash can sometime prior to July 3, 1966.

Claimant's first witness was Mr. Raymond Mills. Mr. Mills testified that he was a frequent camper at the Illinois State Park in Marseilles, Illinois; that he was present on July 3, 1966, the date of the accident, and that he had observed that the slide portion of the slide was missing. He further testified that the slide portion had been missing for a period of at least two years prior to July 3, 1966, and that he had frequently seen children playing on the ladder and poles, which remained. Mrs. Shirley Jean Mills, wife of Raymond Mills, testified that she had seen the slide in its defective condition during the summer of 1965, and that it was in this same dismantled condition on the date of the accident.

Mr. William Albert Divis, father of claimant, testified that, on July 3, 1966, he and his wife and their three children were camping in the park, and that they had paid the required fee for admission into the park. He testified that his son, then age 5, climbed to the top of the ladder, and started to come down by hanging onto one of the rungs, but that his hand slipped, and he fell sideways, landing on his right side.

Immediately following the fall, claimant was taken to Rayburn Hospital in Ottawa, Illinois, where his injury was diagnosed as a dislocation of the right elbow with comminuted supra-condylar fracture. He was given general anesthesia, and the fracture was reduced.

It is true that the State is not an insurer of the safety of those using the State's property, but the State does owe a duty to the public to exercise reasonable care in establishing, maintaining and supervising its parks. *Kamin vs. State of Illinois*, 21 C.C.R. 467; *Stedman vs. State of Illinois*, 22 C.C.R. 446. In this case, however, it is incumbent upon claimant to show that respondent had notice of the defective condition of the slide before this duty is placed upon respondent. The fact that the slide was observed in its dangerous condition two years prior to the accident, and the fact that respondent had previously erected a warning sign on the slide, establish that the State had notice, whether implied or actual, of the dangerous condition of the slide.

It is the opinion of this Court that respondent was negligent in allowing the dangerous condition to exist. The duty placed upon the State would require the State in this case to have either removed the remaining portion of the slide or to have erected a barricade or other obstruction, which could not be removed, in order to prevent children from playing on the slide. There is no question that this negligence was the proximate cause of claimant's injuries.

The remaining question concerns the extent of damages incurred by claimant as a result of this accident. Claimant's Exhibits Nos. 1-7, inclusive, admitted without objection, showed medical expenses in the amount of **\$767.25**. Dr. Selig J. Kavka submitted a written report for respondent, which contains the following language:

“ . . . on extension of the arms there was a slight outward bowing at the right elbow as compared with the left, incomplete flexion of the elbow, and barely touching the shoulder with the fingers.

Diagnosis: Fracture of the **right** arm, from **history**. healed, with slight deformity and impairment."

This Court is of the opinion that claimant has suffered substantial damage, and is hereby awarded the sum of \$4,000.00.

(No. 3025—Claimant awarded \$5,546.78.)

ELVA JENNINGS PENWELL, Claimant, vs. STATE OF ILLINOIS,
Respondent.

Opinion filed April 27, 1971.

GOSNELL, BENECKI and QUINDRY, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBER, Assistant Attorney General, for Respondent.

AWARDS—The Court can make awards on a continuing basis when the claimant continues to have expenses as a result of compensable injury.

PERLIN, C.J.

Claimant filed her petition for reimbursement for monies expended for nursing care and help, medical services and expenses from January 1, 1970, to December 31, 1970, praying for an award in the sum of \$5,546.78.

Claimant was seriously injured in an accident on the 2nd day of February 1936, while employed as a Supervisor at the Illinois Soldiers' and Sailors' Children's School at Normal, Illinois. The complete details of this injury can be found in the original cause of action, *Penwell vs. State of Illinois*, 11 C.C.R. 365, in which an initial award was made, and at which time jurisdiction was retained to make successive awards in the future, and this Court has periodically made supplemental awards to claimant to cover expenses incurred by her, the last award covering the time period from January 1, 1969, through December 31, 1969.

A joint motion of claimant and respondent was filed herein requesting leave to waive the filing of briefs and arguments. This motion was granted, and no further pleadings have been filed herein.

Since the Attorney General does not contest the veracity nor the propriety of the items and amounts set forth in claimant's petition, this Court must assume that the Attorney General agrees with the amounts thus set forth.

The Court, therefore, enters an award in favor of the claimant in the sum of **\$5,546.78** for the period of time from January 1, 1970, through December 31, 1970. The matter of claimant's need for additional care is reserved by this Court for future determination.

(No. 5206—Claimants awarded \$271,192.00.)

JOHN C. TULLY COMPANY, A Corporation and MICHAEL PONTARELLI, INC., A Corporation, Claimants, vs. STATE OF ILLINOIS, Respondent.

Opinion filed *April 27, 1971.*

HARRY M. BROSTOFF and **DONALD J. O'BRIEN, JR.**, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

DAMAGES—stipulation. Where claimant and respondent stipulate to facts and damages, an award will be entered accordingly.

PERLIN, C.J.

The instant cause was filed in December of 1964 as a result of a dispute over a construction contract under which the claimants were joint venturers. The parties have entered a stipulation in which they agreed that the respondent was liable for damages as to certain counts in the complaint. The respondent acknowledged its liability therein to the extent of **\$271,192.00** in return for which the

claimants agreed to waive, release and relinquish any and all claims presented under this cause;

IT IS HEREBY ORDERED that the sum of \$271,192.00 be awarded to claimants in full satisfaction of any and all claims presented to the State under case No. 5206.

(SI).5324—Claimants awarded \$7,500.00.)

JOHN PATTON and JACQUELINE R. PATTON, Claimants, vs. STATE OF ILLINOIS, Respondent.

Opinion filed April 27, 1971.

LEITER, MEWLIN, FRASER, PARKHURST & McCORD, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

NEGLIGENCE—*lateral support and negligent excavation.* Where respondent excavated for a highway, and failed to shore up a hillside, thereby causing a series of landslides. The negligent excavation warrants an award to claimant.

BURKS, J.

A house on a hilltop, claimants' residence, was so badly damaged by a landslide that it became virtually worthless and had to be abandoned. Claimants charge that the landslide which resulted in a total loss of their property's value was caused by acts of negligence on the part of the Illinois Division of Highways.

Claimants' residence was located on the top of a steep hill some 100 feet back from the highway known as U.S. Route 24, south of Rartonville, in Peoria County. The complaint charges that the respondent, while constructing this highway in 1954, was negligent in cutting back the hillside in front of claimants' house and in failing to exercise due care to avoid unnecessary damage to claimants' property.

Various other acts of negligence alleged in the

complaint include the following. No prior notice was given to the claimants as to the magnitude of the cut which was made into the hillside. Respondent removed a concrete block garage set into the hillside at the foot of the hill where the cut was made. No retaining wall or other structure was constructed by the respondent to shore up or support the hillside after the cut was made. The employees of the Division of Highways should have known that cutting into the base of the hillside below the claimants' property would constitute a dangerous, unsafe condition and would be conducive to landslides.

The complaint further states that various representations and promises were made to the claimants by employees of the Division of Highways, both before claimants purchased their property in 1953 and after respondent had made the changes in the hillside in 1954 which allegedly caused claimants' loss. Claimants state that none of these representations and promises were carried out by the respondent.

Subsequent to the cutting and removal of the dirt from the base of the hill, according to the complaint, four landslides occurred on the claimants' property, which caused varying degrees of damage. These were in 1958, 1961, 1964 and, finally, the most serious one in 1965 tore away the foundation under claimants' house and otherwise damaged it so that it was not habitable and repair would not be economically feasible.

The complaint alleges that the claimants were forced to move out of the property in January of 1966 because it was no longer safe to live there; that the negligent acts of the Division of Highways caused the property to become valueless and claimants to lose the investment which they had made in the acquisition and improvement of the premises.

The amount of \$7,500.00, which claimants ask in damages, is shown by the evidence to be a fair and even a modest estimate of their actual financial loss. None of the testimony relating to the amount of claimants' damages is denied or controverted.

No answer having been filed by the respondent, a general traverse or denial of the facts set forth in the complaint is considered as filed pursuant to the rules of this Court. However, in the voluminous record of the hearing in this case, we find that none of the testimony upon which claimants rely was disputed by the respondent. It is therefore accepted as factual. Following is a summary of these undisputed facts presented by the claimants.

In September **1952**, before the claimants purchased and moved into the property, they called the Highway Division for information regarding its plans for the improvement of the highway below and in front of the property which they were considering buying. A representative from the Highway Division came out and talked to the claimants, gave them a plat showing the approximate boundary of the proposed frontage road, and told them that the construction would not involve a cut into the hillside. He said that just a little bit of the bottom of the hill would be scraped away in order to put in a curb and gutter at the edge of the new frontage road. Thus assured, and relying on this assurance, the claimants purchased the property and moved in.

In the spring of **1954**, without notice to the claimants, the Highway Division cut a slice off the base of the hill all along the front of claimants' property within the area of the highway right-of-way. This cut extended some **20** feet into the hillside, and was **3** to **5** feet deep. An old garage at the foot of the hill was removed at the time the cut was made. The edge of the claimants' driveway was left hanging some

2 or 3 feet above the level of the road. No shoring, bracing or retaining wall was built by the respondent in or against the cut-back hillside although, after the cut, employees of the Highway Division at various times represented to the claimants that some sort of retaining wall would be constructed.

Prior to this cut, no slide or movement of earth had occurred on the hillside for more than 50 years. Prior to making the cut, the Highway Division had made some test borings to determine the nature of the soil in the hillside. None were made directly in front of the claimants' house, but a test boring some 110 feet away showed that the top surface of the hillside was silty clay to a depth of 7 feet. No attempt was made to compact or tamp down any of the fresh dirt on the hillside which had been exposed by the cut. The respondent was aware that the land in the general area was conducive to sliding.

In 1958, after the completion of the highway improvement, a landslide occurred on the hillside in front of the claimants' house. Some of the concrete blocks fell out from underneath their front porch and rolled down the hill. The footings underneath the front porch sank about 6 inches. Mrs. Patton, one of the claimants, called the Highway Division, notified them of the slide, and asked if it was due to their cutting at the bottom of the hill. She was assured there was nothing to worry about, and so her husband poured some concrete on top of the old footings, replaced the blocks under the foundation of the house, and supported the porch floor with some heavy timbers.

In 1961 another landslide occurred some 80 feet north of the claimants' house, uphill from their driveway, and almost directly above the place where the old garage had been removed from the foot of the hill. This slide came down over claimants' driveway and closed it off. The

Division of Highways was notified immediately and one of its engineers, Mr. Louis Baxter, came out, observed the landslide and talked to Mrs. Patton. He declined to do anything about the removal of the dirt, and told her that there was nothing he could do about it because it was not on the State's right-of-way. The claimants then contacted the County Highway Department which sent men out to the site with a bulldozer and cleared claimants' driveway.

In 1964, another slide occurred uphill from the driveway, in approximately the same area as the 1961 slide. Again the claimants' driveway was closed by the sliding earth. Again the Highway Division was immediately notified and asked to clear the driveway. Again Mr. Raxter talked to Mrs. Patton, hut told her that it was not within the State's right-of-way, and nothing could be done about it. He didn't bother to come out and **look** at it. That second time, the County Highway Department refused to come back again and clear claimants' driveway because they said it was the State's responsibility. Mr. Patton finally shoveled enough of the dirt off the driveway himself to get his car up to the house.

In March of 1965 the final catastrophic slide occurred. This time, again, it was directly in front of the claimants' house. It tore out the foundation beneath the porch and carried dirt, debris, trees and shrubs down the hillside onto the frontage road below. It left the claimants' house precariously overhanging the hillside, and damaged it beyond repair. The slide originated about 20 feet above and uphill from the top of the cut.

The landslide was newsworthy enough to cause the Peoria Journal Star to take pictures of the scene from a helicopter and run them in the newspaper on April 10, 1965. These published photos were among claimants' exhibits.

On the morning after the landslide, several employees

of the Highway Division went to the site and evidenced great concern. Mr. J. E. Harland, respondent's district engineer, looked over the situation and caused a number of pictures to be taken. Twenty-five of these photos were selected by the attorney for the claimants as being representative of the scene and were admitted in evidence as claimants' exhibits. Mr. Louis Baxter, respondent's field engineer, and a Mr. Scribner went to the scene also, talked to Mrs. Patton, and suggested that she move out of the house immediately because it was dangerous and unsafe to live there. While these men were talking with Mrs. Patton, a messenger came with a special delivery letter and handed it to Mrs. Patton. The letter stated the Highway Division was not responsible for the landslide.

After viewing the scene, a decision was made by the respondent to leave things alone and place barricades around the dirt and debris which had slid down the hill and partially obstructed the frontage road. These barricades for the protection of passing motorists remained in place for months after the slide and are shown in the newspaper pictures among claimants' exhibits. The dirt and debris which obstructed the road was left in place and not disturbed because it was feared by all concerned that its removal might precipitate another landslide. The dirt pile had not been removed at the date of the hearing on this matter, November 20, 1967, and traffic was required to move around it.

Respondent, in denying liability, argues that under the doctrine of lateral support, as enunciated in *I.L.P. Adjoining Landowners, Sec. 11* and in numerous Illinois decisions, claimants' right to lateral support extends only to their soil in its natural condition and not to their house or any structure on their land.

We could accept this well established rule of law as

controlling if we did not have before us the question of negligent excavation which is governed by the equally well established rule stated in *Z.L.P. Adjoining Landowners, Sec. 14*:

“In the leading case of *City of Quincy vs. Jones*, 76 Ill. 231, as well as in other decisions, the courts of this state have established the rule that the right to excavate on one’s own property should be exercised with reasonable skill and care in order to avoid unnecessary damage to buildings and structures on adjoining properties, taking into consideration the character of such buildings or structures and the nature of the soil.”

A comprehensive discussion of the doctrine of lateral support in Illinois, and the right of action for negligent excavation, is set forth in 1956 *Law Forum*, pages 646 to 650. The writer, after a review of all the applicable Illinois cases, concludes as follows:

“Absent contributory negligence, there is always a right to recover for injury to improved land for damages to both land and buildings, where the injury was caused by negligent excavation, even though the land would not have subsided without the additional weight of the buildings.”

The above rule is restated to the same effect in *Z.L.P. Adjoining Landowners, Sec. 16*.

The two essential questions in this case are, first, whether or not the Division of Highways was negligent in some manner in cutting away the foot of the hill in front of claimants’ house and, second, whether that negligence caused the landslides and the accompanying damages.

Respondent insists, in its brief, that claimants failed to maintain the burden of proving negligence on the part of the Division of Highways. We disagree. The evidence, taken as a whole, reveals a pattern of negligent conduct by the respondent in this case. Several acts of the respondent have each been the basis for a finding of negligence in the cases cited in claimants’ brief. When these acts are considered together and in their relationship to each other, respondent’s negligence is even more clearly established.

We find that the Division of Highways was negligent in

some, if not all, of the following ways: when it represented to the claimants that it would not cut into the hillside; when it gave no notice of the cut which was made in the spring of **1954**; when it failed to compact or tamp down the raw earth exposed by the cut; when it failed to shore up the hillside, or put up any sort of retaining wall; and when it failed to anticipate that its cut might cause a landslide in front of the claimants' house.

The finding of negligence in these acts is buttressed by the evidence showing that the respondent took no test borings in front of the claimants' house. Respondent knew the soil condition some **110** feet away to be silty clay to a depth of 7 feet and that the hillsides in the area were conducive to slides. It knew that the claimants' hill was steep and that the cut at the bottom made it steeper. It knew that landslides had occurred in front of claimants' house in **1958** tearing out a part of the foundation. It knew that landslides had occurred in **1961** and **1964** which obstructed the claimants' driveway. It knew, or should have known that, prior to the cut, no landslides had occurred on claimants' property, for more than **50** years. Even after the slides of **1958, 1961** and **1964** on the claimants' property, respondent made no effort to shore the hillside with railroad ties, as it had done elsewhere, or put in any retaining wall, although its employees on more than one occasion assured the claimants that this would be done. Respondent's negligence is clearly established by a very substantial weight of evidence.

We come now to the final question as to whether respondent's negligent removal of lateral support was the proximate cause of the landslide which damaged claimants' property.

The evidence, again taken as a whole, proves conclusively that the cut at the base of the hill did cause the

subsequent landslides. The testimony of claimants' witnesses shows that there had been no movement of the earth on claimants' property for more than 50 years prior to the cut that respondent made. Frank Petri, a neighbor, testified that he tended his cow on the meadow where the claimants' house was built as far back as 1912 and has been thoroughly familiar with the property ever since. He knew that the plateau extended out beyond claimants' front porch and that there was room to walk around in front of it. The claimants told about the condition of the house when they moved in, in 1953. There were then no cracks in the plaster of the upstairs wall or ceilings, no cracks in the foundation. Other neighbors testified that the hillsides in the entire area, in front of the old road, had been stable and unchanging over the years until highway improvements involving cutbacks were made along the base of the hills.

No rebuttal or denial was offered by the respondent to this cumulation of evidence that (a) there had been no landslides for half a century on the claimants' property and other property in the vicinity prior to cutbacks in the base of the hillsides, and (b) after such cuts, a rash of landslides occurred. This evidence of causation is certainly strong and persuasive.

The respondent made one effort to refute the circumstantial evidence of causation. It brought in an expert, as its only witness beside Mr. Harland, the District Highway Engineer. The expert was Dr. Thomas H. Thornburn, a Professor at the University of Illinois, working in the field of soil engineering. He visited the claimants' property the morning of his appearance as a witness, and spent about an hour looking over the premises and examining some of the photographs and drawings which the Highway Division showed him. On direct examination, he gave an opinion that the cut at the bottom

of the hill was not the cause of the **1965** slide in front of the claimants' house, and that it was probably due to the bad weather that spring. On cross-examination, **Dr.** Thornburn admitted that he did not know of the **1958** slide in front of the claimants' house, within **4** years after the cut, and he didn't have any basis for determining what might have caused that slide. He also admitted that the removal of dirt from the bottom of a hill, if in sufficient quantity, could be a "contributing factor" to a subsequent landslide which originated at the top of the hill. **Dr.** Thornburn further acknowledged that the condition of the soil, the history of adjacent terrain, the steepness of the hill, and the prior slides on the claimants' premises, none of which **factors he** had studied, would have affected his opinion.

Under these circumstances, Dr. Thornburn's first conclusion lacks significant credibility. The Factors he suggests, as being proper considerations in a reasonable determination of cause, have been well met by claimants' evidence. This was no minor "scraping off", or slight changing of the grade of the hill. It was a deep and penetrating cut. To take the base of the hill back **20** feet, and cut down a perpendicular slice a distance of **3** to **5** feet all along the front of the claimants' property, was almost an act of wilful disregard for the safety of the claimants and the safety of the public traveling on the frontage road below. It is incredible that anyone could have assumed, under the circumstances, that the hillside would remain in place very long after taking away that much of its base support. To compound the situation by refusing to put in place any sort of shoring or support, even a few railroad ties or some sort of ground cover, indicates an apparent disregard for the foreseeable consequences.

Finally, respondent's District Highway Engineer, **Mr.**

J. E. Harland, testified at the hearing, which was held nearly two years after the landslide, that the Division of Highways had not removed the dirt and debris that slid down onto the highway from claimants' property, although it created a traffic problem, because "the removal of the debris may create further sliding up the hill". If so, it is the height of inconsistency for respondent to deny that its cut in the hillside was the cause of the slide which damaged claimants' property. The extreme care exercised by the Highway Division after the damage was done merely accentuates the carelessness of its previous actions which caused claimants' financial loss.

The facts in this case distinguish it from *Wheeler vs. State*, 6 C.C.R. 65, in which we held that the slides were not caused by the excavation of the road but by other factors. In the case at hand, the burden of proving causation has been fully met by the claimants.

Claimants have also proved that they have sustained a financial loss of at least **\$7,500.00**, the amount asked for in the complaint, by any reasonable interpretation of the evidence. As we stated earlier in this opinion, none of the testimony relating to damages is denied or controverted.

Claimants, John Patton and Jacqueline R. Patton, the joint tenant owners of the damaged property, are hereby awarded the sum of **\$7,500.00**.

(No. 5383—Claimants awarded \$5,000.00.)

WOODROW WOMBLE and **VELDA WOMBLE**, Claimants, **vs. STATE OF ILLINOIS**, Respondent.

Opinion filed April 27, 1971.

SCHIMMEL AND SCHIMMEL, Attorneys for Claimants.

WILLIAM G. CLARK, Attorney General; **LEE D. MARTIN**, Assistant Attorney General, for Respondent.

WATER POLLUTION—level of care. Where the State of Illinois takes a stem view of any act which results in water pollution, State must take the same view of the acts of its Division of Highways, however innocent its intention may be, and where claimants are injured when their well is polluted by calcium chloride placed near their well by respondent, an award will be entered.

BURKS, J.

This is an action to recover damages for the pollution and contamination of claimants' well. The pollution was allegedly caused by acts done or permitted by the respondent at a place along the shoulder of U. S. Route 54 in reasonably close proximity to the residence and well of the claimants at Atlas, in Pike County, Illinois.

The complaint consists of two counts. The first count alleges that the claimant, Velda Womble, suffered personal injuries as a result of **drinking** water from her well that contained excessive amounts of calcium chloride. The second count is a claim for damages to property owned by both claimants as a result of the saturation of calcium chloride in their well.

The facts appearing from the record, which were not disputed or effectively answered by the respondent, are these:

For several years prior to **1958**, the respondent commenced depositing cinders in a pile along the south shoulder of U. S. Route 54. The pile was approximately **150** feet from the point at which, in the year **1958**, claimants drilled a water well on their own property near their dwelling, which had been built in **1956**.

In or about the year **1959**, respondent deposited large amounts of calcium chloride upon and around the said cinder pile which respondent maintained for the purpose of using material from it, when needed, to remove or control ice and snow on the highway. Respondent continued to maintain the said storage pile of cinders and calcium chloride until respondent removed it in the latter part of

1966, shortly after the claimants became aware of the fact that the water in their well was contaminated by an excessive amount of calcium chloride.

The said storage pile of cinders and calcium chloride was never under cover and it blocked the natural drainage of water along the side of the highway. After a rain, surface water often accumulated around the pile until it seeped into the ground. Respondent acknowledged in its stipulation of facts that, "Undoubtedly calcium chloride saturated the soil and a vein of water under, beneath and running in a course toward the well of Claimants".

In May or June of 1966, claimants observed rusting and deterioration of their household utensils, fixtures, appliances and particularly their water system. When this damage to the property of claimants was noticed, claimants had analyses made of the water coming out of their well and were informed by responsible authorities that the corrosion, deterioration and disintegration of their appliances and water system was caused by the saturation of calcium chloride in their water supply.

At or about the same time, claimant Velda Womble became ill and was hospitalized. Medical examination showed that she was suffering from the results of chlorides in her intestines and other parts of her body. Claimant Woodrow Womble does not allege any injury to his health from drinking his well water, apparently explained by his testimony that he had quit drinking the water when it began to taste too salty. Mr. Womble said that his wife continued for a short time to drink the water until she became ill and the tests of the water indicated its contamination.

It is not clear from the record just how long the said storage pile of cinders and calcium chloride remained at its same location after Velda Womble became ill and after the contamination of the well water was confirmed in a test

made by the Illinois Department of Public Health. Nor was there any evidence showing that respondent had notice of these facts prior to the removal of the pile. The stipulation of facts by the parties on this point states: "Thereafter respondent removed several feet of the cinders and calcium chloride deposited along said U. S. Route 54 and filled the hole made by such removal with gravel, crushed rock and dirt, which dirt they took from a ditch along State Route 96."

Suffice it to say, official tests of the water in claimants' well, which were made after the pile was removed by the respondent, indicated a sharp drop in chloride concentration. It had not, by the last reported test on January 31, 1968, fallen below the maximum chloride concentration acceptable for drinking water which the parties stipulated to be 250 milligrams per liter. This stipulation agreed with the reports of the Illinois Department of Public Health.

We accept from the stipulation of facts by the parties, supported by claimants' exhibits, the following list of the results of analyses of water taken from claimants' well. Said analyses were made by the State of Illinois, Department of Public Health, George F. Forster, Chief, Division of Laboratories, and disclosed chloride content as follows:

<u>Date of Test</u>	<u>Chloride Concentration</u>
1. May 9, 1966	1700 mg. per liter
2. October 7, 1966	420 mg. per liter
3. November 7, 1966	330 mg. per liter
4. December 30, 1966	450 mg. per liter
5. January 27, 1967	290 mg. per liter
6. March 17, 1967	450 mg. per liter
7. May 8, 1967	710 mg. per liter
8. June 15, 1967	530 mg. per liter
9. July 5, 1967	390 mg. per liter
10. August 18, 1967	400 mg. per liter
11. October 5, 1967	450 mg. per liter
12. January 31, 1968	380 mg. per liter

It was stipulated by the parties that pollutional bacteria also appeared in all of said water analyses. There was some testimony to the effect that the dirt used by the respondent to fill the hole, after the removal of its pile of cinders and calcium chloride, may have been responsible for some such further and continuing pollution of claimants' well. We did not consider this particular evidence to be conclusive. In any event, it merely tends to support our decision in this case to award compensation to the claimants in the amount of the damages which the evidence shows they sustained.

At a second hearing in this case, held after respondent had asked leave to have further tests and surveys made, the parties entered into the stipulation of facts previously referred to in this opinion. The said stipulation also contained an agreement as to the amount of claimants' damages and as to any further liability of the respondent.

On these points it is stipulated as follows:

"13. As a result of the effect of said chloride in the body of claimant Velda Womble, the said claimant Velda Womble spent a total of **\$458.84** for hospitalization, doctors and drugs to cure herself of her ailments.

"14. Claimant Velda Womble also sustained loss or damages in the amount of **\$1695.80** for loss of time while hospitalized and recuperating and for partial temporary or permanent disability resulting from the serious hemorrhages she sustained due to the destruction of the mucous membrane and lining of her digestive tract caused by the deposit of the calcium chloride from the drinking water.

"15. Claimants Woodrow Womble and Velda Womble sustained damage and loss in the amount of **\$2845.36** to their water system, pumps, washing machines, refrigerator, humidifiers and as the cost of drilling a new well.

"17. It is further stipulated and agreed that if claimants drill or dig a new well, respondent shall in no wise be liable for any chloride or other contamination of any kind which therein appears."

Independently of the stipulation of facts and tacit admission of liability entered into between the parties, claimants sustained the burden of proving the allegations

contained in the two-count complaint. The evidence introduced showed conclusively that the respondent contaminated the claimants' water system and well by depositing the calcium chloride over a long period of time and that the personal injuries of the claimant Velda Womble were a result of drinking the water containing excessive quantities of calcium chloride.

This Court holds the respondent liable for damages in this case, not only on the admissions of its legal representative, but because the applicable law of this state is clear.

A property owner has a right to have the water in the wells on his property possess its natural quality, free from pollution caused by other landowners polluting percolating waters on their land. (*Phoenix vs. Graham*, 1953, 349 Ill. App. 326. *Van Brocklin vs. Gudema*, 1964, 50 Ill. App. 2d 20.) Furthermore, it is also a public nuisance to pollute the water of a spring or well. (Ch. 100½, Sec. 26, Ill.Rev.Stat., 1969.)

The State of Illinois takes a stern view of any act that results in water pollution. In the impartial exercise of its sovereign authority, the State must take the same view of any acts of its Division of Highways, however innocent the intentions may have been, if such acts result in the pollution or contamination of a well on neighboring property.

The Court finds that claimants are entitled to the following awards:

Claimant Velda Womble is hereby awarded the sum of \$2154.64 for loss due to personal injuries.

Claimants Velda Womble and Woodrow Womble, jointly, are hereby awarded the sum of \$2,845.36 for damages to their property.

(No. 5390—Claim denied.)

**WARD ANDERSON MOVERS, Claimant, vs. STATE OF ILLINOIS,
Respondent.**

Opinion filed April 27, 1971.

GIFFIN, WINNING, LINDNER, NEWKIRK, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney - General;-- WILLIAM- E. Webber, Assistant Attorney General, for Respondent.

NEGLIGENCE—burden of proof. Where respondent's snowplow veered in front of claimant, causing claimant to lose control of his vehicle, the respondent was negligent in the operation of its snowplow.

NEGLIGENCE—contributory negligence. Claimant was guilty of contributory negligence when he failed to sound his horn while overtaking respondent's snowplow.

BURKS, J..

This is a claim for damages to claimant's tractor trailer which ran into a ditch after its driver lost control of his vehicle as he was attempting to pass a snowplow operated by the respondent. Claimant alleged and proved that respondent's snowplow turned from the right lane into and across the left lane in front of claimant's vehicle and that the latter thereupon turned sharply to the right to avoid a collision. In making this sharp right turn, claimant's vehicle jackknifed and came to rest in the ditch on the side of the highway.

The complaint was filed on February 24, 1967, exactly two years and some hours after the mishap in question occurred, approximately 6:00 o'clock in the morning of February 24, 1965. This action, however, was not barred by the statute of limitations as time is computed pursuant to Ch.131, Sec. 1.11, Ill.Rev.Stat., 1973.

The only witness who testified at the hearing was the driver of claimant's vehicle, John Jenkinsen. Respondent did not call any witnesses in its behalf and bases its defense entirely on the testimony of Mr. Jenkinsen. Respondent contends that his testimony does not sustain claimant's burden of proving that respondent's alleged negligence was

the proximate cause of claimant's loss or that claimant was free from contributory negligence.

To arrive at an accurate summation of the relevant facts, it was incumbent upon the Court to make a careful study of the transcript of the testimony presented at the hearing in the light of the conflicting interpretations placed upon it by the briefs submitted by each of the parties.

In the absence of any evidence in the record controverting the testimony of John Jenkinsen, driver of claimant's vehicle, his testimony must be taken as true and correct insofar as it is consistent and not contradictory.

We believe that the pertinent and salient facts in Mr. Jenkinsen's testimony, taken in its entirety and with appropriate inferences arising therefrom, may be summarized as follows:

The early morning accident in question occurred directly west of Springfield, Illinois, on Interstate 55 at a location approximately two miles south of the Clear Lake Avenue access. Interstate 55 is a four-lane highway with two lanes for northbound traffic and two lanes for southbound traffic, divided by a dirt median. A light snow had fallen during the evening before the accident in question.

Mr. Jenkinsen, driving claimant's vehicle, a 1959 International Harvester rig consisting of a cab and trailer fully loaded with nursery stock and having a total weight of about 30 thousand pounds, entered Interstate 55 from Clear Lake Avenue headed south. He had gradually accelerated his speed to 40 or 45 miles per hour when he first observed respondent's snowplow truck about a mile in front of him traveling in the same southerly direction and in the same right hand lane.

Respondent's vehicle was a State-owned and State-operated dump truck, equipped with a snowplow and

appropriate lights, including a mounted rotating yellow caution light which was flashing.

Claimant's driver made the following statement in his testimony, "I would estimate the speed of the snowplow at about 35 to 40 miles an hour. I knew the driver was having trouble since he was swerving in his lane. He had been throwing up a lot of snow and, when he had trouble, he lifted the plow." At another point in his testimony, when asked as to the speed of the snowplow when he "started to make his move to pass", Mr. Jenkinsen answered, "He wasn't going fast at all; that is why I was going to pass him. I couldn't judge what speed he would be going. Let's say he was going around 25 miles an hour. I could tell I was closing the distance and, you know, I would have to pass."

When Mr. Jenkinsen decided to pass and had approached a point approximately 300 feet behind the snowplow, he turned into the left hand passing lane after indicating his intentions to change lanes by use of his turn signals. His left turn signal apparently remained on, but there was no evidence indicating that respondent noticed claimant's vehicle approaching. Claimant did not sound his horn nor give audible signal of his approach.

When claimant's vehicle approached a point approximately 100 feet back of the snowplow, the latter made a turn to the left across the left lane in front of claimant's vehicle and into a "cross over" in the median strip. Respondent's snowplow gave no signal of intention to make a left turn.

At "the very instant" claimant's driver saw that the snowplow had turned into the left lane, approximately 100 feet ahead, he "tapped" his brakes and slowed from 40 miles per hour to 5 miles per hour. At the "last moment" he "swerved" sharply to his right to avoid hitting the snowplow; lost control of his vehicle which jackknifed and came

to rest in the ditch on the west side of the highway about 100 feet south of the cross over into which respondent's snowplow had turned. There was no contact between the vehicles.

On the above statement of facts, we conclude that respondent was negligent in the operation of its snowplow when it made a left turn into the lane of claimant's oncoming vehicle without giving any signal or warning. This conclusion is supported by *Hargrave vs. State of Illinois*, 24 C.C.R. 463, which held that the State was negligent in the operation of a snowplow. The Hargrave case also contains the following words which are applicable in this as in all other claims sounding in tort and based on respondent's negligence:

“To recover in this action, claimant must prove by a preponderance of the evidence that not only was respondent negligent, but that claimant was free from contributory negligence.”

We have agreed with claimant's contention as to the negligence of the respondent, a contention well supported by the points of law cited in claimant's brief. We now turn to the legal authority cited by the claimant in support of its second essential allegation, required to sustain its burden of proof, that claimant was free from contributory negligence. On this issue, claimant calls our attention to Ch. 95½, Sec. 153, Ill.Rev.Stat., 1973, and to *Rysdon v. Wice*, 34 Ill. App. 2d 290; 18 N.E. 2d 754. We have undertaken to apply claimant's cited authority to the facts in this case.

Chap. 95½, Sec. 153 reads as follows:

§ 153. Overtaking a vehicle on the left

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

(a) The driver of a vehicle overtaking another vehicle proceeding in the

same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(b) Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle

Subsection (a) appears to support claimant's contention that its vehicle was properly in the left lane when attempting to pass the respondent's snowplow and that under subsection (b) the respondent's snowplow should have given way to the right in favor of the overtaking vehicle on audible signal.

The weakness in claimant's position lies in the fact that claimant gave no audible signal. We believe that this subsection establishes a condition precedent to the duty to yield, and until such time as the overtaking vehicle sounds its horn there is no duty on the driver of an overtaken vehicle to "give way to the right".

Subsection (b) places a duty on the claimant to blow his horn if he expected the vehicle that he was about to pass to remain in or return to the right lane. If claimant's driver did not expect the snowplow to return to the right lane, then he obviously should have turned his rig back into the right lane when he saw the danger approximately 100 feet ahead in the left lane. Failure of the claimant either (1) to make a timely move back to the right lane or (2) blow his horn, indicates that claimant was negligent.

As regards the duty of claimant to blow his horn, let us also look at Section 212 of the same chapter of the statute which reads in part:

"Every motor vehicle of the first and second division when operated on a highway shall be equipped with a horn in good working order and capable of emitting sound under normal conditions audible from a distance of not less than 200 feet." "The driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with his horn." (Emphasis supplied)

We assume that claimant's vehicle was equipped with a

horn capable of giving audible warning, under normal conditions, for a maximum of 200 feet as the statute requires. If so, claimant's driver was certainly in a position to give audible warning of his intention (as per Section 153) or his presence (as per Section 212) at some point between 200 feet and 100 feet distance from respondent at which time claimant alleges that respondent began to make his left turn.

As an experienced semi-trailer truck driver, which Mr. Jenkinsen said he **was**, he should have known, as he approached a snowplow traveling at a slow speed; **one** that had just raised its plow; one that was having trouble; one that was swerving in his lane; that here was a situation envisioned by the drafters of Section 212 when they provided that—"the driver of a motor vehicle shall when reasonably necessary to insure safe operation give audible warning with his horn." Claimant's failure to give audible warning of his approach under these circumstances violated Section 212 and was, therefore, negligent per se.

We have examined **Rysdon vs. Wice**, 34 Ill. App. 2d 290, which claimant cites as authority. This case held that a motorist **was** not negligent in passing on the left when the automobile being passed negligently veered into and collided with the right rear fender of the passing motorist. The passing motorist, however, was held guilty of negligence in failing to maintain proper control of his vehicle immediately after the said collision when he veered into an oncoming traffic lane and became involved in a head-on collision with another car.

Insofar as there is any similarity of facts, we believe that *Rysdon* supports our conclusion in the case before us. *Rysdon* enunciates **the** rule that "a person has the duty to exercise due care to control **his** car even though that car was wrongfully set in motion by the impact of another car."

~~This rule, when applied to the facts before us in which~~

there was no contact between vehicles, is even stronger as to a driver's duty to control his vehicle. In the instant case, claimant's driver admits that he lost control of his vehicle even though it had been slowed down to 5 miles per hour. It should also be noted that after respondent's snowplow turned into its cross-over, claimant's vehicle traveled a distance of about 100 feet before leaving the road and going off into the ditch.

We find that both of the parties were guilty of negligence in this case. It is pointless to consider the extent or degree to which each party was negligent, since the doctrine of comparative negligence does not prevail in Illinois. *Chapin vs. Foege*, 296 Ill. App. 96. Claimant failed to prove that it was free from contributory negligence.

An award to claimant is, therefore, denied.

(No. 5392—Claimants awarded \$6,617.74.)

KURT JONATAT and LORETTA JONATAT, husband and wife, and KANE COUNTY MUTUAL FIRE INSURANCE COMPANY, An Illinois Mutual Fire Insurance Company, Claimants, vs. STATE OF ILLINOIS, Respondent

Opinion filed April 27, 1971.

REDMAN AND SHEARER and RICHARD L. COOPER, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General, for Respondent.

PRISONERS AND INMATES—*burden of proof*. State is liable for damages only if negligent in allowing inmate to escape from an institution.

PERLIN, C.J.

Claimants bring this action to recover damages to a home and personal property owned by Mr. and Mrs. Jonatat allegedly caused by the escape of two inmates from the Illinois State Training School for Boys at St. Charles, Illinois. Neither the facts nor the amount of damages are in dispute.

One of the claimants, Mr. Kurt Jonatat, testified that on or about February 7, 1967, he was in Florida on a vacation. On that day, he received a call from his daughter telling him that his house had been broken into and that he should come home immediately. Upon returning home, he found his house in shambles, which damage as he later discovered was the result of a gun battle between police officers and two escaped inmates.

Mr. Joseph J. McGovern, the assistant superintendent of the Illinois State Training School for Boys testified that he took part in the search for the two escaped boys and discovered that they had broken a window and entered the Jonatat home. He further testified that an attempt was made to coax the boys from the home, but the attempt failed and the gun battle, which did damage to the home, resulted.

The remainder of Mr. McGovern's testimony dealt with the escape and the normal security precautions taken by the training school. He testified that the school is fenced with a fence 16 feet high with barbed wire 2 feet high on the top of it, and that the entire enclosed area is patrolled by three radio cars.

All of the boys with a previous history of being an escape risk are housed in cottages inside the fence. Each cottage has house parents, a man and a woman, and an assistant house parent. The inmates in the instant case were according to Mr. McGovern, housed in such a cottage.

Mr. McGovern conducted an investigation to discover what had occurred at the time of the escape. It was learned that the boys in this particular cottage were going to the gymnasium that evening to play basketball. The cottage father lined the boys up in the basement, opened the basement door and started to walk out of the basement. At that time, the two boys in the front of the line broke and ran. The cottage father went back into the building and

notified the switchboard operator, who then notified a guard in his parked radio car in front of the cottage.

The testimony points out that the standard procedure in moving from one cottage to another would be to walk the boys in twos. Then when they would get out of the building, a deputy or guard in a radio car would follow them down to the gymnasium with the cottage parents. When an employee learns that a boy has escaped, he must notify the switchboard. The switchboard then is to immediately notify the deputy in the radio car.

In order for the claimants to recover, they must show negligence on the part of the respondent, for, as a review of the cases decided by this court points out, the mere proof of an escape followed by subsequent damages, will not sustain an award. *Paulus vs. State of Illinois*, 24 C.C.R. 215 and *Dixon Fruit Co. vs. State of Illinois*, 22 C.C.R. 271.

The Illinois State School for Boys is not an institution which can be classified as a penitentiary and any alleged negligence must be determined in the light of the standard security procedures instituted by the respondent for a school of this nature. It appears from the record that if the security guard had placed himself at the rear of the building, where he should have been in order to observe the boys exiting, the avenue of escape taken by the boys would have been cut off. It would also appear that the standard procedure precludes direct contact with the security guard by the cottage parent although the guard, as in this instance, was only a few feet away. This negligence gave the boys ample time to scale the fence and escape.

The record shows that \$6,233.00 was paid by intervenor, Kane County Mutual Fire Insurance Company, to claimants, and that claimants incurred and paid an additional sum of \$384.74 as a result of the incident.

The damages caused were the proximate result of the

negligence of the respondent. An award is therefore made to the intervenor, Kane County Mutual Fire Insurance Company of \$6,233.00 and to the Jonatats in the amount of \$384.74.

(No. 5415—Claimant awarded \$500.00.)

LAWRENCE GOLDRING, Claimant, *vs.* STATE OF ILLINOIS,
Respondent.

Opinion filed April 27, 1971.

GREENBERG, JANSSEN AND BECKER, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

PRISONERS AND INMATES—burden of proof. State is liable for damages only if negligent in allowing inmate to escape from an institution.

BURKS, J.

This is a claim for damage to claimant's property caused by an inmate who had escaped from respondent's mental institution, Peoria State Hospital.

Following the hearing on this matter which was held in Peoria on October 30, 1967, and an investigation conducted by respondent, the latter filed a stipulation stating that the facts as set out in claimant's brief, filed June 14, 1968, are a fair and true representation of the facts developed by the evidence.

The facts stated in claimant's brief, which respondent has admitted, may be summarized as follows: at 10:35 a.m. on March 16, 1967, one Arnold Eugene Hoff, a mental patient and inmate at Peoria State Hospital, came to the used car lot owned and operated by the claimant in Bartonville. The said inmate, who talked only with his hands, by gestures indicated to claimant's lot boy, one Oran

Brokaw, that he wanted the lot boy to start a 1959 Chevrolet automobile parked in the front row of cars facing the street. Patient made the lot boy understand by gestures that he merely wanted to “hear” the car’s motor run. The lot boy complied with the patient’s request but did not give him permission to drive the car. The patient got into the car; raced the motor a couple of times; put the car in gear; backed up a little bit and then took off forward across the sidewalk, across the curb and down the street weaving. Five blocks north of the lot from which the patient had taken the car, without claimant’s consent, he crashed the vehicle into Bartonville’s World War II Memorial Monument. The car was totally wrecked and claimant’s resultant financial loss was \$500.00.

Records of the Peoria State Hospital indicate that its patient, Arnold Eugene Hoff, was issued a ground pass which made it possible for him to escape from the institution. The same records show that Hoff had escaped on prior occasions and each time had wrongfully converted other automobiles to his own use and caused them to be damaged.

Claimant’s conclusion, which respondent tacitly concedes by its stipulation, is that respondent’s institution was negligent in issuing a grounds pass to this particular patient, in the light of his record, and that such negligence was the direct or proximate cause of claimant’s loss.

Respondent stated that its stipulation and recommendation were made in accordance with Ch. 23, Sec. 4041, Ill.Rev.Stat., 1969, which reads as follows:

§ 4041. Claims

Whenever a claim is filed with the Department of Mental Health, the Department of Children and Family Services, the Department of Public Safety, the Youth Commission or the Department of Youth, as the case may be, for damages resulting from personal injuries or damages to property, or both, or for

damages resulting from property being stolen, heretofore or hereafter caused by an inmate who has escaped from a charitable, penal, reformatory or other institution over which the State of Illinois has control while he was at liberty after his escape, the Department of Mental Health, the Department of Children and Family Services, the Department of Public Safety, the Youth Commission or the Department of Youth, as the case may be, shall conduct an investigation to determine the cause, nature and extent of the damages and if it be found after investigation that the damage was caused by one who had been an inmate of such institution and had escaped, the Department or Commission may recommend to the Court of Claims that an award be made to the injured party, and the Court of Claims shall have the power to hear and determine such claims.

Since the Court also finds that the facts give no indication of contributory negligence on the part of the claimant, he is entitled to recover the amount of his loss.

Claimant is hereby awarded the sum of \$500.00.

(No. 5429—Claimants awarded \$3,620.99.)

GREAT AMERICAN INSURANCE COMPANY, A Corporation, as subrogee of RAYE AND COMPANY TRANSPORTS, INC., A Corporation, and RAYE AND COMPANY TRANSPORTS, INC., A Corporation, Claimants, vs. STATE OF ILLINOIS, Respondent.

Opinion filed April 27, 1971.

CLAUSEN, HIRSH, MILLER AND GORMAN, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

HIGHWAYS—*duty of state.* The State of Illinois is not an insurer of every accident that occurs on its public highways, but does have the duty 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.

HIGHWAYS—*duty of state.* Failure of respondent to post markings and signs indicating the height of the bridge was negligence.

BURKS, J.

This is an action to recover a loss for damages to a tractor-trailer unit owned by claimant, Raye and Company Transports, Inc. Claimants allege that said

trailer unit was damaged when its top struck an overhead bridge that was apparently lower than the height of the trailer. Respondent is charged with negligence in its maintenance of the bridge or underpass and in its failure to warn the public, using the underpass, of the low clearance by appropriate signs along the approaches to the bridge or on the bridge structure itself.

The file in this case includes the respondent's answers to written interrogatories directed to it through former Attorney General William G. Clark who, prior to the expiration of his term of office on January 13, 1969, represented the respondent in this cause.

The sworn answers to claimants' interrogatories, signed by A. R. Tomlinson for the Division of Highways, admits that there **was** no sign on the bridge structure stating the clearance for vehicles using the underpass. This is apparent from photo exhibits presented by the claimants. It appears from the evidence submitted that such markings on the bridge structure itself would have provided additional protection to the claimants, but that such markings are not mandatory as are the warning signs in advance of the bridge.

Respondent's sworn statement does, however, contain the following answer to interrogatory #4 which tends to dispute claimants' contention that there were no adequate signs giving early warning of the bridge's low clearance on the date the claimant's trailer struck the bridge, November **24, 1965**:

"There is a sign **200** feet west of the overpass along the right curb for eastbound traffic. There are three signs east of the overpass, the first is 100 feet east in the center island for westbound traffic, the second is **250** feet east of the overpass for westbound traffic along the right curb, and the third sign is 750 feet east of the overpass for westbound traffic along the right curb."

To a second part of the same question in the claimants' interrogatories, respondent stated that the above men-

tioned signs were erected on May 14, 1964, some eighteen months prior to the occurrence on which this cause of action is based.

Respondent presented no evidence at the hearing to prove that the said signs were still in place on November 24, 1965, the date of the accident.

The hearing on this cause of action was held in Chicago on June **25**, 1969.

From the evidence introduced at this hearing, it appears that on November 24, 1965, the claimant, Raye and Company Transports, Inc., a corporation, was the owner of a tractor-trailer unit which was being operated by its driver, Dale R. Robinson, in a westerly direction on Illinois Highway **64** (which is also known as North Avenue in Chicago) and was passing under the Lake Street Bridge, a bridge running in a general northerly and southerly direction and crossing over the said Illinois Highway 64; that, while passing under the bridge, the trailer unit struck the west edge of the bridge damaging the trailer and the refrigeration unit attached to it.

The evidence confirmed that the cost of repairing said damaged trailer was \$3,620.99. Of this amount, \$500.00 was paid by the Raye and Company Transports, Inc., and the balance of \$3,120.99 was paid by the Great American Insurance Company, the insurance carrier, which brings its claim as the subrogee of its insured, Raye and Company Transports, Inc.

John W. Powell, office manager and treasurer of the Raye and Company Transports, Inc., testified as to the sums expended to repair said trailer. Bills were admitted into evidence showing that the claimant, Great American Insurance Company, expended the sum of \$3,120.99 and a \$500.00 deductible was paid by claimant, Raye and Company Transports, Inc.

Dale R. Robinson testified that he was driving the tractor-trailer at the time of the accident. He stated that he proceeded under the bridge in question at a speed of approximately **25** miles per hour; that the authorized speed limit at that location is **40** miles per hour; that he was in the outside lane next to the curb; that his trailer struck the west sill of the bridge as he was coming out from under the bridge; that his trailer then became wedged under the bridge.

Mr. Robinson pointed out, on the photographs in evidence, the place where his trailer struck the bridge and the damage to the trailer. He said that the height span of his trailer was **13** feet **2** inches; and that no sign was posted prior to the bridge stating its clearance; that after the accident he went back and checked to see if there were any signs to advise the motoring public as to the height of the bridge and confirmed that there were no such signs.

Introduced into evidence was a State of Illinois *Manual of Uniform. Traffic Control Devices for Streets and Highways*, published by the Department of Public Works and Buildings, Division of Highways, Springfield, Illinois, which sets forth the type of signs that are to be posted advising the public of the clearance height of such bridges. Mr. Robinson stated again that no such signs were posted.

It was stipulated by the parties that the signs in question, identified in the manual as **W12-2** and **W13-3**, are mandatory in Illinois to advise motorists of clearances of underpasses that are less than **14** feet **6** inches in height.

Since no rebuttal testimony was offered on behalf of the respondent, the evidence presented at the hearing conclusively proves that the respondent was negligent in the maintenance of this bridge or underpass and in its failure to post markings and signs indicating the height of the bridge; and that respondent's negligence caused the

property damage complained of in this case. Claimant had a right to rely on the respondent to post and maintain the required warning signs and was not under a duty to stop and examine this bridge or underpass as it came to it. The record shows no evidence of contributory negligence on the part of the claimant herein.

Awards are hereby made as follows:

To Great American Insurance Company the amount of \$3,120.99.

To Raye and Company Transports, Inc., the amount of \$500.00.

(No 5487—Claimant awarded \$7,500.00.)

CONSOLIDATED ENGINEERING DIVISION, A Division of AZZARELLI CONSTRUCTION COMPANY, A Corporation, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed April 27, 1971.

BISSONNETTE AND NUTTING, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **LEE D. MARTIN**, Assistant Attorney General, for Respondent.

CONTRACTS—mistake of fact in hid. Where bidder's error was unintentional, not fraudulent, and did not amount to culpable negligence, and where the acceptor of the bid does not alter his position prior to notice of the mistake, and would not be prejudiced by the cancellation, the claimant may withdraw its bid without penalty and is entitled to a refund of its deposit.

BURKS, J.

This is a claim for a refund of \$7,500.00, the amount of a bid deposit cashier's check which accompanied claimant's bid for a contract to do certain construction work for the respondent.

The facts set forth in the complaint and in claimant's brief are supported by the evidence submitted at the hearings on this matter and are not disputed by the respondent.

The testimony given at the hearings discloses that on July 11, 1967, claimant, by its employee, Charles S. Tudor, submitted a bid to the Department of Public Works and Buildings on a project known as No. 74-457 for the rehabilitation of an auditorium building located at the Kankakee State Hospital. Mr. Tudor personally delivered claimant's bid to the respondent's office in Springfield prior to the deadline on the day bids were to be opened. Just before delivering the bid, Mr. Tudor made a phone call to claimant's office in Kankakee to see if any sub-contractors had submitted lower cost proposals as sometimes happens. There being no changes thus indicated in the total amount of claimant's bid, Mr. Tudor, while still in the phone booth, filled in the blank lines in his bid on which the total amount is to be written in words and in numerals. The other parts of **claimant's bid had been carefully completed in advance** and Mr. Tudor had his cost sheets with him showing what the total amount would be, subject to any last minute charges.

In the space on the bid form where the amount of the bid was to be expressed in numerals, Mr. Tudor wrote the correct amount, **\$139,284.00**. However, in the space where the amount of the bid was to be expressed in words, he inadvertently left out thirty-nine thousand and wrote: "one hundred thousand two hundred eighty-four". As stipulated by the parties, Mr. Tudor's cost sheets showed that the bid was intended to be in the amount he wrote in figures, **\$139,284.00**.

Mr. Tudor put his bid in an envelope, sealed and delivered it to respondent's Architectural Office where it was stamped as received. Enclosed in the envelope with the bid was claimant's bid deposit, a cashier's check in the amount of **\$7,500.00**. Whether this check should be recovered by the claimant or forfeited to the respondent is the question before the Court and the subject matter of this controversy.

In the afternoon of the same day, on a stage in the Armory, the bids were opened and read aloud. When they finally came to the job on which claimant was bidding, three other bids were read before claimant's bid was announced. Two of the three bids were slightly lower than the amount Mr. Tudor thought he had bid, intended to bid and had written in figures, the amount of \$139,284.00. All other bids were substantially higher than Mr. Tudor had written in words, \$100,284.00. Mr. Tudor said that, as far as he was concerned at this point, he had been eliminated by the lower bids. When the official in charge opened and looked at claimant's bid, he hesitated a few seconds, asked his assistant to look it over, and then read claimant's bid in the amount Mr. Tudor had erroneously written in words, "one hundred thousand two hundred eighty-four dollars". Mr. Tudor then got up, walked to the official's table and said, "There must be something wrong. That isn't what I bid." The official in charge showed Mr. Tudor the amount he had written in words and explained that he was required to read the numbers that were written in words rather than in figures.

Exhibits attached to the complaint show that claimant wrote to the Department of Public Works and Buildings on July 13, 1967, asking that its erroneous bid be withdrawn, but on September 21, 1967, the respondent awarded the contract to the claimant. Claimant thereupon notified the respondent that it could not carry out the contract. The respondent subsequently awarded the contract to another company which did the work. The respondent has refused to return claimant's \$7,500.00 bid deposit.

The Court recognizes that respondent's officer in charge of opening bids followed correct procedure in reading the amount of claimant's bid as expressed in words rather than figures. Section 3-118(c) of the Commercial Code states, "Words control figures except that if the words

are ambiguous, figures control.” In this case the words were not ambiguous.

The Court is also mindful of the fact that public officials should exercise extreme care and caution to avoid abuses of the competitive bidding processes which have come to light in the past. An example would be a case in which a low bidder, after being awarded a contract, discovers that he has made a mistake in his bid and is allowed to raise his price so long as it does not exceed the amount of the next lowest bid. Such a practice would be manifestly unfair to all other bonafide bidders and would open the door to collusion, favoritism and fraud. Such is not the situation in the case before us.

As we view the facts in this record, claimant’s error was unintentional, not fraudulent, and did not amount to culpable negligence. It is important to note that claimant did not seek to have the contract awarded at the higher of the two figures shown in its bid but merely asked permission to withdraw its bid when it noticed its error. Here the respondent had immediate notice of the error in claimant’s bid, knew that the amount involved in the error was substantial, and its position would not have been prejudiced by allowing the requested withdrawal of claimant’s bid. The rule applicable to the facts in this case is well expressed in 13 AM. JUR.2d, *Building and Construction Contracts*, Sec. 107:

“A bid based on a unilateral mistake which is so great that it must be considered fundamental may be avoided in equity where the mistake is honestly made, without negligence, and the acceptor of the bid does not alter his position prior to notice of the mistake and would not be prejudiced by the cancellation”

The Illinois Supreme Court followed the above rule in *Bromagin vs. Bloomington* (1908)234 Ill. 114. In upholding a decree rescinding a bid and restraining the forfeiture of a deposit, the Court noted that the bid was hastily prepared; that within a few hours after its acceptance the bidder

notified the city attorney of his mistake (weight of pipe inadvertently used for cost price), and asked to be relieved; that the city engineer had himself also noticed the mistake when the bids were opened, and that there apparently was nothing to prevent the board from awarding the contract to another bidder; and said that the circumstances did not show such negligence as should bar the relief awarded.

Bromagin appears to be the only Illinois case on the subject other than an earlier case, *Steinmeyer vs. Schroepel* (1907) 226 Ill. 9, wherein the bidder's mistake was not discovered until some time after the bid was accepted. In *Bromagin* the Court said that this case is distinguished from *Steinmeyer* in two respects: "First, here there seems to have been some reasonable excuse for the error made in calculating the bid; there was no such excuse in the *Steinmeyer* case. Second, here the party to whom the bid was made knew of the mistake at the time the bid was accepted; it was not so in the case in the 226th."

This Court agrees with claimant's contention that it should have been allowed to withdraw its bid without penalty, and is entitled to a refund of \$7,500.00, the amount of its cashier's check deposited with the respondent.

Claimant is hereby awarded a refund in the amount of \$7,500.00.

(No. 5567—Claimant awarded \$7,478.64.)

ELMHURST-CHICAGO STONE COMPANY, A Delaware Corporation,
Claimant, vs. STATE OF ILLINOIS, DIVISION OF HIGHWAYS, Respon-
dent.

Opinion filed April 27, 1971.

ARTHUR J. RUDOLPH, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
and JAMES RUBIN, Assistant Attorneys General, for Respon-

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

BURKS, J.

(No 5665—Claimant awarded \$12,979.36.)

ASSOCIATED SERVICE & SUPPLY Co., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 27, 1971.

EUGENE WARD, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

DAMAGES—stipulation. Where claimant and respondent stipulate as to facts and damages, an award will be entered accordingly.

PERLIN, C.J.

This cause coming on to be heard on the Joint Stipulation of the parties hereto, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED:

1. That hearings before the Court held on March 26, 1971, and April 20, 1971, revealed that the respondent was liable for the unpaid balance of the contract;
2. That the respondent, acknowledging such liability, has filed a Joint Stipulation herein agreeing to the entry of an award in the amount of \$12,979.36;
3. That the sum of \$12,979.36 is hereby awarded to claimant in full satisfaction of any and all claims presented to the State under Cause No. 5665.

(No. 5715—Claimant awarded \$2,698.25.)

JULIAN, DYE, JAVID, HUNTER AND NAJAFI, ASSOCIATED, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed April 27, 1971.

JULIAN, DYE, JAVID, HUNTER AND NAJAFI, ASSOCIATED,
Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5799—Claimant awarded \$2.43.00.)

JOHN D. SINGER, M.D., Claimant, *us.* STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 27, 1971.

JOHN D. SINGER, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5807—Claimant awarded \$88.49.)

WIEBOLDT STORES, INC., Claimant, *us.* STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 27, 1971.

WIEBOLDT STORES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5808—Claimant awarded \$73.26.)

**GOODWILL INDUSTRIES OF CHICAGO AND COOK COUNTY, ILLINOIS,
Claimant, vs. STATE OF ILLINOIS, GOVERNOR'S COMMITTEE ON
EMPLOYMENT OF THE HANDICAPPED, Respondent.**

Opinion filed April 27, 1971.

**GOODWILL INDUSTRIES OF CHICAGO AND COOK COUNTY,
ILLINOIS, Claimant, pro se.**

**WILLIAM J. SCOTT, Attorney General; BRUCE J. FINNE,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J

(No. 5810—Claimant awarded \$351.00.)

**GOODWILL INDUSTRIES OF CHICAGO AND COOK COUNTY, ILLINOIS,
Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL
REHABILITATION, Respondent.**

Opinion filed April 27, 1971.

**GOODWILL INDUSTRIES OF CHICAGO AND COOK COUNTY,
ILLINOIS, Claimant, pro se.**

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5811—Claimant awarded \$95.00.)

**DAVID B. HERSHENSON, Claimant, vs. STATE OF ILLINOIS, BOARD OF
VOCATIONAL EDUCATION AND REHABILITATION, Respondent.**

Opinion filed April 27, 1971.

DAVID B. HERSHENSON, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5812—Claimant awarded \$109.00.)

**GOODWILL INDUSTRIES OF CHICAGO AND COOK COUNTY, ILLINOIS,
Claimant, us. STATE OF ILLINOIS, DIVISION OF VOCATIONAL
REHABILITATION, Respondent.**

Opinion filed April 27, 1971.

**GOODWILL INDUSTRIES OF CHICAGO AND COOK COUNTY,
ILLINOIS, Claimant, pro se.**

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5816—Claimant awarded \$200.00.)

**TRAVENOL LABORATORIES, INC., Claimant, us. STATE OF ILLINOIS,
DIVISION OF VOCATIONAL REHABILITATION, Respondent.**

Opinion filed April 27, 1971.

W. J. KENDALL III, Attorney for Claimant.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed appropriation.* When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5818—Claimant awarded \$1,408.50.)

CARMEN ALONZO, d/b/a CARMEN'S MOVERS, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 27, 1971.

EDWIN M. RAFFEL, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5831—Claimant awarded \$195.00.)

ELLSWORTH HASBROUCK, M.D., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 27, 1971.

ELLSWORTH HASBROUCK, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5832—Claimant awarded \$28.00.)

JAMES L. HALL, M.D., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 27, 1971.

JAMES L. HALL, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5834—Claimant awarded \$20.00.)

200 X-RAY LABORATORY, Claimant, *us.* **STATE OF ILLINOIS**,
DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 27, 1971.

200 X-RAY LABORATORY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5835—Claimant awarded \$54.00.)

FRANCOIS J. CONTE, M.D., Claimant, *us.* **STATE OF ILLINOIS**,
DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 27, 1971.

FRANCOIS J. CONTE, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL K. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5836—Claimant awarded \$105.00.)

GEORGE KERSEY, M.D., Claimant, *vs.* STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 27, 1971.

GEORGE KERSEY, M.D., Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5837—Claimant awarded \$25.00.)

GERSON KAPLAN, M.D., Claimant, *vs.* STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 27, 1971.

GERSON KAPLAN, M.D., Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5838—Claimant awarded \$360.00.)

EVANSVILLE ASSOCIATION FOR THE BLIND, INC., Claimant, *vs.* STATE
OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION,
Respondent.

Opinion filed April 27, 1971.

EVANSVILLE ASSOCIATION FOR THE BLIND, INC., Claimant,
pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5841—Claimant awarded \$91.00.)

THE SALVATION ARMY, AN ILLINOIS CORPORATION, Claimant, vs.
STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 27, 1971.

KENNEDY, GOLAN, MORRIS, SPRANGLER AND GREENBERG,
Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5843—Claimant awarded \$836.72.)

MONTERREY CONVALESCENT HOME, INC., Claimant, vs. STATE OF
ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 27, 1971.

MONTERREY CONVALESCENT HOME, INC., Claimant, pro
se.

WILLIAM J. SCOTT, Attorney General; BRUCE J. FINNE,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5844—Claimant awarded \$324.00.)

ROGERS PARK MANOR, INC., Claimant, *vs.* STATE OF ILLINOIS, DIXON STATE SCHOOL, Respondent.

Opinion filed April 27, 1971.

ROGERS PARK MANOR, INC., Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5849—Claimant awarded \$115.00.)

FRANK MILLOY, M.D., Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed April 27, 1971.

FRANK MILLOY, M.D., Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5869—Claimant awarded \$160.00.)

LICATA MOVING AND STORAGE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 27, 1971.

LICATA MOVING AND STORAGE COMPANY, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5871—Claimant awarded \$114.00.)

LICATA MOVING AND STORAGE COMPANY, Claimant, **vs.** STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 27, 1971.

LICATA MOVING AND STORAGE COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5875—Claimant awarded \$145.53.)

ST. FRANCIS HOSPITAL, Claimant, **vs.** STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed April 27, 1971.

ST. FRANCIS HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5881—Claimant awarded \$2,097.00.)

GARDEN CITY ENGINEERING COMPANY, Claimant, **vs.** STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed April 27, 1971.

CLAUSEN, HIRSH, MILLER AND GORMAN, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5887—Claimant awarded \$194.43.)

W.G.N. FLAG AND DECORATING CO., INC., Claimant, *vs.* **STATE OF ILLINOIS, SECRETARY OF STATE**, Respondent.

Opinion filed April 27, 1971.

W.G.N. FLAG AND DECORATING CO., INC., Claimant, *pro se*.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5888—Claimant awarded \$12,915.25.)

NEW ENGLAND NUCLEAR CORPORATION, Claimant, *vs.* **STATE OF ILLINOIS, STATE PSYCHIATRIC INSTITUTE**, Respondent.

Opinion filed April 27, 1971.

NEW ENGLAND NUCLEAR CORPORATION, Claimant, *pro se*.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5891—Claimants awarded \$220,700.67.)

COUNTY OF COOK, AND COOK COUNTY DEPARTMENT OF PUBLIC AID,
Claimants, *us.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID,
Respondent.

Opinion filed April 27, 1971.

COUNTY OF COOK, AND COOK COUNTY DEPARTMENT OF
PUBLIC AID, Claimants, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 5900—Claimant awarded \$92.00.)

JOSEPH K. CALVIN, M.D., Claimant, *us.* STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 27, 1971.

JOSEPH K. CALVIN, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5903—Case dismissed.)

ROBERT SPEER, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed April 27, 1971.

GILLESPIE, BURKE AND GILLESPIE, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General, for Respondent.

TORT LIABILITY ACTION—involves automobile accident where driver was a member of the Illinois National Guard on Federal inactive duty. Court of Claims held it had no jurisdiction due to the fact that said driver was not under the direction of the State of Illinois nor on any mission for the State of Illinois, but was on a Federal mission under the control of the Federal Government pursuant to the U.S. Code and, therefore, claimant could not recover damages, but his remedy was under either the Federal *Tort* Claims Act or the National Guard Claims Act.

PERLIN, C.J.

This cause coming on by motion of respondent to dismiss and the Court having been advised in the premises, having considered respondent's suggestions in support of its motion and accompanying documents, and claimant's objection to the motion find that:

Because of the importance of the subject matter involved in the motion to dismiss submitted by respondent, this Court feels compelled to set forth fully the reasons behind the action herein taken by this Court.

This case involves the Illinois National Guard and revolves around the dual status peculiar to the National Guard of the United States.

This dual status of the National Guard is brought about by Title 10 and Title 32 of the United States Code which are the basic federal laws governing the National Guard.

Although the National Guard is composed of local units from the various states, and although these various local units are subject to the call of the Governor of the particular state involved when the Governor feels that he needs the services of the National Guard for state purposes, it is clear from a reading of Title 10 and Title 32 that the

mission of the National Guard is primarily a federal mission.

Title 10, Section **261** establishes the National Guard of each state as a reserve component of the Federal Armed Forces.

Title 10, Section **262** establishes the purpose of these reserve components to be to provide trained units and qualified persons to the Federal Armed Forces in time of war or national emergency, etc.

Title 10, Section **263** establishes the right of Congress to call upon these reserve components “Whenever Congress determines that more units and organizations are needed for the national security”, and we note that this authority is assumed without regard to the wishes of the state or states involved.

Title **32**, Sections **502** and **503** give the authority to prescribe the type, location, time and duration of training, in preparation for the National Guards’ primary mission, to the President and the Secretary of the branch of the armed forces involved.

It follows then that, whenever the National Guard is either called into federal active duty under Title 10, Section **263** or into inactive federal training under Title **32**, Sections **502** and **503**, generally and Section **502(2)** in particular, they are on a federal mission and not performing a state function.

Since they are not, at these times, performing a state function, any tort committed by any one or more members thereof would not constitute a tort by the State and no liability would ensue thereby as against the State.

The Congress being aware of this situation has provided a means of paying claims arising from torts committed by National Guard members while on these federal missions.

The first of these remedies is embodied in the Federal Tort Claims Act which provides a source of recovery for third parties damaged by members of the National Guard while in the course of their mission on active federal duty.

The second of these remedies is embodied in the National Guard Claims Act, Title **32**, Section **715**, which provides a source of recovery for third parties damaged;

“by a member of the Army National Guard or the Air National Guard, as the case may be, while engaged in training or duty under Section 316, 502, 503, 504 or 505 of this title or any other provision of law for which he is entitled to pay under Section 206 of Title 37, or for which he has waived that pay, and acting within the scope of his employment; or otherwise incident to noncombat activities of the Army National Guard or the Air National Guard, as the case may be, under one of those sections.”

Respondent in its Suggestions in Support of Motion to Dismiss points to Army Regulation **27-24** as amended by change 1 dated **28 January 1969** which establishes an Army policy of treating the National Guard Claims Act as a secondary source of recovery when other sources of recovery in the various states exist.

Respondent then states that this policy established by the Department of the Army is arbitrary, discriminatory and capricious, and outside the authority granted the Secretary by the Congress.

It is not for this Court to decide policy for the Department of the Army, and this Court takes no position on the question, as the Department of the Army is outside the jurisdiction of this Court.

It is also outside the purview of this Court to express any opinion as to whether the claimant has any recourse against the federal government under either the Federal Tort Claims Act or the National Guard Claims Act as these Acts are, also, outside the jurisdiction of this Court.

It is not for this Court to say that this claimant should recover his damages from anyone.

It is only for the Court to say that claimant has failed to state on the face of his complaint allegations sufficient to show a cause of action against the State of Illinois in that he has failed to show the National Guard driver was on a mission for the State of Illinois, and in his objections to respondent's Motion to Dismiss claimant does not deny respondent's contentions that the National Guard driver was on a federal mission and not on a mission for the State of Illinois.

Claimant having failed to state a sufficient cause of action, this Court has no jurisdiction to hear the complaint.

This Court, therefore, finds that respondent's Motion to Dismiss should be allowed.

IT IS HEREBY ORDERED and this case is dismissed.

(No. 5913—Claimant awarded \$747.75.)

SOUTH SUBURBAN HOSPITAL FOUNDATION, A Not-For-Profit Corporation, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed April 27, 1971.

EDMUND G. URBAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5919—Claimant awarded \$80.00.)

R. C. BALAGOT, M.D. AND ASSOCIATES, Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed April 27, 1971.

R. C. BALAGOT, M.D. AND ASSOCIATES, Claimant, pro se.

WILLIAM J. SCORN, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5920—Claimant awarded \$3,500.00.)

JAMES JOHN HILGER, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT
OF LABOR, Respondent.

Opinion filed April 27, 1971.

RICHARD F. MCPARTLIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5921—Claimant awarded \$115.00.)

JOSEPH MARKEL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF
PUBLIC AID, Respondent.

Opinion filed April 27, 1971

BLACHER, BUCKUN, NELLIS AND FAGEL, Attorneys for
Claimant.

WILLIAM J. SCOTT, Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5925—Claimant awarded \$5,500.00.)

UNIVAC DIVISION OF SPERRY RAND CORPORATION, Claimant, vs.
STATE OF ILLINOIS, AUDITOR OF PUBLIC ACCOUNTS, Respondent.

Opinion filed April 27, 1971.

UNIVAC DIVISION OF SPERRY RAND CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5928—Claimant awarded \$690.00.)

BROOKS INSTITUTE OF PHOTOGRAPHY, Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed April 27, 1971.

BROOKS INSTITUTE OF PHOTOGRAPHY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5934—Claimant awarded \$376.00.)

SANGAMO ELECTRIC COMPANY, Claimant, vs. STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed April 27, 1971.

SANGAMO ELECTRIC COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5935—Claimant awarded \$146.46.)

BISMARCK HOTEL, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed April 27, 1971.

BISMARCK HOTEL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5938—Claimant awarded \$140.00.)

BOOKER T. WRIGHT, d/b/a WRIGHT'S MOVING, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 27, 1971.

BOOKER T. WRIGHT, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5944—Claimant awarded \$531.96.)

INSTITUTE OF LETTERING AND DESIGN, Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed April 27, 1971.

INSTITUTE OF LETTERING AND DESIGN, Claimant, pro se.
WILLIAM J. SCOTT, Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5945—Claimant awarded \$105.00.)

RAY IRBY, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID**, Respondent.

Opinion filed April 27, 1971.

HOLLIS L. GREEN, Attorney for Claimant.
WILLIAM J. SCOTT, Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5946—Claimant awarded \$502.45.)

THE SALVATION ARMY BOOTH MEMORIAL HOSPITAL, Claimant, *vs.*
STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed April 27, 1971.

THE SALVATION ARMY BOOTH MEMORIAL HOSPITAL,
Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5952—Claimant awarded \$256.60.)

DREYER MEDICAL CLINIC, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 27, 1971.

DREYER MEDICAL CLINIC, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5959—Claimant awarded \$340.86.)

NEWENA ARGIROFF, M.D., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 27, 1971.

NEWENA ARGIROFF, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5964—Claimant awarded \$6,366.00.)

ELVIS E. SPENCER, Claimant, vs. STATE OF ILLINOIS, CHARLES F.
READ ZONE CENTER, Respondent.

Opinion filed April 27, 1971.

RICHARD F. MCPARTLIN, Attorney for Claimant.

WILLIAM J. SCORN, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5965—Claimant awarded \$128.73.)

COMMONWEALTH EDISON COMPANY, A Corporation, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 27, 1971.

JOSEPH C. SIDLEY, JR. and GEORGE O. SHAFFNER,
Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5967—Claimant awarded \$336.05.)

COTLER DRUGS, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 27, 1971.

COTLER DRUGS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5968—Claimant awarded \$100.00.)

MAX SHAPS, Claimant, **vs.** STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 27, 1971.

MAX SHAPS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5977—Claimants awarded \$153.10.)

JOHN R. CASTRO and GEORGE R. BACKER, Claimants, **vs.** STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed April 27, 1971.

KLEIMAN, CORNFIELD AND FELDMAN, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5984—Claimant awarded \$44,592.67.)

ILLINOIS BELL TELEPHONE COMPANY, A Corporation, Claimant, **vs.** STATE OF ILLINOIS, DEPARTMENT OF REVENUE, Respondent.

Opinion filed April 27, 1971.

ROBERT R.V. DALENBERG, L. BOW PRITCHETT and ALAN N. BAKER, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5985—Claimant awarded \$1,415.00.)

SOILTEST, INC., Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF HIGHWAYS, Respondent.

Opinion filed April 27, 1971.

SOILTEST, INC., Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5986—Claimant awarded \$328.00.)

JEFFREY CENTER CLINICAL LABORATORY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 27, 1971.

JEFFREY CENTER CLINICAL LABORATORY, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5992—Claimant awarded \$15,665.90.)

OTIS ELEVATOR COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed April 27, 1971.

McLAUGHLIN, KINSER AND BRYANT, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5993—Claimant awarded \$70.36.)

SHORECREST CONVALESCENT HOME, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 27, 1971.

SHORECREST CONVALESCENT HOME, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5996—Claimant awarded \$2,746.51.)

INTERNATIONAL HARVESTER COMPANY, Claimant, vs. STATE OF ILLINOIS, DIVISION OF HIGHWAYS, Respondent.

Opinion filed April 27, 1971.

INTERNATIONAL HARVESTER COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6002—Claimant awarded \$98.50.)

**BELMONT COMMUNITY HOSPITAL, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed April 27, 1971.

BELMONT COMMUNITY HOSPITAL, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6004—Claimant awarded \$569.10.)

**BELL OIL COMPANY, Claimant, vs. STATE OF ILLINOIS, SECRETARY
OF STATE, Respondent.**

Opinion filed April 27, 1971.

BELL OIL COMPANY, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6006—Claimant awarded \$174.70.)

**ROCKFORD BEAUTY ACADEMY, INC., Claimant, vs. STATE OF ILLINOIS,
DIVISION OF VOCATIONAL REHABILITATION, Respondent.**

Opinion filed April 27, 1971.

ROCKFORD BEAUTY ACADEMY, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6009—Claimant awarded \$726.30.)

CONSTANCE V. YOUKER, Claimant, vs. STATE OF ILLINOIS,
ADMINISTRATIVE OFFICE OF THE ILLINOIS COURTS, Respondent.

Opinion filed April 27, 1971.

CONSTANCE V. YOUKER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6010—Claimant awarded \$1,956.12.)

S. MELTZER AND SONS, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed April 27, 1971.

S. MELTZER AND SONS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6011—Claimant awarded \$2,177.71.)

XEROX CORPORATION, Claimant, vs. STATE OF ILLINOIS, ELGIN STATE HOSPITAL, Respondent.

Opinion filed April 27, 1971.

XEROX CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6014—Claimant awarded \$133.35.)

PATRICIA STEVENS CAREER COLLEGE, Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed April 27, 1971

PATRICIA STEVENS INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6018—Claimant awarded \$3,496.50.)

REVZEN OFFICE EQUIPMENT Co., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF INSURANCE, Respondent.

Opinion filed April 27, 1971.

REVZEN OFFICE EQUIPMENT Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6022—Claimant awarded \$327.01.)

LYDIA TAYLOR, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 27, 1971.

LYDIA TAYLOR, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6031—Claimant awarded \$226.42.)

WALTER P. ANDERSON, Claimant, vs. STATE OF ILLINOIS, ILLINOIS LOCAL GOVERNMENTAL LAW ENFORCEMENT OFFICERS TRAINING BOARD, Respondent.

Opinion filed April 27, 1971.

WALTER P. ANDERSON, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6038—Claimant awarded \$1,385.00.)

HALPH KOZANECKI, d/b/a RALPH'S DECORATING SERVICE, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed April 27, 1971.

RALPH KOZANECKI, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6040—Claimant awarded \$117.40.)

COMMUNITY MEDICAL CENTER, S.C., Claimant, vs. STATE OF
ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 27, 1971.

COMMUNITY MEDICAL CENTER, S.C., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6041—Claimant awarded \$459.00.)

EVANS CONSTRUCTION COMPANY, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 27, 1971.

EVANS CONSTRUCTION COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6043—Claimant awarded \$200.00.)

ROBERT L. MEYER, Claimant, **vs.** STATE OF ILLINOIS, DIVISION OF
VOCATIONAL REHABILITATION, Respondent.

Opinion filed April 27, 1971.

ROBERT L. MEYER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6045—Claimant awarded \$48.00.)

GEORGE A. CONN, Claimant, *vs.* STATE OF ILLINOIS, BOARD OF
VOCATION EDUCATION AND REHABILITATION, Respondent.

Opinion filed April 27, 1971.

GEORGE A. CONN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6052—Claimant awarded \$34,000.00.)

THE AMERICAN APPRAISAL Co., INC., Claimant, **us.** STATE OF
ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 27, 1971.

THE AMERICAN APPRAISAL Co., INC., Claimant, pro se.

WILLIAM J. SCORN, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5199—Claimant awarded \$25,000.00.)

ELAINE A. METZLER, individually and as Administratrix of the Estate of MARVIN METZLER, Deceased, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed May 11, 1971.

PHILIP E. HOWARD, Attorney for Claimant.

WILLIAM G. CLARK, Attorney General; MORTON L. ZASLAVSKY, Assistant Attorney General, for Respondent.

HIGHWAYS—*duty* of state. Where respondent owned and controlled land upon which rotten trees were situated and of which the respondent had constructive notice of the condition of the tree.

HIGHWAYS—*duty* of state. The State of Illinois is not an insurer of every accident that occurs on its public highways, but does have the duty 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.

PERLIN, C.J.

Claimant Elaine Metzler seeks recovery of the sum of **\$25,000** as a result of the death of her husband, Marvin Metzler, who was killed on April 13, 1964, when a tree situated next to U.S. Highway 14 (Northwest Highway) fell upon the cab of the truck driven by decedent.

The parties have stipulated that claimant's decedent, Marvin Metzler, was killed as a result of the accident and that the trees and the land upon which they were situated were owned and controlled by respondent.

Claimant presented several witnesses who testified as follows:

Lt. Irvin McDougall, a police officer of the Village of

Arlington Heights, testified that he investigated the accident on Northwest Highway on the morning of the date in question. He found a large tree lying across the Highway completely blocking the street and a Read-Mix truck about **222** feet west of the tree on the south side of the highway. A part of the base of the tree was in the ground and part of the base was out. The base was about **4** feet from the edge of the highway. The cab of the truck was smashed even with the top of the hood of the truck and there was a dent on the top part of the truck. The driver of the truck was flat on the seat of the truck and had no movement. The witness examined the tree involved in the occurrence and saw that it was hollow from the base upward, with decayed matter at the bottom. There were several other trees in the immediate area at that time. There was a heavy wind in the area at the time of the occurrence.

Manley Johnson testified that he was driving a vehicle in a southeasterly direction on Northwest Highway as the tree fell on the truck. The witness saw the truck coming toward him in a northwesterly direction and noticed that it was in the proper lane for northwest traffic and was traveling at a rate less than the speed limit. The witness examined the tree after it fell and observed the trunk of the tree and the base of the tree were decomposed and rotten.

Paul Dolinajec, Jr., testified that he lived at the site of the accident for **43** years. Prior to April **13, 1964**, he noticed that there were little openings in the base of the tree which were visible from the exterior; that bark was missing towards the base of the tree; that the top branches were dying and that in his opinion, the tree was turning rotten. There were three other trees in the area which were in very bad shape, in the opinion of the witness.

Respondent introduced no witnesses or other evidence during the course of the hearing, but filed a Departmental Report with its brief.

Claimant cites the following cases in support of her claim against respondent: In *Dreier vs. State*, 21 C.C.R. 72, claimants recovered when a large limb from a tree fell on their car during a rain storm. It was established that the dangerous condition had existed for a length of time, although it was not clear that the State had actual notice of the defect. The Court quoted from the case of *Renle vs. City of Chicago*, 268 Ill. App. 266, which held that a city had the duty to remove any trees which become rotten or decayed in case the trees became a menace to pedestrians.

The Court in *Dreier* further stated, (p. 75):

“The position of the tree, and the enormous size of the limb overhanging the highway warranted a duty on the State to remove the same, if it were defective. That the State had knowledge is in conflict; that it had constructive knowledge seems borne out by the evidence, and required the State to exercise a duty to remove this dangerous obstacle; and from this record, its failure to do so constituted negligence.”

In *Kenney vs. State*, 22 C.C.R. 247, a tree limb fell on the decedent while he was on the State Fairgrounds, and killed him. The question arose as to whether respondent had actual or constructive notice of the defective condition of the tree. The Court held for the claimants, applying the doctrine of “res ipsa loquitur” as follows: (pp. 256, 257, 258)

“The respondent has not offered any evidence, or explained why the limb fell, other than that it did not know the tree was in a dangerous and hazardous condition until after the accident. We are of the opinion that, from the testimony, the disease in the tree could have been determined had a proper inspection been made by respondent’s agents. It was respondent’s duty to make such an inspection in order to safeguard the patrons at the Fair, which fact was later recognized, as the diseased condition in other trees surrounding the tree in question evidently was apparent to respondent’s agents after the accident. . . .”

“Under the maxim ‘res ipsa loquitur,’ our courts have announced many times that where a thing, which has caused injury, is shown to be under the management of the party charged with negligence, an accident is such as in the ordinary course of things does not happen, if the management uses proper care. The accident itself affords reasonable evidence, in the absence of an explanation by the party charged, that it arose from want of proper care.”

It is clear that the foregoing standards apply directly to

the instant case. Respondent presented no evidence which tended to show that it exercised proper care, although claimant established that respondent **knew** or should have known about the defective tree.

Other evidence introduced by claimant established that the decedent was **35** years **old** at the time of his death; that he left surviving, his wife, Elaine Metzler, **39**, and two children, ages 6 and 9; that he had been employed by the Edwin H. Mayer Construction Company for about thirteen years and had been **so** employed at the time of his death; and that his earnings in the years immediately preceding his death were as follows: **1961, \$7,246.80; 1962, \$8,548.70; 1963, \$8,724.15.** His family was completely dependent **upon** the decedent for its support. The United States Department of Health, Education and Welfare Life Tables indicated that the life expectancy of a white male of the age of 35 years is 36.3 years, and that the life expectancy of a white female of 41 years is **36.4** years.

Claimant is hereby awarded the sum of **\$25,000.**

(No. 5243—Claimants awarded \$6,550.00.)

MARIE RIVOLTORTO, GEORGE R. PASCUCIELLO and YOLANDA ROMANAZZI, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 11, 1971.

ERWIN M. PEARL, Attorney for Claimants.

WILLIAM G. CLARK, Attorney General; GERALD S. GROBMAN, Assistant Attorney General, for Respondent.

NEGLIGENCE—*due care.* Where snowplow operated by respondent on expressway during snow storm swerved into another lane striking claimants' auto, the doctrine of *res ipsa loquitur* applies, and an award will be entered for claimant.

PERLIN, C.J.

Claimants Marie Rivoltorto, George R. Pascucciello, and Yolanda Romanazzi seek recovery of \$20,000, \$15,000

and \$5,000, respectively for injuries incurred when an automobile in which they were riding collided with a snowplow truck owned and operated by respondent.

The facts are as follows:

Claimant, George R. Pascucciello, was driving a 1956 Chevrolet automobile in a northerly direction on the Eden's Expressway on March 17, 1965. Among his three passengers were claimants Marie Rivoltorto and Yolanda Romanazzi. All were enroute to their employment at the Hanson Steel Company. A heavy snow was falling that morning. A State of Illinois snowplow operated by Noel Paul was plowing the left lane of the highway. The plow was traveling about 10 or 15 miles per hour. Claimant Pascucciello was traveling about 15 or 20 miles per hour in the middle lane of the expressway and was attempting to pass the snowplow when the snowplow skidded or the blade fell into the middle lane, colliding with claimants' automobile.

Claimants must prove the following before they may recover: (1) freedom of claimants from contributory negligence, (2) negligence of respondent, (3) that respondent's negligence was the proximate cause of their injuries and (4) damages.

Claimants contend that the driver of the State snowplow operated the same negligently and carelessly in that he suddenly, without warning, turned right from the passing lane into the lane of traffic on which the claimants' vehicle was operating alongside the snowplow truck, and that the snowplow blade fell off the truck into claimants' path.

The respondent contends that the driver of the State of Illinois snowplow truck operated his vehicle with reasonable care under the circumstances, to clear snow from the highway on a "very snowy, very icy, very slippery highway;" (there was about 3.9 inches of snow in the area) that the snowplow truck skidded on an icepatch and

unavoidably swerved to the right; that claimants' auto had been in a place of safety behind the snowplow; that there were warning lights on the truck; that claimant left the area of safety and tried to pass the snowplow truck on an un-cleared path without giving sufficient clearance to pass respondent's vehicle; and that the driver of claimants' car was contributorily negligent.

The respondent further charges that the passengers, Marie Rivoltorto and Yolanda Romanazzi, were guilty of contributory negligence because they allowed themselves to be placed in a condition of danger and did nothing to reduce or correct the danger, such as asking the driver of their auto to stay in the cleared path behind the snowplow or to avoid passing the truck too closely.

While the witnesses were not in agreement as to whether the snowplow blade suddenly fell in front of claimants' car or whether the truck skidded in front of claimants' car, it would appear that respondent was negligent.

There was no evidence that claimant was contributorily negligent in passing the snowplow by traveling in the middle lane or not swerving into the third lane. Weather conditions were not too dangerous to permit driving on the expressway, as evidenced from the testimony, which established heavy traffic using the road at the time of the accident.

The claimant cites the similar case of *Hargrave vs. State*, 24 C.C.R. 463, 467, in which the court stated:

"Respondent claims that this was an unavoidable accident. It is the opinion of the Court that the doctrine of res ipsa loquitur is properly applied in the case at hand, since, if proper care had been used, a snowplow frame does not ordinarily fall off a truck causing the truck to come to a sudden stop."

The doctrine of res ipsa loquitur has been defined as follows:

"When an injury is caused by an instrumentality under the exclusive control of the party charged with negligence, and is such as would not ordinarily happen if the party having control of the instrumentality had used proper care, an inference or presumption of negligence arises. The burden then rests upon the respondent to rebut the presumption of negligence arising from the facts of the case" (*City of St. Louis vs. State*, 24 C.C.R. 477, 479)

Claimants further urge that Noel Paul violated the Uniform Motor Vehicle Traffic Act, Illinois Motor Vehicle Code, Ch. 95½, Sec. 157, Ill.Rev.Stat., 1969, which provides that whenever any roadway has been divided into two or more clearly marked lanes of traffic, a vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.

In the opinion of the Court, the passenger claimants were not contributorily negligent and the injuries which they received were proximately caused by respondent's negligence in failing to keep its vehicle under control and in its proper lane, or in failing to control the action of the snowplow blade.

It appears from the evidence that claimant, George Pascucciello, suffered back injuries and missed two weeks of work. Claimant, Marie Rivoltorto, had a fracture of her right wrist and missed 11 weeks of work. The evidence further shows that Yolanda Romanazzi expended \$50.00 for medical expenses as a result of said accident, but she did not appear at the hearing.

Claimants are hereby awarded the following amounts: George R. Pascucciello is awarded the sum of \$1,500; Marie Rivoltorto is awarded the sum of \$5,000 and Yolanda Romanazzi is awarded the sum of \$50.00.

(No. 5356—Claimant awarded \$1,605.59.)

**AMERICAN OIL COMPANY INCORPORATED, A Corporation;
Claimant, vs. STATE OF ILLINOIS, VARIOUS STATE AGENCIES,
Respondent.**

Opinion filed May 11, 1971.

GILLESPIE, BURKE AND GILLESPIE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5650—Claimant awarded \$545.77.)

HARRY CHARNESKI, for the use of GENERAL CASUALTY COMPANY OF WISCONSIN, Claimant, vs. STATE OF ILLINOIS, ILLINOIS YOUTH COMMISSION, Respondent.

Opinion filed May 11, 1971.

GILLESPIE, BURKE AND GILLESPIE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5652—Claim denied.)

JUDITH M. HILDEN, as Administrator of the Estate of LOWELL R. HILDEN, Deceased, and JUDITH M. HILDES, individually, Claimant, vs. STATE OF ILLINOIS, DIVISION OF HIGHWAYS, Respondent.

Opinion filed May 11, 1971.

ROSZKOWSKI AND PADDOCK, Attorney for Claimant.

**WILLIAM J. SCOTT, Attorney General; BRUCE J. FINNE,
Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(So.5716—Claimant awarded \$49.09.)

**CLARK OIL AND REFINING CORPORATION, Claimant, vs. STATE OF
ILLINOIS, DEPARTMENT OF PUBLIC SAFETY, Respondent.**

Opinion filed May 11, 1971.

**CLARK OIL AND REFINING CORPORATION, Claimant, pro
se.**

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(So.5723—Claimant awarded \$454.45.)

**HOUSE OF TOOLS, INC., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC SAFETY, Respondent.**

Opinion filed May 11, 1971.

HOUSE OF TOOLS, INC., Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed appropriation.* When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5732—Claimant awarded \$2,530.32.)

GULF OIL CORPORATION, Acting by and through GULF OIL COMPANY, U. S., A Division thereof, Claimant, *vs.* STATE OF ILLINOIS, VARIOUS STATE AGENCIES, Respondent.

Opinion filed May 11, 1971.

GULF OIL CORPORATION, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; WILLIAM E. Webber, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount **due** claimant.

PERLIN, C.J.

(No. 5735—Claimant awarded \$30.00.)

THEFIMO-FAX SALES, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 11, 1971.

THERMO-FAX SALES, INC., Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; WILLIAM E. Webber, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court **will** enter an award for the amount due claimant.

PERLIN, C.J.

(*So.* 5741—Claimant awarded \$125.00.)

C. E. WINDSOR, M.D., Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed May 11, 1971.

WISEMAN, SHAIKEWITZ, MCGIVERN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. Webber, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5742—Claimant awarded \$847.72.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed May 11, 1971.

ATLANTIC RICHFIELD COMPANY, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5745—Claimant awarded \$253.00.)

NICK KERASIoTIS, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF REGISTRATION AND EDUCATION, Respondent.

Opinion filed May 11, 1971.

NICK KERASIoTIS, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5747—Claimant awarded \$73.87.)

DANIEL J. CARROLL, JR., Claimant, *vs.* STATE OF ILLINOIS, DIVISION
OF HIGHWAYS, Respondent.

Opinion filed May 11, 1971.

DANIEL J. CARROLL, JR., Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5754—Claimant awarded \$585.00.)

THE SPRINGFIELD MASS TRANSIT DISTRICT, Claimant, *vs.* STATE OF
ILLINOIS, STATE FAIR AGENCY, Respondent.

Opinion filed May 11, 1971.

JAMES M. WINNING, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5756—Claimant awarded \$370.16.)

ANDREW P. ADAMS, M.D., Claimant, *vs.* STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 11, 1971.

MICHAEL R. BERZ, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5757—Claimant awarded \$532.59.)

INTERNATIONAL BUSINESS MACHINES CORPORATION, Claimant, *vs.*
STATE OF ILLINOIS, DEPARTMENT OF REVENUE, Respondent.

Opinion filed May 11, 1971.

INTERNATIONAL BUSINESS MACHINES CORPORATION,
Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

Comas — *lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5758—Claimant awarded \$222.00.)

ALTON MEMORIAL HOSPITAL, Claimant *vs.* STATE OF ILLINOIS,
DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed May 11, 1971.

ALTON MEMORIAL HOSPITAL, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

Comas — *lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5767—Claimant awarded \$175.00.)

LYAL LAUTH, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 11, 1971.

LYAL LAUTH, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5778—Claimant awarded \$107.98.)

KATE MAREMONT FOUNDATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed May 11, 1971.

RIVERS, WATT AND LOCKHART, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL H. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5780—Claimant awarded \$829.00.)

MOHAWK DATA SCIENCES CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed May 11, 1971.

MOHAWK DATA SCIENCES CORPORATION, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5786—Claimant awarded \$389.65.)

PRESBYTERIAN-ST. LUKE'S HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed May 11, 1971.

PRESBYTERIAN-ST. LUKE'S HOSPITAL, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5793—Claimant awarded \$53.00.)

ABBEY RENTS, Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed May 11, 1971.

ABBEY RENTS, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.]

(No. 5804—Claimant awarded \$306.39.)

SUN OIL COMPANY, Claimant, *vs.* STATE OF Illinois, VARIOUS STATE AGENCIES, Respondent.

Opinion filed May 11, 1971.

SUN OIL COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5822—Claimant awarded \$1,621.22.)

B. & B. ELECTRIC, INC., An Illinois Corporation, Claimant, vs. STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed May 11, 1971.

GRAHAM AND GRAHAM, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5828—Claimant awarded \$4,327.00.)

XEROX CORPORATION, Claimant, vs. STATE OF ILLINOIS, VARIOUS STATE AGENCIES, Respondent.

Opinion filed May 11, 1971.

XEROX CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5892—Claimant awarded \$552.00.)

**CHARLES McCORKLE, JR., Claimant, vs. STATE OF ILLINOIS,
GOVERNOR'S REVENUE STUDY COMMITTEE, Respondent.**

Opinion filed May 11, 1971.

CHARLES McCORKLE, Jr., Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(So. 5893—Claimant awarded \$720.34.)

**MYERS BROTHERS, INC., Claimant, vs. STATE OF ILLINOIS, STATE
FAIR AGENCY, Respondent.**

Opinion filed May 11, 1971

MYERS BROTHERS, INC., Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5914—Claimant awarded \$137.97.)

**KENNEDY VALVE MANUFACTURING COMPANY, INC., A Corporation,
Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL
HEALTH, Respondent.**

Opinion filed May 11, 1971.

WILLIAM E. AULGUR, Attorney for Claimant.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5939—Claimant awarded \$472.50.)

SALVADORE HERRERA, Claimant, *us.* STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed May 11, 1971.

JEROME J. KORNFELD, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 3951—Claimant awarded \$894.21.)

ALEXANDER LUMBER COMPANY, Claimant, *us.* STATE OF ILLINOIS,
DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed May 11, 1971.

ALEXANDER LUMBER COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(So. 5966—Claimant awarded \$4,028.05.)

ST. FRANCIS HOSPITAL, Claimant, *us.* STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed *May* 11, 1971.

ST. FRANCIS HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5972—Claimant awarded \$103.00.)

CARL ANIS, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed *May* 11, 1971.

CARL ANIS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5973—Claimant awarded \$452.00.)

EASTMAN KODAK COMPANY, Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed *May* 11, 1971.

EASTMAN KODAK COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5974—Claimant awarded \$225.00.)

ROBESON'S, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF
PUBLIC AID, Respondent.

Opinion filed May 11, 1971.

ROBESON'S, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5975—Claimant awarded \$13,720.00.)

INTERNATIONAL BUSINESS MACHINES CORPORATION, Claimant, *vs.*
STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT,
Respondent.

Opinion filed May 11, 1971.

INTERNATIONAL BUSINESS MACHINES CORPORATION,
Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5979—Claimant awarded \$55.00.)

GEORGE M. BORIN, M.D., Claimant, *vs.* STATE OF ILLINOIS, DIVISION
OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed May 11, 1971.

GEORGE M. BORIN, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5987—Claimant awarded \$91.33.)

FAMOUS BARR COMPANY, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES**, Respondent.

Opinion filed May 11, 1971.

FAMOUS BARR COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6001—Claimant awarded \$113.70.)

PRAIRIE FARMS DAIRY, INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES**, Respondent.

Opinion filed May 11, 1971.

PRAIRIE FARMS DAIRY, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(So. 6003—Claimant awarded \$522.14.)

**LEWIS MOTOR SUPPLY, INC., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed May 11, 1971.

LEWIS MOTOR SUPPLY, INC., Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(So. 6008—Claimant awarded \$301.74.)

**BUREAU OF BUSINESS PRACTICE, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF REVENUE, Respondent.**

Opinion filed May 11, 1971.

BUREAU OF BUSINESS PRACTICE, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(So. 6017—Claimant awarded \$3,491.16.)

**BERRY BUSINESS INTERIORS, Claimant, vs. STATE OF ILLINOIS,
SECRETARY OF STATE, Respondent.**

Opinion filed May 11, 1971.

BERRY BUSINESS INTERIORS, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6028—Claimant awarded \$62.50.)

W. C. BARROW, M.D., Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed May 11, 1971.

W. C. BARROW, M.D., Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6029—Claimant awarded \$392.75.)

ST. MARY'S HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed May 11, 1971.

ST. MARY'S HOSPITAL, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6030—Claimant awarded \$84.00.)

ST. MARY'S HOSPITAL, **Claimant**, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, **Respondent**.

Opinion filed May 11, 1971.

ST. MARY'S HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6034—Claimant awarded \$154.00.)

E. ANDRI, M.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed May 11, 1971.

E. ANDRI, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6035—Claimant awarded \$55.35.)

FS SERVICES, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC WORKS AND BUILDINGS, Respondent.

Opinion filed May 11, 1971.

ILLINOIS AGRICULTURAL ASSOCIATION AND AFFILIATED COMPANIES, Attorneys for Claimant.

WILLIAM J. SCORN, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a

claim should have been paid has lapsed. the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6037—Claimant awarded \$1,686.55.)

McDONNELL AUTOMATION COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC WORKS AND BUILDINGS, Respondent.

Opinion filed May 11, 1971

McDONNELL AUTOMATION COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed. the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6042—Claimant awarded \$52.50.)

PETROLANE GAS SERVICE, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC WORKS AND BUILDINGS, Respondent.

Opinion filed May 11, 1971.

PETROLANE GAS SERVICE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6088—Claimants awarded \$920,168.85.)

COUNTY OF COOK and COOK COUNTY DEPARTMENT OF PUBLIC AID, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed May 11, 1971.

EDWARD V. HANRAHAN, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5419—Claimant awarded \$78,000.00.)

**JAMES MCHUGH CONSTRUCTION COMPANY, an Illinois Corporation,
Claimant, vs. STATE OF ILLINOIS, Respondent.**

Opinion filed December 18, 1969.

Petition of Respondent for Rehearing denied June 9, 1971.

KORSHAK, ROTHMAN, OPPENHEIM AND FINNEGAN, At-
torney for Claimant.

WILLIAM J. SCOTT, Attorney General; MORTON L.
ZASLAVSKY, Assistant Attorney General, for Respondent.

CONTRACTS—penalties for delay. Where specifications supplied by respon-
dent indicated incorrect excavating conditions, the delay thus occasioned to the
claimant was the fault of the respondent and a penalty for delay could not be
imposed on the claimant.

SAME—same. Where claimant imposed a penalty for delay in construction
due to fact that work was damaged by barges, the delay was not the fault of the
claimant, and a penalty for the delay could not be imposed upon the claimant.

BOOKWALTER, J.

This is an action by the claimant, a general contractor,
to recover \$78,000.00 in penalties assessed against it as li-
quidated damages by respondent for failure to complete a
pier cell construction contract on time.

The facts show that on August 14, 1963, claimant
entered into a contract with The Department of Public
Works and Buildings to construct eight cells for the protec-
tion of future bridge piers over the Chicago and Sanitary
Ship Canal. The contract provided for completion

by December 2, 1963, or, “on or before a later date determined as specified herein; otherwise, the Department shall proceed to collect liquidated damages described hereinafter.” The liquidated damages for failure to meet the completion date were \$1,000.00 per day. The project was finished on March 26, 1964.

The issue in this case is whether the causes of delays, which prevented the timely completion of the pier cells, were the types of causes, which would warrant, under the contract, extensions of time.

The applicable provision of the contract is as follows:

“When a delay occurs due to unforeseen causes beyond the control and without the fault or negligence of the contractor, including but not restricted to acts of God, acts of the public enemy, governmental acts, fires, floods, epidemics, strikes (except those caused by improper acts or omissions of the contractor), extraordinary delays in delivery of materials caused by strikes, lock-outs, wrecks, freight embargoes, governmental acts, or acts of God, the time of completion shall be extended in whatever amount is determined by the Department to be equitable.

The State allowed three extensions of time under this provision of the contract extending the completion date from December 2, 1963, through January 8, 1964. No other extensions were allowed, and consequently the State withheld \$78,000.00 from the contract price, representing \$1,000.00 per day for the seventy-eight days from January 8, 1964, to March 26, 1964, the actual completion date of the contract.

Claimant, according to evidence introduced at the hearing, made various requests for extensions of time, which, if allowed, would have extended the completion date past January 8, 1964. These requests and their alleged justification were set forth in Paragraph 5a through e, of claimant’s complaint. As to each of these requests, it is incumbent upon claimant to show by a preponderance of the evidence that respondent should have allowed extensions of time as the contract provided.

Claimant requested extensions for delays caused by unanticipated subsurface conditions. The drawings furnished by the State indicated that claimant would encounter the subsurface condition known technically as “Class B Excavation”. This was not in fact encountered. Instead the material found **was** of a fine, silty nature making it difficult to pump out the water, and to achieve a “seal” in installing the steel sheeting for the cells. Twenty-seven additional calendar days were required to install the steel sheeting under these conditions. Also the drawings did not indicate that claimant would encounter “shot” rock, e.g., rock fragments produced in times past by blasting, possibly during the original construction of the canal. Excavating through the “shot” rock to solid rock consumed an additional twenty-three days. These delays were the basis of a fifty day extension request made by claimant.

Claimant’s witnesses testified that the State, when it furnished drawings to bidders on the cell contract, had in its possession boring logs, which showed the true subsurface condition of the area. These boring logs contradicted the representations made in the drawings furnished bidders on the cell contract. Claimant discovered the existence of the boring logs when they bid unsuccessfully on the pier contracts, which were let after the cell contracts.

Claimant’s exhibit No. 5 went into great detail in describing the subsurface conditions, which the boring logs indicated would be found on the job site. The exhibit in effect shows that Class **B** Excavation, which was stated to exist in the contract plans, was not actually going to be present.

Article **2.3** of the Standard Specifications reads as follows:

“When plans or special provisions included information pertaining to subsurface exploration, borings, test pits, and other preliminary investigation, such information represents only the opinion of the Department as to location,

character and quantity of material encountered, and is only included for the convenience of the bidder. The Department assumes no responsibility whatsoever in respect to the sufficiency or accuracy of the information and there is no guarantee, either expressed or implied, that the conditions indicated are representative of those existing throughout the work or that unanticipated developments may occur."

The problem arises in how to relate Article 2.3 with those portions of the special provisions quoted earlier relating to delays due to unforeseen causes beyond the control and without the fault of the contractor. In the opinion of this Court it does not seem reasonable, and from the evidence is not generally required, that a contractor individually go onto a job site such as this, and make soil borings and other subsurface explorations before bidding the job. It appears from the evidence that the State could have revealed the true information as to subsurface conditions, but for some reason did not do so. Taking these two facts into account, and the fact that Article 2.3 acknowledges the possibility of "unanticipated developments", an extension of fifty days as requested by claimant should have been allowed, as the delay was beyond the control and without the fault of the contractor.

A request for an extension of seventy-two days was made by claimant for alleged delays caused by the fact that two cells were damaged by barges using the canal, and that these cells had to be repaired and rebuilt. The State allowed a twenty-five day extension, but disallowed the remaining forty-seven days of the request.

There is nothing in the evidence, which would indicate that claimant did not have either of the cells adequately lighted to avoid possible collision by traffic using the canal. It is true that after the first collision claimant did not change its lighting protection, but there has been no showing that the lighting in the first instance was inadequate. Claimant should have been given the remainder of the seventy-two day extension request, that being forty-seven days.

Having found that a fifty day extension for delays caused by subsurface conditions and a forty-seven day extension for delay due to cell damage should have been allowed by respondent, claimant is hereby awarded the amount of \$78,000.00.

(No. 5565—Claimant awarded \$2,910.70.)

MARY WEISHAAR, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed June 9, 1971.

KRUSEMARK AND BERTANI, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; BRUCE J. FINNE, Assistant Attorney General, for Respondent.

NEGLIGENCE—*due care*. Where respondent operated a bridge, and the bridge tender raised the bridge while claimant was walking on it. The respondent failed to exercise due care, and an award would be entered for claimant's injuries.

AWARD—*decedent's estate*. Where claimant died subsequent to this court reaching its decision, but just prior to filing this opinion, the award would be paid to the administrator of claimant's estate.

BURKS, J.

Miss Mary Rose Weishaar, the claimant, was 66 years of age when she was injured in an accident on April 6, 1968, on the Jackson Street drawbridge in Joliet. This drawbridge, owned and operated by the respondent, is lifted when necessary to allow passage of river traffic beneath it. The bridge opens in the center when the east and west portions are raised up at a sharp angle. A bridge tender, employed by the respondent, operates the bridge.

Miss Weishaar was walking in an easterly direction from her home to downtown Joliet and was proceeding across the drawbridge in the pedestrian walkway when the accident occurred. She had almost crossed the bridge and was within a few feet of the eastern end when the bridge began to open. As the walk that she was on began to raise, the claimant grabbed on to the guard rail but fell across and

onto the stationary portion of the concrete walkway. She sustained some bodily injuries described later in this opinion.

The complaint charges that claimant's injuries were caused by negligence on the part of respondent's employee, the bridge tender, in that he failed to keep a proper lookout for pedestrians crossing said bridge on the pedestrian crosswalk; failed to give timely warning to the claimant that the bridge was to be opened; and that he opened the bridge when he knew or should have known that a pedestrian was on the walk of the bridge.

The undisputed facts show that claimant certainly had no advance warning that the bridge was going to be raised when she walked on to it. The gate was not down; no bells were ringing; no lights were flashing. It is our opinion that the open gate and the absence of any audible or visual warning signals could properly be regarded by the claimant as an invitation for her to proceed. *Simoneaux vs. State Dept. of Highways (La)*90 ALR2d 100.

The bridge tender, in his testimony as to the procedure for opening the bridge, stated that he first puts on a signal that blows a whistle; then pushes a button for bells and lights which go on a few seconds before the first gate goes **down**; that when the west gate closes behind the eastbound traffic on the bridge, there is a waiting period of several seconds before the east gate will close; that this intervening period, timed automatically, is apparently calculated to be adequate for traffic on the bridge to clear off at normal traveling speed. That the bridge will not open until all this has been done; and that, even when the gates are down and the signals are on, the bridge tender does not raise the bridge until he has looked to see if any pedestrians may be **on** the bridge.

The bridge tender's visual observation to determine whether pedestrians may be on the bridge is, in our

judgment, required and implicit in his duty to exercise reasonable care and to take reasonable precautions for the safety of travelers over the structure. **39 Am.-Jur.2d, Highways, Streets and Bridges, Sec. 553.** Such visual observation is especially necessary for the protection of older people, like the claimant, who may not walk or be able to walk as fast as the average person.

In this case, the bridge tender said that he looked but did not see the claimant when he raised the bridge. Respondent apparently attempted to excuse its employee's failure to see the claimant by putting in photographic evidence showing that there were certain places on the bridge where a pedestrian could not be seen from the bridge tender's house. At such points the bridge tender's vision was obscured by the super-structure of the bridge. This fact, it seems to us, acknowledges that a hazardous situation exists which should have been known to the bridge tender and which increases the degree of care he was required to exercise for the protection of a pedestrian.

The claimant was entirely free from fault and is entitled to recover a reasonable amount in damages for her injuries.

Immediately after her fall, claimant was taken by ambulance to St. Joseph's Hospital where she remained for two weeks. Her injuries consisted of contusions about her body, but x-rays revealed no broken bones. She suffered a back strain and a rather severe contusion on her left leg. She also broke a cyst formation on her left breast which is medically referred to as a carcinoma. The cyst on claimant's chest, of course, was not due to the accident on the bridge but was aggravated by its causing the cyst to bleed. Cobalt treatments were prescribed by her physician. Her hospital and medical bills totalling \$782.70 were paid by her insurance companies.

The claimant was semi-retired but sold greeting cards

from door to door earning approximately **\$25** per month. She was prevented from conducting her occupation for approximately 11 months due to her injuries resulting in a loss of income amounting to approximately **\$275**.

Claimant asked, in her complaint, for damages in the amount of \$5,000.00. Based on a careful evaluation of claimant's relatively minor injuries due to this accident and weighing all other factors involved, we feel that an award for damages in the amount of \$3,000.00 would be fair and reasonable and justified. Our order will be based on our finding that claimant has proved her case for damages in the amount of \$3,000.00.

The claimant was, at the time of the accident, a recipient of public assistance from the Illinois Department of Public Aid. Said Department, as required by law, filed with this Court on June 11, 1970, a petition requesting this Court to enforce the Department's charge against any award that may be entered for the claimant in this cause of action. The amount of the Department's charge against the award is the amount of medical assistance the Department has provided to the claimant from the time of her injury to the date her award is entered, pursuant to the provisions of Ch. 23, Sec. 11-22, Ill. Rev. Stat., 1969. This section excludes from its applicability only three classes of claims or causes of action, namely, those arising under (a) the "Workmen's Compensation Act", (b) the "Workmen's Occupational Diseases Act" and (c) the "Wrongful Death Act". Hence we conclude that the said law applies to actions brought in the Court of Claims and that we must recognize the charge of the Illinois Department of Public Aid as stated in its intervening petition.

The total amount of the charge which the Department of Public Aid claims against the award in this case is **\$89.30**. This is the amount paid to or on behalf of the claimant for medical assistance only. The Department claims no charge

for the total amount of aid provided to the claimant to meet her basic maintenance requirements since the claimant was not considered to be employable at the time of her injury. Since the Department of Public Aid is an agency of the respondent, we do not believe it is necessary for the Court to request the legislature to appropriate \$89.30 out of one of the respondent's pockets, the general revenue fund, and put it in another, the Department of Public Aid. The same ultimate result can be accomplished by considering the Department's charge of \$89.30 as a set-off against the total award of \$3,000.00, making the claimant's net award \$2,910.70.

The penultimate paragraph of the aforesaid Section 11-22 of the Public Aid Code states: "This Section shall not affect the priority of an attorney's lien under 'an act concerning attorney's lien' and for the enforcement of same" (Ch. 13, Sec. 14, Ill.Rev.Stat., 1969). Hence we must also recognize the attorney's lien duly filed with this Court by the law firm of Krusemark and Bertani of Joliet, attorneys for the claimant. Said attorneys represented the claimant in this action on a contingent fee basis and have a lien against the award for services rendered to and on behalf of the claimant and for costs incurred. Since the statute provides that the attorney's lien has priority over the charge claimed by the Illinois Department of Public Aid, the attorney's fee would properly be based on the total award of \$3,000.00 rather than the net amount as reduced by the Department's charge.

Subsequent to reaching its decision in this matter and just prior to filing this opinion, the Court was duly advised by attorneys for the claimant, that the claimant, Mary Weishaar, died on April 12, 1971; and that her estate will be handled by the public administrator, Mr. William Kaplan, 5 East Van Buren Street, Joliet, Illinois.

Under these circumstances the award in this case must

be made to the claimant's estate, and claimant's attorneys will have a claim against said estate for the amount of their lien. The charge of the Department of Public Aid having been recognized by a set-off against the total award, an award to claimant's estate is hereby made as follows:

To the estate of Mary Weishaar, deceased, the sum of \$2,910.70.

(No. 5477—Claimant awarded \$26.45.)

HENSON & MILLS OIL COMPANY, Claimant, OS. STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed August 30, 1971

WILLIAM R. TODD, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

Cowrums—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5584—Claimant awarded \$342.52.)

PETER STAVROS, Claimant, OS. STATE OF ILLINOIS, Respondent.

Opinion filed August 30, 1971.

THOMAS, KOSTANTACOS AND TRAUM, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACT—erroneous interpretation of rules. Where respondent failed to pay claimant for services due because of an erroneous interpretation of departmental rules, an award will be entered for claimant.

PERLIN, C.J.

This cause coming on to be heard on the Stipulation of

the parties hereto, and the Court being fully advised in the premises;

THIS COURT FINDS that this claim in the amount of **\$342.52** is for food services rendered by the claimant to patients of the Department of Mental Health during the month of July, **1967**, and that the reason said amount was not previously paid is that due to an erroneous interpretation of departmental rules, this sum was sent to the **New Elms Hotel**, which sum was to be remitted to the claimant.

IT IS HEREBY ORDERED that the sum of **\$342.52** be awarded to claimant in full satisfaction of any and all claims presented to the State under Cause No. **5584**.

(No. 5615—Claimant awarded \$1,081.63.)

MOBIL OIL CORPORATION, A Corporation: Claimant, vs. STATE OF ILLINOIS, VARIOUS STATE AGENCIES, Respondent.

Opinion filed August 30, 1971.

GIFFIN, WINNING, LINDNER, NEWKIRK AND COHEN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5k — Claimant awarded \$47.50.)

SPRINGFIELD RADIOLOGISTS, Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed August 30, 1971.

SPRINGFIELD RADIOLOGISTS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5714—Claimant awarded \$250.00.)

RONALD ALLEN SIMMONS, Claimant, *vs.* STATE OF ILLINOIS,
Respondent.

Opinion filed August 30, 1971.

EDWARD ZUKOSKY, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

DAMAGES—*stipulation*. Where claimant and respondent stipulate to facts and damages, an award will be entered accordingly.

PERLIN, C.J.

This cause coming on 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 claim arose as a result of a Safety Responsibility Deposit belonging to the claimant being deposited in the State Treasury where the Office of the Secretary of State was unable to retrieve it to return it to the claimant.

IT IS HEREBY ORDERED:

1. That the sum of **\$250.00** be awarded to claimant in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause.

(No. 5744—Claimant awarded \$350.00.)

CLARK RANDOLPH HOUSE d/b/a **SHERMAN HOUSE**, Claimant, *vs.*
STATE OF ILLINOIS, DEPARTMENT OF REGISTRATION AND EDUCATION,
Respondent.

Opinion filed August 30, 1971.

SIDNEY D. KOMIE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5749—Claimant awarded \$196.16.)

WIEBOLDT STORES INC., Claimant, *vs.* **STATE OF ILLINOIS,**
DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed August 30, 1971.

WIEBOLDT STORES INC., Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5773—Claimant awarded \$170.00.)

CARL ANIS, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF**
PUBLIC AID, Respondent.

Opinion filed August 30, 1971.

CARL ANIS, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5783—Claimant awarded \$750.00.)

DORTCH THE MOVER, Claimant, **us. STATE OF ILLINOIS**,
DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed August 30, 1971.

DORTCH THE MOVER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5789—Claimant awarded \$300.00.)

WILLIAM J. SCHNABEL, Claimant, **us. STATE OF ILLINOIS, SECRETARY
OF STATE**, Respondent.

Opinion filed August 30, 1971.

WILLIAM J. SCHNABEL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5798—Claimant awarded \$95.00.)

JAMES L. LEWIS, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed August 30, 1971.

JAMES L. LEWIS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

Coma — -lapse dappropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5801—Claimant awarded \$799.50.)

THE CHILDREN'S MEMORIAL HOSPITAL, An Illinois Corporation, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed August 30, 1971.

WILSON AND MCLVAINE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

Coma — -lapse dappropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5874—Claimant awarded \$7,434.88.)

CHARLES W. BILLINGSLEA, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed August 30, 1971.

RICHARD F. MCPARTLIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

DAMAGES—*stipulation.* Where claimant and respondent stipulate to facts and damages, an award will be entered accordingly.

PERLIN, C.J.

This cause coming on 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 claim in the amount of **\$7,434.88** is for back salary due the claimant from the Department of Labor for the period **May 30, 1967**, through **May 6, 1968**.

IT IS HEREBY ORDERED that the sum of **\$7,434.88** be awarded to claimant in full satisfaction of any and all claims presented to the State under Cause No. **5874**.

(No. 5906—Claimant awarded \$923.58.)

MICHAEL REESE HOSPITAL AND MEDICAL CENTER, Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed August 30, 1971.

MICHAEL REESE HOSPITAL AND MEDICAL CENTER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5929—Claimant awarded \$458.88.)

McHENRY SAND AND GRAVEL COMPANY, INC., Claimant, vs. STATE OF ILLINOIS, DIVISION OF HIGHWAYS, Respondent.

Opinion filed August 30, 1971.

WILLIAM M. CARROLL, JR., Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5994—Claimant awarded \$851.06.)

GERALDINE T. HUBBARD, as Executrix of the Estate of EMERY HUBBARD, deceased, Claimant, vs. STATE OF ILLINOIS, ILLINOIS YOUTH COMMISSION, Respondent.

Opinion filed August 30, 1971.

KNUPPEL, GROSBOLL, RECKER AND TICE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6000—Claimant awarded \$765.00.)

AMERICAN HOSPITAL SUPPLY, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed August 30, 1971.

GIFFIN, WINNING, LINDNER, NEWKIRK AND COHEN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6015—Claimant awarded \$300.00.)

**INTERNATIONAL BUSINESS MACHINES CORPORATION, Claimant, vs.
STATE OF ILLINOIS, AUDITOR OF PUBLIC ACCOUNTS, Respondent.**

Opinion filed August 30, 1971

**PRETZEL, STOUFFER, NOLAN AND ROONEY, Attorney for
Claimant.**

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6016—Claimant awarded \$949.15.)

**BOLTON ENTERPRISES, INC., Claimant, vs. STATE OF ILLINOIS,
DIVISION OF HIGHWAYS, Respondent.**

Opinion filed August 30, 1971.

BOLTON ENTERPRISES, INC., Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6044—Claimant awarded \$2,392.00.)

SIEG PEORIA COMPANY, An Illinois Corporation, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC WORKS AND BUILDINGS, Respondent.

Opinion filed **August 30, 1971.**

DONALD G. BESTE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6046—Claimant awarded \$12,609.45.)

BURROUGHS CORPORATION, Claimant, vs. STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed **August 30, 1971.**

DAVIS, DIETCH AND RYAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6047—Claimant awarded \$73.07.)

SAX ARTS & CRAFTS, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC HEALTH, Respondent.

Opinion filed **August 30, 1971.**

SAX ARTS & CRAFTS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6050—Claimant awarded \$1,367.28.)

MINNESOTA MINING AND MANUFACTURING COMPANY, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC WORKS AND BUILDINGS, Respondent.

Opinion filed August 30, 1971.

CHARLES W. OTT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant

PERLIN, C.J.

(No. 6053—Claimant awarded \$250.22.)

P. SIDNEY NEUWIRTH, M.D., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF REGISTRATION AND EDUCATION, Respondent.

Opinion filed August 30, 1971.

P. SIDNEY NEUWIRTH, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6054—Claimant awarded \$243.52.)

JOHN B. CUNNINGHAM, Claimant, vs. STATE OF ILLINOIS, WHITESIDE COUNTY CIRCUIT MAGISTRATE, Respondent.

Opinion filed August 30, 1971.

JOHN B. CUNNINGHAM, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6058—Claimant awarded \$110.00.)

CARL ANIS, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed August 30, 1971.

CARL ANIS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6059—Claimant awarded \$345.50.)

THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY, Claimant, vs. STATE OF ILLINOIS, ATTORNEY GENERAL'S OFFICE, Respondent.

Opinion filed August 30, 1971.

THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6062—Claimant awarded \$175.00.)

NORMAN E. LARSON, M.D., Claimant, **vs.** STATE OF ILLINOIS,
DIVISION OF HEALTH CARE FACILITIES AND CHRONIC ILLNESSES,
Respondent.

Opinion filed August 30, 1971.

ALTMAN, KURLANDER AND WEISS, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6063—Claimant awarded \$175.00.)

NORMAN E. LARSON, M.D., Claimant, **vs.** STATE OF ILLINOIS,
DIVISION OF HEALTH CARE FACILITIES AND CHRONIC ILLNESSES,
Respondent.

Opinion filed August 30, 1971.

ALTMAN, KURLANDER AND WEISS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6064—Claimant awarded \$315.00.)

**CHARLES L. CARROLL, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC AID, Respondent.**

Opinion filed August 30, 1971.

CHARLES L. CARROLL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6065—Claimant awarded \$1,943.75.)

**INTERNATIONAL BUSINESS MACHINES CORPORATION, A New York
Corporation, Claimant, vs. STATE OF ILLINOIS, SECRETARY OF
STATE, Respondent.**

Opinion filed August 30, 1971.

PRETZEL, STOFFER, NOLAN AND ROONEY, Attorney for
Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6066—Claimant awarded \$110.00.)

**LEONARD COLBERT, as Administrator of the Estate of IDA PERRY,
deceased, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC
AID, Respondent.**

Opinion filed August 30, 1971.

LEONARD COLBERT, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; EDWARD L.S. ARKEMA, JR., Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6068—Claimant awarded \$304.00.)

FLORENCE CRITTENTON PEORIA HOME, Claimant, os. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed August 30, 1971.

FLORENCE CRITTENTON PEORIA HOME, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6069—Claimant awarded \$260.00.)

MARY CRANE NURSERY SCHOOL, Claimant, os. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed August 30, 1971.

MARY CRANE NURSERY SCHOOL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6070—Claimant awarded \$466.85.)

FREEMPORT MEMORIAL HOSPITAL, A Non-Profit Illinois Corporation,
Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND
FAMILY SERVICES, Respondent.

Opinion filed August 30, 1971.

JOHN G. WHITON, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6073—Claimant awarded \$487.49.)

FIDELITY AND DEPOSIT COMPANY OF MARYLAND, Claimant, *vs.*
STATE OF ILLINOIS, DEPARTMENT OF REVENUE, Respondent.

Opinion filed August 30, 1971

DENT, HAMPTON and DOTEN, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid hits lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6074—Claimant awarded \$131.59.)

SANDOR KIRSCH, d/b/a THRIFTY FOOD MART, Claimant, *vs.* STATE
OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed August 30, 1971.

SILBERMAN AND SILBERMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL K. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6075—Claimant awarded \$4,684.10.)

LORD, BISSELL AND BROOK, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF FINANCIAL INSTITUTIONS, Respondent.

Opinion filed August 30, 1971.

LORD, BISSELL AND BROOK, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6076—Claimant awarded \$400.00.)

M. D. APPLE, D.D.S., Claimant, vs. STATE OF ILLINOIS, DIVISION OF
VOCATIONAL REHABILITATION, Respondent.

Opinion filed August 30, 1971.

M. D. APPLE, D.D.S., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6077—Claimant awarded \$1,182.72.)

INTERNATIONAL BUSINESS MACHINES CORPORATION, Claimant, vs.
STATE OF ILLINOIS, COMMISSION OF HUMAN RESOURCES,
Respondent.

Opinion filed August 30, 1971.

INTERNATIONAL BUSINESS MACHINES CORPORATION,
Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER,** Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(So 6078—Claimant awarded \$83.55)

WINFIELD, INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed August 30, 1971.

WINFIELD, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6087—Claimant awarded \$1,023.38.)

PIONEER PRESS, INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES,** Respondent.

Opinion filed August 30, 1971.

PIONEER PRESS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6089—Claimant awarded \$740.30.)

**DICTAPHONE CORPORATION, Claimant, us. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed August 30, 1971

DICTAPHONE CORPORATION, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6092—Claimant awarded 8367.82.)

**LEO W. DUNN, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF
PUBLIC WORKS AND BUILDINGS, Respondent.**

Opinion filed August 30, 1971.

LEO W. DUNN, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6095—Claimant awarded \$905.49.)

**BETTY L. REINSCHMIDT, Claimant, us. STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC AID, Respondent.**

Opinion filed August 30, 1971.

BETTY L. REINSCHMIDT, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6096—Claimant awarded \$41.00.)

CARL F. HAMILTON, Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed August 30, 1971.

CARL F. HAMILTON, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6099—Claimant awarded \$3,708.62.)

JEROME H. TORSHEN, LTD., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF INSURANCE, Respondent.

Opinion filed August 30, 1971.

JEROME H. TORSHEN, LTD., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6100—Claimant awarded \$452.00.)

**NALCO CHEMICAL COMPANY, Claimant, vs. STATE OF ILLINOIS,
DIVISION OF HIGHWAYS, Respondent.**

Opinion filed August 30, 1971.

L. H. LEMIEUX, Attorney for Claimant.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6101—Claimant awarded \$41,022.30.)

**CARROLL SEATING COMPANY, INC., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF GENERAL SERVICES, Respondent.**

Opinion filed August 30, 1971.

CARROLL SEATING COMPANY, INC., Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6102—Claimant awarded \$138.75.)

**FRUIT BELT SERVICE COMPANY, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF CONSERVATION, Respondent.**

Opinion filed August 30, 1971.

FRUIT BELT SERVICE COMPANY, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6104—Claimant awarded \$687.45.)

XEROX CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, OFFICE OF THE ATTORNEY GENERAL, Respondent.

Opinion filed August 30, 1971.

XEROX CORPORATION, Claimant, *pro se*.

WILLIAM J. SCOTT, Attorney General; EDWARD L.S. ARKEMA, JR., Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6105—Claimant awarded \$15.00.)

BASILIUS ZARICZNYJ, M.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed August 30, 1971.

BASILIUS ZARICZNYJ, M.D., Claimant, *pro se*.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6107—Claimant awarded \$126.00.)

MICHAEL A. BOWDEN, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed August 30, 1971

MICHAEL A. BOWDEN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(So. 6108—Claimant awarded \$144.00.)

OKLAHOMA STATE UNIVERSITY OF AGRICULTURE AND APPLIED SCIENCE, claimant, **us. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION**, Respondent.

Opinion filed August 30, 1971.

RAY LEE WALL, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6110—Claimant awarded \$1,164.00.)

WATRING BROS., INC., A Wisconsin Corporation, Claimant, **us. STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION**, Respondent.

Opinion filed August 30, 1971.

LIDSCHIN & PUCIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6114—Claimant awarded \$400.22.)

LOTTIE FULLER, Claimant, **us. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID**, Respondent.

Opinion filed August 30, 1971.

LOTTIE FULLER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **EDWARD L.S. ARKEMA, JR.**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6115—Claimant awarded \$169.00.)

LARRY L. BLUM, Claimant, **us. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES**, Respondent.

Opinion filed August 30, 1971.

LARRY L. BLUM, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6117—Claimant awarded \$5,252.53.)

NORTHEAST COMMUNITY HOSPITAL, Claimant, **us. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH**, Respondent.

Opinion filed August 30, 1971.

NORTHEAST COMMUNITY HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6121—Claimant awarded \$138.79.)

ROSECRANCE MEMORIAL HOMES FOR CHILDREN, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed August 30, 1971.

ROSECRANCE MEMORIAL HOMES FOR CHILDREN, Claimant, *pro se.*

WILLIAM J. **SCOTT**, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6122—Claimant awarded \$135.86.)

ROSECRANCE MEMORIAL HOMES FOR CHILDREN, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed August 30, 1971.

ROSECRANCE MEMORIAL HOMES FOR CHILDREN, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6123—Claimant awarded \$280.00.)

KAISER AGRICULTURAL CHEMICALS, A Division of KAISER ALUMINUM
AND CHEMICAL SALES, INC., Claimant, vs. STATE OF ILLINOIS,
DIVISION OF HIGHWAYS, Respondent.

Opinion filed August 30, 1971.

KAISER AGRICULTURAL CHEMICALS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a
claim should have been paid has lapsed, the Court will enter an award for the
amount due claimant.

PERLIN, C.J.

(No. 6124—Claimant awarded \$47.00.)

THE FLEISCHLI MEDICAL GROUP, Claimant, vs. STATE OF ILLINOIS,
DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed August 30, 1971.

THE FLEISCHLI MEDICAL GROUP, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a
claim should have been paid has lapsed, the Court will enter an award for the
amount due claimant.

PERLIN, C.J.

(No. 61% —Claimant awarded \$517.50.)

DEAN C. LAHUE, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF
PUBLIC AID, Respondent.

Opinion filed August 30, 1971.

DEAN C. LAHUE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6128—Claimant awarded \$89.52.)

TEXTILE INDUSTRIES, INC., Claimant, *vs.* STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed August 30, 1971.

TEXTILE INDUSTRIES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; EDWARD L.S.
ARKEMA, JR., Assistant Attorney General, Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6131—Claimant awarded \$72.47.)

PETTITT PHOTO SERVICE, Claimant, *vs.* STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC WORKS AND BUILDINGS, Respondent.

Opinion filed August 30, 1971.

PETTITT PHOTO SERVICE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6135—Claimant awarded \$113.50.)

WILLIAM T. OSMANSKI, D.D.S., Claimant, *vs.* STATE OF ILLINOIS,
DEPARTMENT OF REGISTRATION AND EDUCATION, Respondent.

Opinion filed August 30, 1971.

WILLIAM T. OSMANSKI, D.D.S., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6138—Claimant awarded \$364.00.)

SAMANTHA J. MOORE, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed August 30, 1971.

JEROME J. KORNFELD, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6140—Claimant awarded \$308.00.)

THE JOLIET MEDICAL GROUP, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed August 30, 1971.

THE JOLIET MEDICAL GROUP, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6142—Claimant awarded \$93.50.)

SUPERIOR MANAGEMENT COMPANY, Claimant, **vs.** STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed August 30, 1971.

SUPERIOR MANAGEMENT COMPANY, Claimant, *pro se*.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6144—Claimant awarded \$1,572.11.)

THE LAKE ERIE CHEMICAL COMPANY, Claimant, **vs.** STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed August 30, 1971.

SMITH AND WESSON, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6153—Claimant awarded \$148.00.)

SPRINGFIELD INTERNAL MEDICINE ASSOCIATES, S.C., Claimant, **vs.** STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed *August 30, 1971.*

SPRINGFIELD INTERNAL MEDICINE ASSOCIATES, S.C.,
Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6161—Claimant awarded \$175.62.)

FIRST DISTRIBUTORS, INC., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed *August 30, 1971.*

FIRST DISTRIBUTORS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6170—Claimant awarded \$350.00.)

BARRY AND KAY, INC., Claimant, vs. STATE OF ILLINOIS, ILLINOIS
YOUTH COMMISSION, Respondent.

Opinion filed *August 30, 1971.*

ETTELSON, O'HAGAN, EHRLICH AND FRANKEL, Attorney
for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6171—Claimant awarded \$829.84.)

GULF OIL CORPORATION, Acting by and through GULF OIL COMPANY, U.S., A Division thereof, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF AERONAUTICS, Respondent.

Opinion filed August 30, 1971.

GULF OIL CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6174—Claimant awarded \$495.00.)

PARKE DEWATT LABORATORIES, INC., An Illinois Corporation, d/b/a CENTRAL X-RAY, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed August 30, 1971.

RICHARD GIGANTE, Attorney for Claimant.

WILLIAM J. SCORN, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6176—Claimant awarded \$85.00.)

STAPLETON FORD SALES, Claimant, vs. STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed August 30, 1971.

STAPLETON FORD SALES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6177—Claimant awarded \$119.33.)

ROBERT F. GODFREY, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed August 30, 1971.

ROBERT F. GODFREY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General: for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6179—Claimant awarded \$1,800.00.)

SECURITY BANK AND TRUST COMPANY, Cairo, Illinois, A Corporation, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed August 30, 1971.

LANSDEN AND LANSDEN, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6180—Claimant awarded \$3,890.00.)

LEONARD W. BENN d/b/a **L. W. BENN COMPANY**, Claimant, *vs.*
STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed August 30, 1971.

LEONARD W. BENN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6183—Claimant awarded \$373.40.)

DALE P. RUFUS, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF
REVENUE**, Respondent.

Opinion filed August 30, 1971.

DALE P. RUFUS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E.
WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6189—Claimant awarded \$280.00.)

COMMERCE CLEANING HOUSE, INC., Claimant, *vs.* **STATE OF
ILLINOIS, SECRETARY OF STATE**, Respondent.

Opinion filed August 30, 1971.

COMMERCE CLEANING HOUSE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6190—Claimant awarded \$323.76.)

**TRECK PHOTOGRAPHIC, INC., Claimant, vs. STATE OF ILLINOIS,
SECRETARY OF STATE, Respondent.**

Opinion filed August 30, 1971.

TRECK PHOTOGRAPHIC, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6191—Claimant awarded \$850.00.)

**STATE FARM INSURANCE COMPANY, Claimant, vs. STATE OF
ILLINOIS, Respondent.**

Opinion filed August 30, 1971.

GARRETSON AND SANTORA, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

DAMAGES—stipulation. Where claimant paid for damages to light pole, upon mistaken belief that pole was owned by state, an award for the payment will be made to claimant upon stipulation that respondent did not own light pole.

PERLIN, C.J.

This cause coming on 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 claim in the amount of \$850.00 is based on reimbursement for monies paid to the State of Illinois, Division of Highways, for the damage to a light pole, under the assumption that said light pole was owned by the State of Illinois, and that it was subsequently discovered that said light pole was not the property of the State of Illinois after payment by the claimant was deposited with the General Revenue Fund.

IT IS HEREBY ORDERED that the sum of \$850.00 be awarded to claimant in full satisfaction of any and all claims presented to the State under Cause No. **6191**.

(So. 6192—Claimant awarded \$180.00.)

BEST REALTY, INC. Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed August 30, 1971.

SHELDON BELOFSKY, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(So. 6202—Claimant awarded \$120.00.)

EMPIRE MOVING AND WAREHOUSE CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF HUMAN RELATIONS, Respondent.

Opinion filed August 30, 1971.

EMPIRE MOVING AND WAREHOUSE CORPORATION, Claimant, *pro se*.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(So. 5301—Claim denied.)

HOLIDAY EDWARDSVILLE HOLDING COMPANY and BLUFF ROAD DEVELOPMENT COMPANY, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed October 12, 1971.

JOHN F. O'CONNELL, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRIBUTION—joint tort-feasors. In this state there is no contribution among joint tort-feasors, however a tort-feasor who is only "passively" negligent is entitled to indemnification from a tort-feasor who is "actively" negligent.

HOLDERMAN, J.

This is an action whereby Holiday Edwardsville Holding Company and Bluff Road Development Company seek to be indemnified for sums paid out by them in settlement of a personal injury suit. The personal injury action was brought by Mildred Stewart against the claimants for injuries received by her on March 30, 1963. On that evening, around 11:00 o'clock she was driving a motor vehicle on a State Highway near the intersection of Illinois State Route 157 and U.S. By-Pass 66, in Madison County, Illinois. It was raining heavily. As she approached the intersection, her car skidded and spun around, striking a light standard on the east shoulder of the highway. The highway was in a very hazardous condition due to the large amount of water and mud that was on it.

(Here are the facts.) About 4 months before the accident, the claimants, who owned the property adjacent to the highway, commenced work on the land preparatory to making an improvement. They scarified the top and the sides of a hill, removing brush and grass. While this work was going on, the Field Engineer of the Department of Public Works and Buildings, Division of Highways, informed the claimants that what they were doing would result in large amounts of mud and silt being washed onto the highway whenever it rained.

The highway and the drains had previously been constructed to handle normal amounts of drainage. Apparently there had been no difficulty previous to the time the claimants scarified their adjoining land. The area scarified was about 1,000 feet wide and a quarter of a mile along the highway with a slope of about a 45° angle. The Field Engineer suggested to claimants that they could leave strips of vegetation to hold back the drainage run-off and that they could terrace the hillside. Claimants refused to follow the advice or suggestions of the Field Engineer.

The claimants admit in their argument that there is no dispute but what the water and silt came from the claimants' land and that there had been an increased flow of water and dirt after the claimants had scarified the hill. They further admit that they would be liable to parties injured for injuries received from the hazardous condition of the highway. They argue, however, that the conduct of the claimants was harmless, and that the injury to the motorist would never had occurred if the State had performed its duty of maintaining the highway ditches and culverts or of warning motorists.

In her suit against the claimants, Mildred Stewart claimed that claimants were negligent in several respects. She claimed that the claimants caused the mud to

accumulate on the roadway; that they graded and excavated a hill adjacent to the highway in such a manner as to cause it to drain out onto the highway. She also alleged that the claimants were negligent in failing to warn her of the dangerous condition, and that they failed to have the dangerous condition corrected by removing the dirt and mud.

There is no dispute in the case as to how the accident happened. The case went to trial and after 2 days, settlement was made by payment of \$9,000.00 total to the injured motorist for her injuries. No question is raised (anyway) on the good faith of claimants in making the settlement, nor do we raise any such question.

Claimants' theory here is that they were "passively" negligent only and that **the** State of Illinois was "actively" negligent and that therefore claimants have a right to be indemnified for the amounts paid out by them in settlement.

The primary issue involved before this Court is whether or not under the facts of the case the claimants were "passively" negligent insofar as the injured party was concerned and whether or not under the facts of the case the State of Illinois was "actively" negligent. If claimants were actively negligent, they have no right of indemnity.

It is clear that in Illinois there is no contribution among joint tort-feasors. However a tort feisor who is only "passively" negligent is entitled to indemnification from a tort feisor who is "actively" negligent. *Griffiths and Son Co. vs. National Fireproofing Co.*, 310 Ill. 331, 141 N.E. 739.

The distinction between "active" and "passive" negligence has been said to be one which is "court made" and that there is no single comprehensive definition thereof; also, it is said that the cases have been decided on

the facts of each case. See *Topel vs. Porter*, 237 N.E. 2d 711. The Topel case held a lessee “actively” negligent in a situation where its negligence was failure to have a safety test of an elevator. In other words, negligence by omission. In the Topel case also, the Court quoted from *McFall vs. Compagnie Maritime Belge*, 304 N.Y. 314, 107 N.E. 2d. 463, where the New York Court said, quoted Page 472 of 107 N.E. 2d. that active negligence could consist of either a fault of *omission* or one of *commission*.

This Court is called upon to determine whether or not the facts were such that it could be said that the claimants here were actively negligent or passively negligent. If they were actively negligent, they would have no right of indemnification.

This Court holds that the claimants were “actively” negligent and therefore would have no right to indemnity from the State.

We need not, therefore, concern ourselves with any other issue in the case.

(No. 5605—Claim denied.)

CLAIR J. FERRY and GRAIN DEALERS MUTUAL INSURANCE COMPANY,
A Corporation, Claimants, vs. STATE OF ILLINOIS, Respondent.

Opinion filed October 12, 1971.

HOLTAN and GARRITY, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; BRUCE J. FINNE,
Assistant Attorney General, for Respondent.

HIGHWAYS— *duty of state*. The State of Illinois is not an insurer of every accident that **occurs** on its public highways, but does have the duty 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.

HOLDERMAN, J.

This case originated with the filing of the Complaint by Clair J. Ferry and Grain Dealers Mutual Insurance Company, a Corporation, against the State of Illinois.

The contention is that the respondent was guilty of negligence in not having adequately warned the traveling public on Route 20, near Galena, Illinois, of repair work on said State highway.

In particular, the action was brought under Ch. 37, Sec. 439(8) of the Ill. Rev. Stat., 1969, to recover for damages occasioned by the alleged negligence of the State of Illinois in failing to warn adequately of a hazardous excavation on the highway.

Clarence Smith was a truck driver for claimant, Clair J. Ferry, at the time of the accident which occurred approximately two miles east of Galena, Illinois. He testified that the road in the area of the accident was quite curvy and that part of the road was excavated so that there was one-way traffic. He testified to the fact that upon coming around the curve, without seeing any warning signs, he saw a working crew some distance ahead of him, the excavated portion of the pavement, and another truck coming from the other direction, that he applied his brakes and the truck jackknifed and that he eventually came to a halt at the scene of the repair work, causing the damage. He further testified that he missed seeing one construction sign, which was approximately 150 yards from the place of the accident and that he had not seen any other signs.

His testimony was to the effect that it had started raining shortly before the accident in question. He had been issued a ticket for speeding and not having his vehicle under control and pled guilty to this charge and further testified that he did so simply as a matter of convenience rather than make the long trip back from Pennsylvania.

He further testified that when he got out of the truck,

one of the workmen asked him if he was hurt and he said "no" and the workman allegedly said, "I bet you we get a flagman out here, there's no flagman, I bet you we get one."

The testimony of the truck driver is in direct contradiction to one George H. Speith who, at the time of the accident, was the foreman on this particular repair job where the accident occurred but, at the time of the Hearing, was no longer employed by the State of Illinois and had not been for some time.

He testified to the effect that he had placed three warning signs in the area of the accident, the first one approximately **500** feet away from the accident, the second one about 1,0 feet from the accident and the third one about 1,500 feet from the accident. The first sign, which was a 48 inch square sign, stated "one lane road ahead," the second **was** a sign with a red flag on it and stated "road construction ahead" and the third sign stated "right lane closed ahead." He also testified that there were two barricades in front of the patch and they had blinking lights on them. Pictures of all three signs are in the record as exhibits.

The record and arrangement of evidence in this case are wanting in many respects in establishing a claim against respondent, especially where respondent had set up safeguards in warning the public who were going through the area in question at the time of the accident.

Respondent is not an insurer of all persons traveling upon its highways. Where repair work is taking place, all the respondent has to do is use reasonable safeguards in warning the traveling public of the locations where such work is in progress. We believe, from the record, that respondent had, by posting of the signs, given the public ample warning and notice of the dangerous condition in the area in which was driving when the accident occurred.

The law in the State of Illinois is clear, that in order for the plaintiff to recover against the State, he must prove that the State was negligent, that such negligence was the proximate cause of the injuries and that claimant was in the exercise of due care and caution for his own safety. (*McNary vs. State of Illinois*, 22 C.C.R. 328, 334; *Bloom vs. State of Illinois*, 22 C.C.R. 582, 585.)

It is a well known proposition of the law that the State is not an insurer of all persons using its highways. It is also a well established principle of the law in the state that the claimant is not entitled to recover where the facts show he was guilty of contributory negligence. The doctrine of contributory negligence has been applied in this Court in the case of *Doolittle vs. State of Illinois*, 21 C.C.R. 113 and *Mounce vs. State of Illinois*, 20 C.C.R. 268. In the cases cited, the Court held that when approaching a place of known danger without care commensurate to such danger it is contributory negligence.

It is the finding of this Court that the contributory negligence of the driver of the truck was the proximate cause of the accident in question. Claim is therefore denied.

(No. 5679—Claimant awarded \$32,398.00.)

JOEL WILLARD, d/b/a JOEL WILLARD PRODUCTIONS, Claimant, *vs.*
STATE OF ILLINOIS, Respondent.

Opinion filed October 12, 1971.

HENRY F. WEBER, Attorney for Claimant.

WILLIAM J. Scorn, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

DAMAGES—stipulation. Where claimant and respondent stipulate to facts and damages an award will be entered accordingly.

PERLIN, C.J.

This cause coming on 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 claim in the amount of \$32,398.00 is for the creation and production of a motion picture film entitled "Illinois Trade Mission to Europe" which was produced by the claimant at the request of the former Governor of Illinois and the Board of Economic Development.

IT IS HEREBY ORDERED that the sum of \$32,398.00 be awarded to claimant in full satisfaction of any and all **claims presented to the State** under Cause No. 5679.

(No. 6067—Claimant awarded \$35.00.)

JOHN J. DEVITT, M.D., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY Services, Respondent.

Opinion filed October 12, 1971.

JOHN J. DEVITT, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6120—Claimant awarded \$1,405.50.)

ROOT BROTHERS MFG. & SUPPLY, An Illinois Corporation, Claimant, vs. STATE OF ILLINOIS, DIVISION OF HIGHWAYS, Respondent.

Opinion filed October 12, 1971.

KORSHAK, ROTHMAN, OPPENHEIM & FINNEGAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6141—Claimant awarded \$500.30.)

CHARLES McCORKLE, JR., **Claimant, us. STATE OF ILLINOIS, SENATE
OPERATIONS COMMITTEE, Respondent.**

Opinion filed October 12, 1971.

CHARLES McCORKLE, JR., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6195—Claimant awarded \$387.55.)

COMMONWEALTH EDISON COMPANY, **Claimant, us. STATE OF
ILLINOIS, DIVISION OF HIGHWAYS, Respondent.**

Opinion filed October 12, 1971.

JOSEPH C. SIBLEY, JR. and EMMET T. GALLAGHER, At-
torneys for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6216—Claimant awarded \$193.17.)

STATE HOUSE INN, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed October 12, 1971.

STATE HOUSE INN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

DAMAGES—*stipulation*. Where claimant and respondent stipulate to facts and damages, an award will be entered accordingly.

BERLIN, C.J.

This cause coming on to be heard on the Joint Stipulation of the parties hereto and the Court being fully advised in the premises;

THIS COURT FINQS that this claim is for various staff meetings, agent/broker examinations, and interview expenses all held at the State House Inn in Springfield.

IT IS HEREBY ORDERED:

1. That the sum of \$193.17 be awarded to claimant in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause.

(No. 5418—Claim denied.)

BETTY JEAN BEARD, A MINOR, by LAURA BEARD, her Mother and next friend, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed February 26, 1970.

Petition of Claimant for Rehearing denied October 27, 1971.

ANSANI, PROVENZANO AND LOUTOS, Attorney for Claimant.

WILLIAM G. CLARK, Attorney General; MORTON L. ZASLAVSKY and ETTA J. COLE, Assistant Attorneys General, for Respondent.

NEGLIGENCE—*due care*. Where claimant, while cleaning a meat grinder

knowingly stuck her hand into meat grinder. The claimant knew or should have known that it was dangerous, and claimant failed to prove negligence by respondent.

NEGLIGENCE—*intervening efficient cause.* Even if act of respondents' agent in turning on meat grinder was to be considered an intervening efficient cause of accident, it was such an act as was probable and foreseeable by claimant.

DOVE, J

On August 7, 1967, claimant, Betty Jean Beard, a Minor, by Laura Beard, her Mother and Next Friend, filed her complaint seeking damages for injuries received on June 2, 1967.

The facts of the case are as follows:

On or about January 18, 1965, claimant, Betty Jean Beard, was sentenced to the Geneva State Training School for Girls, Geneva, Illinois, as a result of a plea of guilty to a voluntary manslaughter charge. In addition to a regular academic program, the school maintained various laboratory programs and claimant first received instructions in sewing, cooking and food classes, general store, coffee shop. Later, in November, 1966, she was assigned to the meat room of the school.

Inmates, including the claimant, who were assigned to the meat room, were given instructions on hand boning, slicing, packaging, weighing and wrapping of meat, and had the responsibility of maintaining the premises in a clean and sanitary condition. The only machinery in the meat room consisted of an electric cheese slicer, a meat tenderizer and a meat grinder.

The evidence indicates that the meat grinder was operated only by authorized employees, and never by the inmates. Other than the uncorroborated testimony of claimant, which was in direct opposition to the testimony of a number of other witnesses, no evidence was presented that the inmates were instructed to operate the meat grinder,

and more specifically that claimant ever did, but rather the evidence indicates that the inmates were instructed never to operate the meat grinder.

On June 2, 1967, claimant, while attempting to dismantle the meat grinder, turned it on and then off. While the auger in the meat grinder was still revolving, claimant stuck her hand into the mouth of the grinder where it was caught by the auger. There is testimony in the record that in the excitement surrounding the accident, one Evelyn Taylor, an employee of respondent, while attempting to remove claimant's hand from the meat grinder, accidentally turned the machine on again. Evelyn Taylor testified that, when she heard Betty scream, she ran over to the meat grinder, and flicked the switch not knowing whether the machine was on or off. Claimant was taken by ambulance to Community Hospital where a portion of her right arm had to be amputated.

Claimant alleges in Count I of her complaint that respondent was negligent in one or more of the following respects:

- A. It assigned claimant to work under unsafe conditions.
- B. It failed to give claimant proper instructions in the use of the meat grinder, or to warn her of the dangers thereof.
- C. It failed to provide adequate or proper safeguards for the meat grinder.
- D. It allowed the grinder to be operated without adequate or proper safeguards.
- E. It failed to furnish adequate help or assistance or supervision to claimant in the operation of the meat grinder.
- F. It failed to inspect and properly maintain the said meat grinder.
- G. It failed to provide a hopper on the said grinder so that claimant's arm or hand could not come in contact with the cutting devices.
- H. It negligently allowed claimant to use a meat grinding machine, which machine, because of its size and shape in relation to claimant's physical size, was intrinsically dangerous to her.

Claimant alleges in Count II of her complaint that respondent was negligent in one or more of the following respects:

A. It failed to give claimant proper instructions in the use of and the cleaning of the machines in the meat room.

B. It failed to warn claimant of the dangers of the machinery in the meat room.

C. It failed to warn claimant of the danger in cleaning the machines without having all sources of power completely turned off.

D. It allowed claimant to clean the machines, among which was the meat grinder, without an employee of the State of Illinois preparing the machines for cleaning.

E. It failed to clear the floor and table from fats, fatty substances, and meat droppings, and thereby rendered said place slippery to touch and step.

F. It failed through its employees, to inspect the meat grinder when claimant's fingers were caught in the machine.

G. It, through its employee, changed the switch suddenly, without ascertaining if the meat grinder was on or off.

H. It, through its employee, failed to check the condition of the meat grinder and claimant's hand before flicking the switch.

Claimant alleges in Count III of her complaint that respondent was guilty of wilful and wanton conduct in the following instances:

A. It, through its employee, turned on the meat grinder with the claimant's hand in it.

B. It, through its employee, flicked the switch of the meat grinder without ascertaining the condition of claimant's hand.

C. It, through its employee, failed to inspect the meat grinder with claimant's hand in it.

The law in the State of Illinois is clear that, in order for a claimant in a court action to recover damages against the State of Illinois, she must prove that the State of Illinois was negligent, that such negligence was the proximate cause of the injury, and that claimant was in the exercise of due care and caution for her own safety. *McNary vs. State of Illinois*, 22 C.C.R. 328, 334; *Bloom vs. State of Illinois*, 22 C.C.R. 582, 585.

At the time of the accident claimant was seventeen years old. Illinois law requires a minor over the age of seven years to exercise that degree of care, which a reasonably careful person of the same age, capacity, intelligence and experience would exercise under the same or similar cir-

cunstances. *Wolf vs. Budzyn*, 305 Ill. App. 603; *Hartnett vs. Boston Store of Chicago*, 265 Ill. 331.

The record indicates that claimant testified that she stuck her hand into the meat grinder in order to push the auger out, and that instead it caught her fingers. Claimant's testimony indicates that she was aware of the fact that the auger was still revolving when she put her hand into the meat grinder.

It is the opinion of this Court, taking into consideration the age and experience of claimant, that she knew or should have known that it was dangerous to place her hand in close proximity to the revolving auger of the meat grinder. Claimant's action was the proximate cause of her injury. *Shannon vs. State of Illinois*, 24 C.C.K. 154; *Craven vs. Illinois*, 24 C.C.K. 158; *Moe vs. State of Illinois*, 23 C.C.K. 14.

It is the opinion of this Court that claimant has failed to introduce any evidence that respondent was guilty of wilful and wanton conduct with respect to Evelyn Taylor's act of turning on the meat grinder while claimant's hand was in the meat grinder.

It appears to this Court that Count II of claimant's complaint raises two questions:

1. Was there an intervening efficient cause that relieves claimant from her own contributory negligence?

2. If there was an intervening efficient cause, was it probable and foreseeable by claimant so that claimant cannot break the causal connection, and thereby relieve herself from her own contributory negligence?

The doctrine of intervening efficient cause is set forth in the case of *Johnston vs. City of East Moline*, 405 Ill. 460, 1 N.E. 2d 401. "An intervening and efficient cause is a new and independent force, which breaks the causal connection between the original wrong and the injury, and itself becomes the direct and immediate cause of the injury".

Pullman Palace Car Company vs. Laack, 143 Ill. 242, 32 N.E. 285; *Illinois Central Railroad Company vs. Oswald*, 338 Ill. 270, 170 N.E. 247. The intervention of independent concurrent intervening forces will not break causal connection, if the intervention of such forces was itself probable or foreseeable. *Sycamore Preserve Works vs. Chicago and Northwestern Railway Company*, 366 Ill. 11, 7 N.E. 2d 740; *Wintersteen vs. National Cooperage and Woodenware Company*, 361 Ill. 95, 197 N.E. 578; *Garibaldi and Cunco vs. O'Connor*, 210 Ill. 284, 71 N.E. 379; *Armour vs. Golkovska*, 202 Ill. 144, 66 N.E. 1037.

It is the opinion of this Court that, even if the act of Evelyn Taylor of turning on the meat grinder while claimant's hand was in the grinder was to be considered to be an intervening efficient cause it was such an act as was probable and foreseeable by claimant so that the causal connection between the accident in question and the contributory negligence of claimant is not broken.

For the foregoing reasons, it is the opinion of this Court that claimant's contributory negligence was the proximate cause of her injury, and that claimant by reason of her contributory negligence is barred from any recovery in this action. Claimant's claim is hereby denied.

(No. 6049—Claimant awarded \$450.00.)

**MINNESOTA MINING AND MANUFACTURING COMPANY, Claimant, vs.
STATE OF ILLINOIS, STATE FAIR AGENCY, Respondent.**

Opinion filed November 9, 1971.

CHARLES W. OTT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation. When the appropriation from which a*

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6103—Claimant awarded \$50.00.)

**AERO AMBULANCE SERVICE, INC., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed November 9, 1971.

AERO AMBULANCE SERVICE, INC., Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6145—Claimant awarded \$750.00.)

**ADVANCED SYSTEMS, INC., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF FINANCE, Respondent.**

Opinion filed November 9, 1971.

**GRIFFIN, FIEDLER AND PASCUCCI, LTD., Attorney for
Claimant.**

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6151—Claimant awarded \$293.04.)

**HILLMAN'S, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF
PUBLIC AID, Respondent.**

Opinion filed November 9, 1971.

HILLMAN'S, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6182—Claimant awarded \$2,126.94.)

**COMMONWEALTH EDISON COMPANY, A Corporation, Claimant, us.
STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.**

Opinion filed November 9, 1971.

JOSEPH C. SIBLEY, JR. AND EMMET T. GALLAGHER, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6194—Claimant awarded \$103.50.)

**PICKENS KANE MOVING AND STORAGE COMPANY, Claimant, us.
STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.**

Opinion filed November 9, 1971.

PICKENS KANE MOVING AND STORAGE COMPANY, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6197—Claimant awarded \$5,501.99.)

XEROX CORPORATION, Claimant, vs. STATE OF ILLINOIS, BUREAU OF ADMINISTRATION, DIVISION OF HIGHWAYS, Respondent.

Opinion filed November 9, 1971.

XEROX CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6218—Claimant awarded \$87.00.)

MACKEVICH'S DEPARTMENT STORE, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed November 9, 1971.

MACKEVICH'S DEPARTMENT STORE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6223—Claimant awarded \$282.00.)

TRANSWORLD VAN LINES, INC., a/k/a MAJESTIC WAREHOUSES, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed November 9, 1971.

TRANSWORLD VAN LINES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,**
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6224—Claimant awarded \$653.37.)

LOYOLA UNIVERSITY HOSPITAL, Claimant, us. **STATE OF ILLINOIS,**
DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed November 9, 1971.

LOYOLA UNIVERSITY HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,**
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 623—Claimant awarded \$279.64.)

BESSIE KRIGEL, AGENT FOR EMILY ECONOMOU, (MOTHER), Claimant, vs. **STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID,**
Respondent.

Opinion filed November 9, 1971.

BESSIE KRIGEL, AGENT FOR EMILY ECONOMOU, (MOTHER),
Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,**
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6253—Claimant awarded \$6,397.30.)

**MINNESOTA MINING AND MANUFACTURING COMPANY, Claimant, vs.
STATE OF ILLINOIS, DEPARTMENT OF REVENUE, Respondent.**

Opinion filed November 9, 1971.

CHARLES W. OTT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6263—Claimant awarded \$1,440.00.)

**COPYING PRODUCTS, DIVISION OF CLOPAY CORPORATION, Claimant,
vs. STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES,
Respondent.**

Opinion filed *November 9, 1971*.

COPYING PRODUCTS, Claimant, *pro se*.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6267—Claimant awarded \$324.81.)

**MARIE KRAUTSIEDER, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT
OF PUBLIC AID, Respondent.**

Opinion filed November 9, 1971.

MARIE KRAUTSIEDER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5667—Claimant awarded \$1,939.15.)

BOISE CASCADE CORPORATION, Claimant, *vs.* **STATE OF ILLINOIS**,
VARIOUS STATE AGENCIES, Respondent.

Opinion filed January 11, 1972.

HELL, BOYD, LLOYD, HADDAD AND BURNS, Attorney for
Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5833—Claimant awarded \$10.00.)

THORNBURG CLINICAL LABORATORY, Claimant, *vs.* **STATE OF
ILLINOIS, DEPARTMENT OF PUBLIC AID**, Respondent.

Opinion filed January 11, 1972.

THORNBURG CLINICAL LABORATORY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5961—Claimant awarded \$1,956.90.)

ETHELBERT W. McCLURE, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed January 11, 1972.

KLEIMAN, CORNFIELD AND FELDMAN, Attorney for
Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a
claim should have been paid has lapsed, the Court will enter an award for the
amount due claimant.

PERLIN, C.J.

(No. 5962—Claimant awarded \$186.00.)

MEDICAL SURGICAL CLINIC OF EAST ST. LOUIS, Claimant, vs. STATE
OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES,
Respondent.

Opinion filed January 11, 1972.

MEDICAL SURGICAL CLINIC OF EAST ST. LOUIS, Claimant,
pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a
claim should have been paid has lapsed, the Court will enter an award for the
amount due claimant.

PERLIN, C.J.

(No. 5963—Claimant awarded \$1,430.02.)

PHILLIPS PETROLEUM COMPANY, Claimant, vs. STATE OF ILLINOIS,
VARIOUS AGENCIES, Respondent.

Opinion filed January 11, 1972.

PHILLIPS PETROLEUM COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5971—Claimant awarded \$225.00.)

MONTEREY CONVALESCENT HOME, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed January 11, 1972.

MONTEREY CONVALESCENT HOME, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; EDWARD L.S. ARKEMA, JR., Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5981—Claimant awarded \$24.00.)

TRIANGLE TIRE AND BATTERY Co., INC., Claimant, vs. STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed January 11, 1972.

TRIANGLE TIRE AND BATTERY Co., INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5991—Claimant awarded \$452.25.)

HONEYWELL, INC., A Corporation, Claimant, **vs.** STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed January 11, 1972.

CARDOSE AND CARDOSE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6007—Claimant awarded \$5,071.50.)

THE COUNTY OF RANDOLPH, Claimant, **vs.** STATE OF ILLINOIS, Respondent.

Opinion filed January 11, 1972.

DON P. KOENEMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

HABEAS CORPUS PROCEEDINGS—reimbursement of counties. A county is entitled to reimbursement of expenses, costs, and fees incurred in habeas corpus proceedings involving non-residents of such counties.

PERLIN, C.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 this case arises pursuant to Ch. 65, Sec. 37, 38 and 39, Ill. Rev. Stat., 1947, being;

“An Act to provide for the imbursement (reimbursement) of counties within the State of Illinois for expenses, costs and fees incurred in habeas corpus proceedings in the courts of such counties, involving non residents of such counties who may be confined in State penal or charitable institutions.”

and that claimant is entitled to reimbursement of expenses, costs and fees as follows:

A.	\$1,420.00
B.	2,110.00
C.	1,140.00
D.	155.00
E.	<u>256.00</u>
	\$5,071.50

IT IS HEREBY ORDERED that the parties' presence at a hearing and the filing of briefs is waived and in pursuance of the statutes of the State of Illinois, as set out above, and based on claimant's complaint with attached Bill of Particulars, as revised by the parties and agreed and stipulated thereto, an award is hereby entered for claimant in the amount of \$5,071.50.

(No. 6082—Claimant awarded \$170.00.)

THE HEARTHSIDE SHELTERED CARE HOME, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed January 11, 1972.

THE HEARTHSIDE SHELTERED CARE HOME, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6090—Claimant awarded \$2,850.00.)

CALHOUN COUNTY CONTRACTING CORPORATION, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed January 11, 1972.

CALHOUN COUNTY CONTRACTING CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6097—Claimant awarded \$284.71.)

WALKER LUMBER AND CONSTRUCTION, INC., Claimant, vs. STATE OF ILLINOIS, DIVISION OF HIGHWAYS, Respondent.

Opinion filed January 11, 1972.

WALKER LUMBER AND CONSTRUCTION, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6106—Claimant awarded \$4,059.97.)

ATLANTIC RICHFIELD COMPANY, Claimant, vs. STATE OF ILLINOIS, VARIOUS STATE AGENCIES, Respondent.

Opinion filed January 11, 1972.

ATLANTIC RICHFIELD COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6148—Claimant awarded \$1,046.60.)

**ST. JOSEPH HOSPITAL, Claimant, *us.* STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed **January 11, 1972.**

ST. JOSEPH HOSPITAL, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6152—Claimant awarded \$188.45.)

**WATSON'S DRUG STORE, Claimant, *us.* STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed **January 11, 1972.**

WATSON'S DRUG STORE, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6201—Claimant awarded \$419.29.)

**OTIS VINSON, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF
MENTAL HEALTH, Respondent.**

Opinion filed January 11, 1972.

RICHARD F. McPARTLIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6204—Claimant awarded \$1,893.60.)

RCA COMPUTER SYSTEMS DIVISION, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF REVENUE, Respondent.

Opinion filed January 11, 1972.

RCA COMPUTER SYSTEMS DIVISION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6205—Claimant awarded \$283.50.)

EUGENE DIETZGEN COMPANY, Claimant, vs. STATE OF ILLINOIS, DIVISION OF HIGHWAYS, Respondent.

Opinion filed January 11, 1972.

EUGENE DIETZGEN COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation; from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6208—Claimant awarded \$660.00.)

ITEK BUSINESS PRODUCTS, Claimant, vs. STATE OF ILLINOIS, DIVISION OF HIGHWAYS, Respondent.

Opinion filed January 11, 1972.

ITEK BUSINESS PRODUCTS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6217—Claimant awarded \$332.43.)

STATE HOUSE INN, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT, Respondent.

Opinion filed January 11, 1972.

STATE HOUSE INN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6236 thru 6251—Consolidated—Claimant awarded \$9,238.90.)

ST. MARY'S HOSPITAL, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed January 11, 1972.

ST. MARY'S HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6252—Claimant awarded \$565.12.)

**MINNESOTA MINING AND MANUFACTURING COMPANY, Claimant, vs.
STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.**

Opinion filed January 11, 1972.

CHARLES W. OTT, Attorney for Claimant.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6258—Claimant awarded \$5,677.24.)

**HUBBARD AND HYLAND AND BRADLEY AND BRADLEY, INC., Claimant,
vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,
Respondent.**

Opinion filed January 11, 1972.

**HUBBARD AND HYLAND AND BRADLEY AND BRADLEY, INC.,
Claimant, pro se.**

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 8259—Claimant awarded \$16,710.95.)

BRADLEY AND BRADLEY, INC., Claimant, *vs.* **STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH**, Respondent.

Opinion filed January 11, 1972.

BRADLEY AND BRADLEY, INC., Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6260—Claimant awarded \$14,017.30.)

RICHARD W. PRENDERGAST AND ASSOCIATES, Claimant, *vs.* **STATE OF
ILLINOIS, DEPARTMENT OF MENTAL HEALTH**, Respondent.

Opinion filed January 11, 1972.

RICHARD W. PRENDERGAST AND ASSOCIATES, Claimant,
pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 8266—Claimant awarded \$2,431.85.)

THE SALVATION ARMY, An Illinois Corporation, Claimant, *vs.*
STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed January 11, 1972.

KENNEDY, GOLAN, MORRIS, SPANGLER AND GREENBERG,
Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6274—Claimant awarded \$573.00.)

LEANDREW MOORE, d/b/a **STAR MOVERS**, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID**, Respondent.

Opinion filed January 11, 1972.

LEANDREW MOORE, d/b/a **STAR MOVERS**, Claimant, *pro se*.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6279—Claimant awarded \$70.55.)

JOHN G. SMITH, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF INSURANCE**, Respondent.

Opinion filed January 11, 1972.

JOHN G. SMITH, Claimant, *pro se*.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6282—Claimant awarded \$1,828.00.)

E. F. MUELLER, Claimant, vs. STATE OF ILLINOIS, DEPARTMENTS OF PUBLIC WORKS and BUILDINGS and MENTAL HEALTH, Respondent.

Opinion filed January 11, 1972.

E. F. MUELLER, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; EDWARD L.S. ARKEMA, JR., Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6285—Claimant awarded \$954.00.)

INTERNATIONAL BUSINESS MACHINES CORPORATION, Claimant, vs. STATE OF ILLINOIS, GOVERNOR'S OFFICE OF HUMAN RESOURCES, Respondent.

Opinion filed *January 11, 1972.*

INTERNATIONAL BUSINESS MACHINES CORPORATION, Claimant, pro se.

WILLIAM J. Scorn, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6286—Claimant awarded \$100.83.)

CLARK OIL AND REFINING CORPORATION, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF AGRICULTURE, Respondent.

Opinion filed January 11, 1972.

CLARK OIL AND REFINING CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6292—Claimant awarded \$103.44.)

ROCKFORD INDUSTRIES, INC., Claimant, **vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH**, Respondent.

Opinion filed January 11, 1972.

ROCKFORD INDUSTRIES, INC., Claimant, **pro se**.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant: Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6295—Claimant awarded \$13,187.83.)

JAS. E. RUST ELECTRIC Co., Claimant, **vs. STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES**, Respondent.

Opinion filed January 11, 1972.

JAS. E. RUST ELECTRIC CO., Claimant, **pro se**.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6298—Claimant awarded \$1,500.00.)

SANDERS ASSOCIATES, INC., Claimant, *vs.* STATE OF ILLINOIS,
SECRETARY OF STATE, Respondent.

Opinion filed January 11, 1972.

SANDERS ASSOCIATES, INC., Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6298—Claimant awarded \$6,980.00.)

R. V. MONAHAN CONSTRUCTION COMPANY, Claimant, *us.* STATE OF
ILLINOIS, DEPARTMENTS OF GENERAL SERVICES and PUBLIC SAFETY,
Respondent.

Opinion *filed* January 11, 1972.

EDWARD G. COLEMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6299—Claimant awarded \$2,246.55.)

PATRICIA J. CALLAWAY, Claimant, *vs.* STATE OF ILLINOIS,
DEPARTMENT OF PERSONNEL, Respondent.

Opinion filed January 11, 1972.

KLEIMAN, CORNFIELD AND FELDMAN, Attorneys for
Claimant.

WILLIAM J. SCORN, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

Comers--lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6300—Claimant awarded \$97.00.)

DONALD D. KOZOLL, M.D., M.S.C., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed January 11, 1972.

DR. DONALD D. KOZOLL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6308—Claimant awarded \$279.83.)

XEROX CORPORATION, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed January 11, 1972.

XEROX CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; EDWARD L.S. ARKEMA, JR., Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6307—Claimant awarded \$58.66.)

DRUCE DRUG COMPANY, INC., Claimant, *vs.* STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed January 11, 1972.

DRUCE DRUG COMPANY, INC., Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6313—Claimant awarded \$1,651.75.)

CARTER REPORTING SERVICE, Claimant, *vs.* STATE OF ILLINOIS, FAIR
EMPLOYMENT PRACTICES COMMISSION, Respondent.

Opinion filed January 11, 1972.

CARTER REPORTING SERVICE, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6314—Claimant awarded \$170.00.)

KENNETH MOY, Claimant, *vs.* STATE OF ILLINOIS, FAIR
EMPLOYMENT PRACTICES COMMISSION, Respondent.

Opinion filed January 11, 1972.

KENNETH MOY, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6315—Claimant awarded \$161.00.)

WILLIAM D. STIEHL, Claimant, vs. STATE OF ILLINOIS, FAIR EMPLOYMENT PRACTICES COMMISSION, Respondent.

Opinion filed January 11, 1972.

WILLIAM D. STIEHL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6316—Claimant awarded \$334.60.)

ELSIE GOLDSTEIN, C.S.R., Claimant, vs. STATE OF ILLINOIS, FAIR EMPLOYMENT PRACTICES COMMISSION, Respondent.

Opinion filed January 11, 1972.

ELSIE GOLDSTEIN, C.S.R., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6317—Claimant awarded \$1,220.00.)

ELLIS E. REID, Claimant, vs. STATE OF ILLINOIS, FAIR EMPLOYMENT PRACTICES COMMISSION, Respondent.

Opinion filed January 11, 1972.

ELLIS E. REID, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 8318—Claimant awarded \$277.75.)

CHARLES McCORKLE, JR., Claimant, *vs.* STATE OF ILLINOIS, FAIR
EMPLOYMENT PRACTICES COMMISSION, Respondent.

Opinion filed January 11, 1972.

CHARLES McCORKLE, JR., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6319—Claimant awarded \$1,295.00.)

GARLAND W. WATT, Claimant, *us.* STATE OF ILLINOIS, FAIR
EMPLOYMENT PRACTICES COMMISSION, Respondent.

Opinion filed January 11, 1972.

GARLAND W. WATT, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6320—Claimant awarded \$495.00.)

**THOMAS S. METSKAS, Claimant, vs. STATE OF ILLINOIS, FAIR
EMPLOYMENT PRACTICES COMMISSION, Respondent.**

Opinion filed January 11, 1972.

THOMAS S. METSKAS, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 8321—Claimant awarded \$380.00.)

**WILLIAM T. REGAS, Claimant, vs. STATE OF ILLINOIS, FAIR
EMPLOYMENT PRACTICES COMMISSION, Respondent.**

Opinion filed January 11, 1972.

WILLIAM T. REGAS, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6322—Claimant awarded \$533.01.)

**JOSEPH E. ENGEL, Claimant, vs. STATE OF ILLINOIS, FAIR
EMPLOYMENT PRACTICES COMMISSION, Respondent.**

Opinion filed January 11, 1972.

JOSEPH E. ENGEL, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6323—Claimant awarded \$311.00.)

KEEFE REPORTING SERVICES, Claimant, vs. STATE OF ILLINOIS, FAIR EMPLOYMENT PRACTICES COMMISSION, Respondent.

Opinion filed January 11, 1972.

KEEFE REPORTING SERVICE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6324—Claimant awarded \$168.35.)

XEROX CORPORATION, Claimant, vs. STATE OF ILLINOIS, FAIR EMPLOYMENT PRACTICES COMMISSION, Respondent.

Opinion filed January 11, 1972.

XEROX CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6326—Claimant awarded \$520.60.)

SMITH, KLINE & FRENCH LABORATORIES, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed *January 11*, 1972.

SMITH, KLINE & FRENCH LABORATORIES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6331—Claimant awarded \$285.00.)

WILLIAM M. COHEN, D.P.M., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH**, Respondent.

Opinion filed *January 11*, 1972.

DR. WILLIAM M. COHEN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6335—Claimant awarded \$236.30.)

BISMARCK HOTEL, Claimant, *vs.* **STATE OF ILLINOIS, FAIR EMPLOYMENT PRACTICES COMMISSION**, Respondent.

Opinion filed *January 11*, 1972.

BISMARCK HOTEL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6336—Claimant awarded \$357.50.)

**ANTHONY J. PAULETTO, Claimant, vs. STATE OF ILLINOIS, FAIR
EMPLOYMENT PRACTICES COMMISSION, Respondent.**

Opinion *filed* January 11, 1972.

ANTHONY J. PAULETTO, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 8337—Claimant awarded \$500.00.)

**REX CARR, Claimant, vs. STATE OF ILLINOIS, FAIR EMPLOYMENT
PRACTICES COMMISSION, Respondent.**

Opinion filed January 11, 1972.

REX CARR, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6338—Claimant awarded \$260.00.)

**LEWIS V. MORGAN, JR., Claimant, vs. STATE OF ILLINOIS, FAIR
EMPLOYMENT PRACTICES COMMISSION, Respondent.**

Opinion filed January 11, 1972.

LEWIS V. MORGAN, JR., Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6339—Claimant awarded \$164.69.)

**DOLMAR PHARMACY, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed January 11, 1972.

DOLMAR PHARMACY, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6341—Claimant awarded \$2,302.10.)

**SUPREME MOTOR & VAN LINES, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC Am, Respondent.**

Opinion filed January 11, 1972.

M. T. GRUENER, Attorney for Claimant.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6344—Claimant awarded \$424.20.)

**MARSHALL FIELD & COMPANY, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed January 11, 1972.

ROBERT A. WILBRANDT, Attorney for Claimant.

**WILLIAM J. SCOTT, Attorney General; EDWARD L.S.
ARKEMA, JR., Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6347—Claimant awarded \$168.00.)

**SEYMOUR S. KESSLER, D.P.M., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed January 11, 1972.

DR. SEYMOUR S. KESSLER, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6350—Claimant awarded \$873.30.)

**CABRINI HALL MATERNITY HOME, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.**

Opinion filed January 11, 1972.

CABRINI HALL MATERNITY HOME, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6356—Claimant awarded \$71.65.)

RICHARD J. KARECKAS, Claimant, vs. STATE OF ILLINOIS, FAIR EMPLOYMENT PRACTICES COMMISSION, Respondent.

Opinion filed January 11, 1972.

RICHARD J. KARECKAS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6358—Claimant awarded \$228.81.)

SHAMEL MANOR #2, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed January 11, 1972.

SHAMEL MANOR #2, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6360—Claimant awarded \$240.00.)

OUR LADY OF THE HIGHLANDS, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed January 11, 1972.

OUR LADY OF THE HIGHLANDS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6368—Claimant awarded \$71.60.)

BI-RITE FOOD STORE, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed January 11, 1972.

BI-RITE FOOD STORE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6398—Claimant awarded \$527.20.)

RCA-COMPUTER SYSTEMS, Claimant, vs. STATE OF ILLINOIS,
AUDITOR OF PUBLIC ACCOUNTS, Respondent.

Opinion filed January 11, 1972.

RCA-COMPUTER SYSTEMS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5795—Claim denied.)

BENJAMIN H. TURNER, Claimant, *us.* STATE OF ILLINOIS,
Respondent.

Opinion filed January 21, 1972.

RAINEY AND MURPHY, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

SECRETARY OF STATE—*drivers license fees*. Where claimant paid fee for renewal of drivers license, but failed to have new license issued, he was not entitled to a refund of fee in absence of statute authorizing such refund.

HOLDERMAN, J.

In this case claimant seeks to recover \$8.00 drivers license fee which he paid the State of Illinois.

In 1969, claimant applied for a renewal of his drivers license, paid the prescribed fee of \$8.00, but failed to pass the examination due to his eyesight. The Secretary of State notified him by letter of his failure to pass the examination. Thereafter, claimant wrote a letter to the Secretary of State stating that he did not intend to apply again for a renewal of his license and requested a refund of the \$8.00 he paid. The Secretary of State wrote claimant declining to refund the license fee.

The sole question is whether or not claimant should be refunded the \$8.00 license fee paid by him at the time he applied for the renewal of his license.

The argument of claimant is that the fee had to be paid at the time of the application and therefore **was** not voluntary; that since the State refused to renew his license,

the fee should be refunded to him because the \$8.00 fee could not, under the law, be charged solely for taking of the examination; and that inasmuch as claimant never received his license, it would be unjust for the State to retain the fee.

It appears that there is some merit to the claimant's position in that he never received what he applied for when he paid the \$8.00 license fee. Nevertheless, the rule has been firmly established by many cases, that where a license fee is voluntarily paid to a governmental body, it cannot be recovered in the absence of a statute authorizing such a recovery. See the case of *The L. F. Corporation vs. State of Illinois*, 22 C.C.R.486. In that case, a fee in the amount of \$6,750.00 for a racing license was not returned to the applicant after the applicant had abandoned his application.

To change this long established principle of law in order to assist the claimant here could result in confusion in the rules. There is no provision in the Illinois Vehicle Code which authorizes the Secretary of State or any other person to refund a drivers license application fee in case the license is refused or the application withdrawn. There are provisions, however, for refunding fees received when an application for a certificate of title to a motor vehicle or when an application for registration of a motor vehicle is refused. Ch. 95½, Sec. 3—824, Ill.Rev.Stat., 1969, provides that **any** such fee shall be returned to the applicant when the application for title or for registration is refused or withdrawn. The Legislature has not adopted such provisions in connection with the fees collected for drivers licenses.

The claim is denied.

(No. 5332—Claim denied.)

CHARLES EDWARD FERGUSON, Claimant, vs. STATE OF ILLINOIS,
Respondent.

Opinion filed December 18, 1969.

Petition of Claimant for Rehearing denied February 14, 1972.

HENNING AND CROFT, Attorney for Claimant.

WILLIAM G. CLARK, Attorney General; MORTON L.
ZASLAVSKY, Assistant Attorney General, for Respondent.

HIGHWAYS—*duty to maintain.* Where claimant stepped into hole in pavement, and where he knew of had condition of roadway in area, but did not look down into street before stepping off the curb, claimant was not in exercise of due care.

SAME—*same.* Respondent owes no duty to pedestrian to keep the street in a safe condition, where sidewalks are provided; and the claimant who stepped into hole in street could not recover.

BOOKWALTER, J.

Charles Edward Ferguson has filed his complaint in this Court seeking to recover damages against respondent, charging respondent with certain acts of negligence in its failure to maintain a street, which was under its control.

From the evidence introduced, it appears that claimant, on October 30, 1965, at or about 6:45 a.m., parked his car at or near 3867 Elston Avenue, Chicago, Illinois, and entered the Elston Launderette; that some time later claimant left the launderette, and at the aforesaid location, while stepping from the sidewalk and curb onto the street, stepped into a hole in the asphalt pavement in the street. Claimant testified that the weather at the time was cloudy and hazy. He further testified that the hole in the pavement was approximately one foot from the curb.

On cross examination, claimant testified that he was well acquainted with the area in question; that the street along the block in question was cracked, and that he knew of the bad condition of the street. He also testified that he

did not look down at the street when he stepped from the curb, even though he knew that the street and pavement was in a bad condition.

Joseph Ciborowski, a witness on behalf of claimant, testified that he is the owner of the Elston Launderette on Elston Avenue. He testified as to the photographs of the street in question, and testified that the hole depicted in claimant's exhibits and photographs, existed for at least four or five months prior to October 30, 1965, the date of the accident in question.

In order for claimant to recover, he must prove by a preponderance of the evidence that respondent was negligent, that this negligence was the proximate cause of claimant's injury, and that he was, at the time of the accident, exercising due care and caution for his own safety. It is the respondent's contention that claimant was a pedestrian walking on a roadway in violation of Chap. 95 1/2, Sec. 175, Ill.Rev.Stat.; "Where sidewalks are provided, it is unlawful for any pedestrian to walk along and upon an adjacent roadway except at a crosswalk," and that respondent owes no duty to such pedestrian to keep the street in a safe condition, and, therefore, could not be guilty of negligence.

It is unnecessary for this court to consider respondent's contention, since we find from the facts in this case the claimant was not in the exercise of due care.

Respondent is not an insurer of all accidents which happen to persons using its roads and it is incumbent upon the claimant to prove by a preponderance of the evidence that he was exercising due care and caution for his own safety at the time of the accident. Claimant has failed to discharge this burden. He knew of the condition of the roadway in the area where the accident occurred, but did not look down into the street before stepping off the curb,

or in any other way exercise care for his own safety. Had he looked down, he could have avoided stepping into the hole. *Thriege vs. State of Illinois*, 24 C.C.R. 470.

In view of the foregoing, the claim must be denied.

(No. 5525—Claimant awarded \$25,000.00.)

WESTCHESTER FIRE INSURANCE COMPANY, A Corporation, Subrogee of Jesse C. Shepherd, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed November 9, 1971.

Petition of Respondent for Rehearing denied February 17, 1972.

JOHN P. WARDROPE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; ZEAMORE A. ADER, Special Assistant Attorney General, for Respondent.

NEGLIGENCE—*res ipsa loquitur*. When a thing which has caused an injury is shown to be under the management of the party charged with negligence and the accident is such as in the ordinary course of things will not happen if those who have such management use proper care, the accident itself affords reasonable evidence, in the absence of an explanation by the parties charged, that it arose from want of due care.

PER CURIAM.

On February 4, 1968, there was an explosion and fire in the National Guard Armory in Aurora, Illinois, which resulted in the destruction of the Armory. As a result of the explosion and fire, an adjoining building owned by a certain Jesse C. Shepherd was damaged. Claimant, Westchester Fire Insurance Company, paid the owner of the adjoining building the sum of \$25,124.55, and brings this claim to recover its payment as the subrogee of the owner of the adjoining building.

Donald Shepherd, a qualified and licensed architect, submitted a thirty-seven page itemization concerning necessary repairs to the building, and stated that the cost of repair, replacement and service required to repair the dam-

age done to claimant's building amounted to **\$39,067.89**. The Assistant Claims Manager of the Westchester Fire Insurance Company, Charles J. Sniericky, testified that an agreement was made with the owner of the building whereby the claimant paid its assured, Jesse C. Shepherd, the sum of **\$25,124.55**.

It is the contention of the claimant that the respondent, through its agents, members of the Illinois National Guard, was negligent in the operation, control and maintenance of the Armory, more specifically, the heating apparatus in the basement known as the "North Boiler", and that it was through this negligence that the fire was caused, resulting in damage to the Shepherd Building. Count One of the claimant's complaint alleges specific negligence in the operation of the "North Boiler" and Count Two alleges general negligence under the doctrine of *res ipsa loquitur*.

Testimony taken at the hearing of this matter established that the Armory was under exclusive control of the respondent and that the "North Boiler" **was** in operation at the time of the explosion and fire. On December **23,1967**, a gas regulator valve on the "North Boiler" was replaced for the reason that the boiler had not been burning with the proper flame. Captain Leo Stoecker, of the Illinois National Guard, testified that there had been no complaint regarding the "North Boiler" after that time. Neither claimant nor respondent introduced any expert witness who might have examined the "North Boiler" after the fire.

Lt. Ronald Miller of the Aurora Fire Department, testified on behalf of the claimant that he had investigated the fire and that in his opinion the fire had started in the basement boiler area and was consistent with a gas explosion. Arson **was** ruled out as a cause.

Another opinion was introduced in the form of a report by James F. Lahey, Deputy State Fire Marshal for the State of Illinois. In his written opinion, the most probable source of ignition was the Boiler Room and further, in his opinion, it was stated that the fire was accidental and due to a malfunction of one of the boilers.

In the opinion of this court, the doctrine of *res ipsa loquitur* is properly invoked by the claimant. In the case of *Feldman vs. Chicago Railways Co.*, 289 Ill. 25, 34., the court stated: "When a thing which has caused an injury is shown to be under the management of the party charged with negligence and the accident is such as in the ordinary course of things will not happen if those who have such management use proper care, the accident itself affords reasonable evidence, in the absence of an explanation by the parties charged, that it arose from want of proper care." The claimant in this case has proven through a sufficient amount of circumstantial evidence that the fire started in the boiler area, which was under the control of the respondent, and that the probable cause of the fire was a gas explosion. Such circumstantial evidence, along with the fact that fires of this nature do not occur in the absence of someone's negligence give rise to the presumption of negligence on the part of the respondent. (*Metz vs. Central Illinois Electric and Gas*, 32 Ill. 2d 446).

The presumption which arises is subject to rebuttal by the respondent and may be overcome by explanation of the occurrence of the fire, consistent with due care on the respondent's part. (*Edmonds vs. Heil*, 333 Ill. App. 497). Respondent did show that the boiler was repaired some time before the fire occurred, but failed to offer evidence as to its condition just prior to and at the time of the explosion and fire in question; and furthermore, failed to have the boiler inspected after the fire, although it was in

respondent's possession for four to five months. Respondent has failed to offer sufficient evidence to rebut the presumption of negligence.

Respondent argues that it might be just as reasonably be inferred that the fire was started by a bomb or that some other form of arson took place. The possibility of arson was ruled out both by Lt. Ronald Miller of the Aurora Fire Department and James F. Lahey, Deputy State Fire Marshal. There was no proof of contributory negligence on the part of the claimant.

In the opinion of this court, respondent is liable for the damages inflicted on the property of Jesse C. Shepherd and the court awards damages to the Westchester Fire Insurance Company, subrogee and claimant in this matter, in the amount of \$25,000.00.

(No. 5570—Claimant awarded \$882.34.)

N. A. MASTERS, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed February 17, 1972.

ORWIN H. PUGH, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

NEGLIGENCE—joint tort-feasors. A party damaged by the actions of joint tort-feasors may sue either or both tort-feasors and may collect in full from either.

BURKS, J.

This is a claim for property damage based on the following facts which are not in dispute.

On Thursday, August 10, 1967, a sign crew from the District #9 office of the Division of Highways at Carbonale proceeded to the southwest corner of the intersection of Illinois Avenue (U. S. Route 51) and Main Street (Illinois

Route 13) in Carbondale to install signs for a temporary one-way couple of Illinois Avenue and University Avenue.

The crew, operating a truck-mounted power digger, was drilling holes for the erection of a sign when the drill punctured a four-inch water service line under the pavement. The ensuing flow of escaping water flooded claimant's place of business, a tavern known as the Rathskeller.

The time of the puncture of the water line was approximately 9:15 a.m. The Carbondale City Water Department was called immediately to repair the break, the Division of Highways being without authority to shut off the water supply or to repair the punctured service line. The flow of water was stopped at approximately 3:00 a.m. on the following day. The water was escaping for 18 hours, a portion of which time it was flowing through the public establishment of the claimant.

It would appear that there may have been undue delay on the part of the City in repairing the water main. Assuming that there was neglect involved in this delay, we are faced with a situation where we have joint tort-feasors. It has been long recognized in Illinois that a party damaged by the actions of joint tort-feasors may sue either or both tort-feasors and may collect in full from either.

The property damage sustained by the claimant was obviously caused by the water which was allowed to escape following the drilling operation of the respondent, and the latter acknowledges liability.

The only remaining question is the amount of damage actually inflicted by the water. According to claimant's testimony on page 6 of his deposition, the floor in the Rathskeller was installed in 1955. This means that the tile floor had been subjected to use by the public for a period of 12 years prior to the water damage. Claimant, by letter

dated August 3, 1970, attached to respondent's Brief and Argument, agrees that the claim should be reduced from \$1,254.78 to \$882.34. Respondent does not contest the other damages alleged by claimant and agrees that the actual damages to the claimant's property amount to \$882.34.

IT IS HEREBY ORDERED that claimant be awarded damages in the amount of \$882.34.

Pursuant to Ch. 27, Sec. 439.24, Ill. Rev. Stat., 1971, the Court directs immediate payment of this claim from the Court of Claims Fund. (Fund No. 572.)

(No. 6023—Claimant awarded \$720.15.)

ST. ALEXIUS HOSPITAL, A Corporation, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed February 17, 1972.

M. C. ELDEN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6116—Claimant awarded \$3,883.50.)

CARMEN ALONZO, d/b/a CARMEN'S MOVERS, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed February 17, 1972.

EDWIN M. RAFFEL, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(So. 6235—Claimant awarded 81.891.31.)

PARKHURST, APPIER, MAROLF, ASSOCIATES, claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed February 17, 1972.

PARKHURST, APPIER, MAROLF, ASSOCIATES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(So. 6265—Claimant awarded \$2,767.77.)

CRAWFORD, MURPHY AND TILLY, Inc., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC WORKS AND BUILDINGS, Respondent.

Opinion filed February 17, 1972.

CRAWFORD, MURPHY AND TILLY, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6273—Claimant awarded \$11,600.54.)

ENGINEERING SERVICE CORPORATION, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed February 17, 1972.

ENGINEERING SERVICE CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6283—Claimant awarded \$1,062.61)

LANKTON, ZIEGELE, TERRY AND ASSOCIATES, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENTS OF PUBLIC WORKS AND BUILDINGS and MENTAL HEALTH, Respondent.

Opinion filed February 17, 1972

LANKTON, ZIEGELE, TERRY AND ASSOCIATES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6330—Claimant awarded \$80.00.)

DAVID V. EFFRON, M.D., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed February 17, 1972.

DR. DAVID V. EFFRON, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6349—Claimants awarded \$302.35.)

ARNOLD H. ALBREDCHT, HOMER BEALL, SR., DONALD HALEY, RALPH JOHNSON, LYNN LAMIE, CURTIS ORR, OTTO SCHRIEFER and RAY STOUT, Claimants, **vs. STATE OF ILLINOIS, OFFICE OF THE SUPERINTENDENT OF THE EDUCATIONAL SERVICE REGION**, Respondent.

Opinion filed February 17, 1972.

CLIFFORD BURY, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6355—Claimant awarded \$151.59.)

LESTER L. HAAG, Claimant, **vs. STATE OF ILLINOIS**, Respondent.

Opinion filed February 17, 1972.

LESTER L. HAAG, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

PERLIN, C.J.

This cause coming on 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 claim is for damage caused to claimant's 1970 Ambassador sedan, while parked, when respondent's agent backed into it with a farm type International Model M Tractor.

IT IS HEREBY ORDERED:

1. That the sum of \$151.59 be awarded to claimant in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause.

(No. 6374—Claimant awarded \$23,938.67.)

FLEX-O-LITE DIVISION, vs. STATE OF ILLINOIS, DIVISION OF HIGHWAYS, Respondent.

Opinion filed February 17, 1972.

FLEX-O-LITE DIVISION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(So 6375—Claimant awarded \$1,200.00)

THE CREST LYN, INC., Claimant, vs. STATE OF ILLISOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

opinion filed February 17, 1972

THE CREST LYN., INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6377—Claimant awarded \$640.00.)

**MECO DISTRIBUTORS, INC., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed February 17, 1972.

MECO DISTRIBUTORS, INC., Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6378—Claimant awarded \$373.23.)

**MANPOWER, INC., Claimant, vs. STATE OF ILLINOIS, SUPERINTENDENT
OF PUBLIC INSTRUCTION, Respondent.**

Opinion filed February 17, 1972.

MANPOWER, INC., Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6379—Claimant awarded \$2,737.80.)

**BARBER-COLMAN COMPANY, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed *Februarq* 17, 1972.

BARBER-COLMAN COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6394—Claimant awarded \$1,360.00.)

PHILLIPS DECORATING SERVICE, Claimant, us. STATE OF ILLINOIS,
INDUSTRIAL COMMISSION, Respondent.

Opinion filed February 17, 1972.

PHILLIPS DECORATING SERVICE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6397—Claimant awarded \$7,729.84.)

MILLIPORE CORPORATION, Claimant, us. STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC HEALTH, Respondent.

Opinion filed February 17, 1972.

MILLIPORE CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6401—Claimant awarded \$85.52.)

**SMITH-CORONA MARCHANT, Claimant, us. STATE OF ILLINOIS,
DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT,
Respondent.**

Opinion filed February 17, 1972.

SMITH-CORONA MARCHANT, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6409—Claimant awarded \$1,069.35.)

**OLSHAW'S INTERIOR SERVICE, Claimant, us. STATE OF ILLINOIS,
INDUSTRIAL COMMISSION, Respondent.**

Opinion filed February 17, 1972.

OLSHAW'S INTERIOR SERVICE, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6413—Claimant awarded \$85.57.)

**BRAUN AUTOMOTIVE, INC., Claimant, us. STATE OF ILLINOIS,
DEPARTMENT OF GENERAL SERVICES, Respondent.**

Opinion filed February 17, 1972.

BRAUN AUTOMOTIVE, INC., Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

BERLIN, C.J.

(No. 6417—Claimant awarded \$291.70.)

**JOHN E. VROOMAN, Claimant, vs. STATE OF ILLINOIS,
SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.**

Opinion filed February 17, 1972.

JOHN E. VROOMAN, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6428—Claimant awarded \$120.00.)

**BOONE BRACKETT, M.D., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed February 17, 1972.

DR. BOONE BRACKETT, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6441—Claimant awarded \$185.35.)

**HOLIDAY INN SOUTH, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT
OF PERSONNEL, Respondent.**

Opinion filed February 17, 1972.

HOLIDAY INN SOUTH, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6448—Claimant awarded \$83.70.)

UREGAS SERVICE OF ANNA, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed February 17, 1972

UREGAS SERVICE OF ANNA, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6450—Claimant awarded \$1,040.19.)

OLSHAW'S INTERIOR SERVICE, Claimant, vs. STATE OF ILLINOIS, INDUSTRIAL COMMISSION, Respondent.

Opinion filed February 17, 1972.

OLSHAW'S INTERIOR SERVICE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5222-Claim denied.)

IRVING SILVERS, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed November 12, 1968.

Petition of Claimant for Rehearing denied March 24, 1972

Moms A. LEVY, Attorney for Claimant.

WILLIAM G. CLARK, Attorney General; GERALD S. GROBMAN, Special Assistant Attorney General, for Respondent.

HIGHWAYS—*duty of care.* The State is not an insurer of all those traveling upon the highway, the extent of its duty being to use reasonable care to keep the highways in a reasonably safe condition for persons exercising due care for their own safety.

DOVE, J.

This cause of action was brought by the claimant against the respondent, State of Illinois, for personal injuries and property damage suffered by claimant, Irving Silvers, when the automobile he was driving struck a barrier median on Willow Road near the Tri-State Tollway in Cook County, Illinois.

On February 19, 1964, at approximately 7:30 p.m., Irving Silvers, the claimant, was operating his automobile in an easterly direction on Willow Road near the Tri-State Tollway in Cook County, Illinois. Traffic was light, and there were no other eastbound vehicles at that time. The weather was clear, and the pavement dry. Willow Road inclines upward as it approaches the overpass above the Tri-State Tollway. At the top of the incline there is a concrete abutment, technically known as a barrier median, which is approximately eight inches high, four to five feet in width, and four hundred feet in length, running in an east to west direction, and located in the middle of Willow Road. The accident in question occurred when claimant's car struck the west end of this barrier median.

At the point of the accident, Willow Road is a four-lane

highway. Claimant was proceeding eastbound in the inner lane when the left side of claimant's automobile struck the barrier median, causing personal injuries to claimant and damage to his automobile.

Claimant testified that at the time of the accident he was driving his automobile at a speed of approximately **30** miles per hour. The evidence indicates that approximately one-tenth of a mile west of the barrier median there is an informational sign bearing the legend "Center Curb Ahead". There is also the customary section of ribbed concrete one hundred feet in advance of the barrier median. The purpose of this ribbed section of concrete is to cause vibrations to a motorist's automobile and generate a peculiar noise, warning a motorist that he has departed from and is not driving on the normal pavement.

Harry Waldon, Field Traffic Engineer, Division of Highways, testified that it would not be possible to strike the barrier median without first passing over this ribbed section of concrete. Waldon further testified that running parallel to the ribbed concrete section, and continuing along the side of the southern edge of the barrier median, was a painted, yellow diversionary line. Waldon also testified that, as a general policy, there would be posted a "Keep Right" sign at each end of a barrier median. The claimant testified, and the evidence indicates, that there was no "Keep Right" warning sign or other device of a similar nature located at the west end of the barrier median. The evidence indicated that a "Keep Right" sign **was** placed near the west end of the barrier median when it was originally constructed. However, this sign was subsequently torn down, and had not, at the time of the accident, been replaced. Claimant alleges that respondent's failure to replace the "Keep Right" sign, or to provide other warning devices as to the existence of the barrier median,

constituted negligence on the part of the respondent, which was the proximate cause of the accident.

It is the duty of the State of Illinois to maintain the highways within its jurisdiction and under its control in a reasonably safe condition or in the event a dangerous or unsafe condition exists, to warn those persons using the highway of said dangerous or unsafe condition. *Thompson vs. State of Illinois*, 24 C.C.R. 219; *Bloom vs. State of Illinois*, 22 C.C.R. 582; *McNary vs. State of Illinois*, 22 C.C.R. 328.

In the case of *Thompson vs. State of Illinois*, 24 C.C.H. 219, the Court said: "It is an established rule, the state is not an insurer of all those traveling upon the highway, the extent of its duty being to use reasonable care to keep the highways in a reasonably safe condition for persons exercising due care for their own safety."

The law in the State of Illinois is clear that in order for a claimant in a tort action to recover he must prove that the State was negligent, that this negligence was the proximate cause of the injury, and that claimant was in the exercise of due care and caution for his own safety. *Link vs. State of Illinois*, 24 C.C.R. 69; *McNary vs. State of Illinois*, 22 C.C.R. 328; *Bloom vs. State of Illinois*, 22 C.C.R. 582. The burden of proof is upon the claimant to prove freedom from contributory negligence.

While there is some dispute as to the existence of the yellow diversionary line running parallel to the corrugated or ribbed concrete section and continuing alongside the edge of the barrier median, there is no dispute as to the existence of the "Center Curb Ahead" sign, approximately one-tenth of a mile west of the barrier median, or to the existence of a ribbed concrete section running one hundred feet in advance of the barrier median. Claimant testified that he did not observe the yellow diversionary line; that he did not observe the "Center Curb Ahead" sign, or experience any vibrations or hear any warning noises, that

would indicate that he had departed from the normal driving pavement, and was passing over the ribbed concrete section.

It is the opinion of this Court that the claimant, Irving Silvers, has failed to sustain the burden of proof that he was free from contributory negligence in connection with the accident in question. Claimant's failure to sustain the burden of proof that he was free from contributory negligence effectively bars his right to recover damages from respondent for personal injuries and property damage when claimant's automobile struck the barrier median. For this reason the question of whether respondent's needs to maintain a "Keep Right" sign at the end of the barrier median need not **be** considered by the Court.

Claimant's claim is hereby denied.

(No. 5474--Claimant awarded \$2,500.00.)

MARILYN KIRKLAND, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed March 24, 1972

GILLESPIE, BURKE AND GILLESPIE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; LEE D. MARTIN, Assistant Attorney General, for Respondent.

COURT REPORTERS—*salary*. Where claimant had passed test **to** become a Class **A** court reporter, and worked as a Class **A** court reporter, she is entitled to be compensated as a Class **A** court reporter.

PER CURIAM.

On January 3, 1966, the claimant, Marilyn Kirkland, was appointed as **a** court reporter for the Seventh Judicial Circuit of Illinois by Chief Judge Creel Douglass. Her appointment was made pursuant to the Court Reporters Act, Ch. 37, Sec. 651-659, Ill.Rev.Stat, 1965. On the same

day, January 3, 1966, claimant took the official oath as required by statute and served as a court reporter from January 3, 1966, until January 16, 1968, when she resigned her position.

Section 657 of the Court Reporters Act provided that each court reporter in office on January 1, 1966, or appointed on or after that date, must take a test to determine his or her proficiency. The statute provides that the proficiency test shall consist of two parts, designated Part A and Part B.

During the month of February, 1966, claimant took and passed Part B of the proficiency test provided for by statute. Thereafter, under the provisions of Section 658 of the Court Reporters Act, claimant was paid a salary of \$6,000.00 per year in monthly installments of \$500.00.

On February 16, 1967, claimant took and passed Part A of the proficiency test, and was so notified by letter on March 1, 1967. Section 658 of the Court Reporters Act provides that Class A court reporters shall receive a salary of \$9,000.00 per year.

Claimant's complaint alleges that from March 1, 1967, until January 16, 1968, when she resigned as a court reporter for the Seventh Judicial Circuit of the State of Illinois, the respondent, State of Illinois, failed and refused to pay claimant a salary of \$9,000.00 per year in monthly installments of \$750.00, but continued to pay her a salary of a Class B court reporter, namely \$6,000.00 per year in monthly installments of \$500.00. The claimant seeks damages in the sum of \$2,625.00, which represents the difference in the statutory salaries of a Class A and a Class B court reporter for the period beginning March 1, 1967, and ending January 16, 1968.

The record in this case reveals that all of the allegations

of claimant's complaint were supported by the testimony of claimant.

Respondent introduced no witnesses or evidence at the hearing. However, the record contains a departmental report and answers to interrogatories filed by the claimant. The defense to the claim appears to be that after claimant took and passed Part A of the proficiency examination, thereby qualifying as a Class A reporter, she waived her right to receive the \$9,000.00 per year salary in a conversation with Chief Judge Creel Douglass, who had been asked by the Director of the Administrative Office of the Illinois Courts to see if claimant and another court reporter who had passed Part A of the examination would work for \$6,000.00 per year, although both were classified as Class A reporters. Such waiver was emphatically denied by claimant during the hearing, and no evidence was introduced to support the alleged waiver.

Although respondent alleges further that it was the policy of the Illinois Supreme Court after August, 1966, to pay \$9,000.00 per year, to court reporters who passed Part A of the proficiency examination if they reported for a Circuit Judge, or if they worked full time on a reasonably heavy trial schedule of reasonably difficult cases, and if there were limited Class A openings, there is no statutory basis for this position. The applicable statute provides as follows:

"Salaries. §8. The salaries of all court reporters shall be paid by the state. Class A reporters shall receive \$9000 per year, and Class B reporters shall receive \$6000 per year. The salaries shall be paid monthly on the voucher of the Supreme Court." (Ill.Rev.Stat. c.38 §658.)

In August, 1967, effective January 1, 1968, that portion of the Statute was amended to provide that the Director of the Administrative Office of the Illinois Courts may set up a salary schedule for each individual court reporter which

reflects the “following relevant factors: (1) proficiency rating; (2) experience; (3) population of the area to which a reporter is normally assigned; (4) the types of cases and the number of each type of case to which a reporter is regularly assigned; (5) other factors considered relevant by the Director.”

Respondent cites the Illinois Constitution, Article IV §19, and the claimant cites the Illinois Constitution, Article V §23, the former prohibiting extra compensation to public servants after service is rendered and the latter providing that a state officer’s salary may not be diminished during his term of office. Neither provision appears applicable to the instant case.

The 1965 statutory language does not qualify the right of a Class A reporter to receive the \$9,000.00 per year salary prescribed. From March 1, 1967, until January 1, 1968, the date the amended provision took effect, claimant is entitled to the extra \$250.00 per month which was authorized for all Class A reporters.

Claimant is hereby awarded the sum of \$2,500.00.

(No. 56%—Claimant awarded \$4,259.12.)

RUSK AVIATION, INC., A Corporation, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed March 24, 1972.

BISSONNETTE, NUTTING AND LUCAS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General, for Respondent.

PRISONERS AND INMATES—*damage*, escaped inmates. Where respondent recommends an award to claimant whose property was damaged, an award will be entered accordingly.

PERLIN, C.J.

Claimant seeks recovery of damages incurred to property owned by it when two inmates es-

caped from the Kankakee State Mental Hospital in Kankakee, Illinois, on May 15, 1967. The statutory provision under which the suit is brought provides as follows:

"Whenever a claim is filed with the Department of Mental Health, the Department of Children and Family Services, the Department of Public Safety, the Youth Commission, or the Department of Youth, as the case may be, for damages resulting from personal injuries or damages to property, or both or for damages resulting from property being **stolen**, heretofore or hereafter caused by an inmate who has escaped from a charitable, penal, reformatory, or other institution over which the State of Illinois has control while he was at liberty after his escape, the Department of Mental Health, the Department of Children and Family Services, the Department of Public Safety, the Youth Commission, or the Department of Youth, as the case may be, shall conduct an investigation to determine the cause and if it is found after investigation that the damage was caused by one who had been an inmate of such institution and had escaped, the Department or Commission may recommend to the Court of Claims that an award be made to the injured party and the Court of Claims shall have the power to hear and determine such **claims**." (Chapter 23, §4041, Illinois Revised Statutes, 1967.)

The record contains reports that inmates, Patrick Henry Wright and Edward Patterson had escaped from the Kankakee State Mental Hospital on May 14, 1967, and were returned May 15, 1967; and that Patterson admitted going during the time of escape to the Kankakee airport, stealing a pickup truck and with it smashing into two airplanes, damaging the truck and one of the airplanes.

Mr. Willard Rusk testified that he was the president of Rusk Aviation, Inc. on May 15, 1967, which company was acting as broker for one D-18 S twin engine Beachcraft airplane. There is no dispute over the facts. It appears that the inmates took a 1981 Chevrolet service truck owned by claimant and backed it into the tail section of the aircraft, causing damage in the amount of \$4,125.00 which was the actual cost of repairs for the aircraft and \$134.12 for the pickup truck.

Respondent has recommended that the awards in the aforesaid amounts be granted.

Claimant is hereby awarded the sum of **\$4,259.12**.

(No. 5743—Claimant awarded \$341 80.)

DR. COMESS AND ASSOCIATES, S.C., Claimant, *vs.* STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed March 24, 1972.

DR. COMESS AND ASSOCIATES, S.C., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J

(So 5766—Claimant awarded \$1,000.00.)

FRIENDLY CHEVROLET, INC., Claimant, *vs.* STATE OF ILLINOIS,
Respondent.

Opinion filed March 24, 1972.

SORLING, CATRON, AND HARDIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*automobile trade-in.* Where respondent purchased new auto and failed to trade in old car, petitioner will be awarded value of auto not delivered as trade-in.

HOLDERMAN, J.

Claimant seeks to recover the value of a 1966 Ford which he allegedly failed to receive as a trade-in when he sold a 1969 Chevrolet to the State.

The State's purchase order #885910, dated January 21, 1969, was issued to the claimant for a 1969 Chevrolet for the price of \$2,347.00 less a trade-in allowance of \$1,000.00 for a 1966 Ford.

There is no dispute in connection with the purchase order nor its terms. The only issue presented is whether or

not the claimant actually received the 1966 Ford that the State agreed to trade in.

Claimant delivered the new car along with several other new cars to the Department of Agriculture at a State garage. At the time of delivery, he should have picked up the trade-in vehicle. Later, claimant discovered that the 1966 Ford trade-in was missing. He contends here that he never received the trade-in vehicle.

Claimant testified that he delivered the new car, along with several others, and that at the time he and his employees picked up several trade-ins. He had a sheet with the State trade-ins listed. As he received a trade-in, he would check it off. It appeared, however, that the 1966 Ford trade-in was never checked off. Claimant actually noticed the missing trade-in some time later. He testified, however, that previously on sales there were delays in getting the trade-in; that often times the trade-in would be located in other parts of the State; and that on occasion they would be wrecked vehicles. The respondent **did** not offer any evidence to the contrary.

The original complaint **asked for \$1,000.00**. The complaint was later amended by raising the amount to \$1200.00 with the statement that the later figure was the fair market value of the trade-in item

It is the opinion of this Court that claimant has produced sufficient evidence to establish a prima facie case that the State did not deliver the 1966 Ford trade-in as agreed upon in the purchase order.

It is the further opinion of this Court that the sum of \$1000.00 is the correct amount that should be allowed to the claimant and an award is therefore entered in said amount of \$1000.00.

(No. 5954—Claimant awarded \$78.84.)

**MOEHLE PRESCRIPTION PHARMACY, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL, HEALTH, Respondent.**

Opinion filed March 24, 1972.

MOEHLE PRESCRIPTION PHARMACY, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5997—Claimant awarded \$255.07.)

**SUN OIL COMPANY, Claimant, vs. STATE OF ILLINOIS, VARIOUS
STATE AGENCIES, Respondent.**

Opinion filed March 24, 1972.

SUN OIL COMPANY, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6026—Claimant awarded \$1,651.54.)

RALPH VANCIL, INC., Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed March 24, 1972.

LANSDEN AND LANSDEN, Attorney for Claimant.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACT—emergency work. Where claimant performed work of an

emergency nature, claimant would be compensated even though respondent had not approved contract before it was done.

HOLDERMAN, J.

For labor and materials furnished to the State, the claimant initially filed a claim in this cause for the amount of \$2,498.78. Subsequently, the **ad** damnum was reduced to \$2,253.75, because the original complaint contained certain items for which claimant apparently had been paid.

Claimant had originally contracted with the Illinois Building Authority to work at the 60-boy Forestry Camp in Dixon Springs, Illinois. That contract work was completed by the claimant and fully paid for by the State. This claim is based **on** extra work done at the request of one John Lovelock of the Department of Corrections who was Administrative Assistant to the Supervisor of Forestry Camps. The record contains a letter from Peter B. Bensinger, Director of the Department of Corrections, addressed to the Attorney General's office, indicating that the Supervisor of Forestry recommended payment of the claim based on valid billing and due to the fact that the work was not part of the original IRA contract.

Further, there is in the record a copy of a letter from Charles Martini, Coordinating Architect, addressed to Albert Paga, State Supervising Architect, explaining that the IBA could not pay the bill since it had not approved the additional work prior to the time it was **done**, and because the change order was submitted *after* the work was completed. It appears, however, that the work done by claimant was in the nature of an emergency. The facility was needed to accommodate boys who were coming in to the Camp. Claimant was **on** the job, boys were coming in, **and** there was no way to feed them or wash their clothes without the additional work finished by claimant.

Respondent acknowledges the merits of this claim.

However, in analyzing the claim, it appears to this Court that, in the first instance, claimant was lax in including items for which he had previously been paid. In addition, the computation of the claim contains an item for Supervision at 25% and Insurance and Taxes at 20%, but nowhere in the testimony is there any evidence to support these items as being proper. If these were proper, claimant should have submitted proof to substantiate their inclusion. There was testimony offered in support of the 15% for Overhead and 10% for Profit as being reasonable and customary charges. Also, it is noted in the itemization of the claim, the 25% amount for Supervision is stated at the same figure as the 20% amount for Insurance and Taxes. Thus, the claim is a bit casual in its original inception and in its final form.

This Court believes claimant is entitled to be compensated; and based on the records, we are allowing the following:

Cost of materials	\$ 353.62
Labor	952.00
Total	\$1,305.62
Overhead 15%	195.78
Total	\$1,501.40
Profit 10%.....	150.14
Total Allowed	\$1,651.54

Claim allowed in the amount of **\$1,651.54.**

(No. 6036—Claimant awarded \$442.52.)

FS SERVICES, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opiniori filed March 24, 1972.

ILLINOIS AGRICULTURAL ASSOCIATION AND AFFILIATED COMPANIES, for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6119—Claimant awarded \$17,880.00.)

ALL WEATHER COURTS, INC., Claimant, vs. THE BOARD OF REGENCY OF THE REGENCY UNIVERSITIES SYSTEM, ILLINOIS STATE UNIVERSITY, Respondent

Opinion filed March 24, 1972.

ALL WEATHER COURTS, INC., Claimant, pro se.

MARKOWITZ, LAWRENCE, LENZ & JENNINGS, Attorney for Illinois State University, and PAUL E. MATHIAS, Attorney for Hoard of Regents, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 6056—Claimant awarded \$2,111.10.)

COMMUTER AIRLINES, INC., An Iowa Corporation, Claimant, vs. STATE OF ILLINOIS, VARIOUS AGENCIES, Respondent.

Opinion filed March 24, 1972.

NICHOLAS G. MANOS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6127—Claimant awarded \$87,244.45.)

COUNTY OF COOK, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 24, 1972.

EDWARD V. HANRAHAN, State's Attorney of Cook County, for Claimant.

WILLIAM J. SCOTT, Attorney General, for Respondent.

JUVENILE COURT—*depleted appropriation.* Where claimant incurred obligations as a matter of law, and where appropriation was depleted prior to claimant's filing for reimbursement, an award would be entered.

PERLIN, C.J.

This cause coming on 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 claim is for salaries of employees of the staff of the Juvenile Court, wherein the State is obligated by Ch. 37, Sec. 706-7, Ill.Rev.Stat, 1969, to compensate the counties for such expenditures, that such obligations were incurred as a matter of law, and that the appropriation was depleted prior to the claimant's filing for reimbursement.

IT IS HEREBY ORDERED that the sum of \$87,244.45 be awarded to claimant in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause.

(No. 6146—Claimant awarded \$186.34.)

GLICK MEDICAL AND SURGICAL SUPPLY COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed March 24, 1972.

GLICK MEDICAL AND SURGICAL SUPPLY COMPANY, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6290—Claimant awarded \$1,255.56.)

ROSEWOOD MANOR, INC., A Corporation, Claimant. vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed March 24, 1972.

ROSEWOOD MANOR, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6340—Claimant awarded \$933.00.)

GEORGE HERRMANN AND COMPANY, Claimant. vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC SAFETY, Respondent.

Opinion filed March 24, 1972.

GEORGE HERRMANN AND COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6342—Claimant awarded \$1,167.00.)

W. W. GROTE COMPANY, Claimant, vs. BOARD OF REGENTS OF THE REGENCY UNIVERSITY SYSTEM, SANGAMON STATE UNIVERSITY, Respondent.

Opinion filed March 24, 1972.

W. W. GROTE COMPANY, Claimant, pro se.

PAUL E. MATHIAS, Attorney for Board of Regents, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

HOLDERMAN, J.

(No. 6343—Claimant awarded \$1,921.13.)

FLYNN FENCE AND SUPPLY COMPANY, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed March 24, 1972.

EDWARD G. COLEMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6345—Claimant awarded \$217.94.)

GREAT LAKES INSURANCE CORPORATION OF WISCONSIN, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed March 24, 1972.

FRISCH, DUDEK, SLATTERY AND DENNY, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

TAXES—overpayment. Where claimant overpaid advanced privilege tax payment, an award would be entered for overpayment.

PERLIN, C.J.

This cause coming on 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 claim is filed pursuant to Ch. 37, Sec. 8(f), Para. 439.8(f), Ill. Rev. Stat., 1969, and arises by reason of claimant having overpaid advanced privilege tax payment as computed on line 24, page 4 of the 1970 Privilege Tax Statement, as per Ch. 73, Sec. 1024, Ill. Rev. Stat., 1969, and no new or novel questions of law are presented.

IT IS HEREBY ORDERED that the sum of **\$217.94** be awarded claimant in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause.

(No. 6348—Claimant awarded \$4,567.00.)

BONGI CARTAGE, INC., Claimant, vs. STATE OF ILLINOIS, DIVISION OF WATERWAYS, Respondent.

Opinion filed March 24, 1972

VINCENT ALFIERI, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL, R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6364—Claimant awarded \$391.00.)

THE CENTER—SISTERS OF THE GOOD SHEPHERD, Claimant, vs. STATE

OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES,
Respondent.

Opinion filed March 24, 1972.

THE CENTER—SISTERS OF THE GOOD SHEPHERD, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(So. 6365—Claimant awarded \$166.12.)

AMERICAS INSTITUTE OF ENGINEERING AND TECHNOLOGY, INC., Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION. Respondent.

Opinion filed March 24, 1972.

AMERICAN INSTITUTE OF ENGINEERING AND TECHNOLOGY, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6369—Claimant awarded \$3,456.25.)

CAW CONTRACTORS EQUIPMENT COMPANY, Claimant, vs. STATE OF ILLINOIS, DIVISION OF HIGHWAYS, Respondent.

Opinion filed March 24, 1972.

CAW CONTRACTORS EQUIPMENT COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6372—Claimant awarded \$510.83.)

ROBERT H. SCANLAN, Claimant, *vs.* **STATE OF ILLINOIS**,
DEPARTMENT OF LOCAL GOVERNMENT OFFICES, Respondent.

Opinion filed March 24, 1972.

ROBERT H. SCANLAN, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6387—Claimant awarded \$60.31.)

VITO'S MARKET, INC., Claimant, *vs.* **STATE OF ILLINOIS**,
DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed March 24, 1972.

VITO'S MARKET, INC., Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6.395—Claimant awarded \$2,169.03.)

FRANK HUBBARD ELECTRIC COMPANY, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed March 24, 1972.

FRANK HUBBARD ELECTRIC COMPANY, INC., Claimant,
pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6396—Claimant awarded \$47.81.)

ASHLAND PETROLEUM COMPANY, DIVISION OF ASHLAND OIL, INC.,
Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF LAW
ENFORCEMENT, Respondent.

Opinion filed March 24, 1972.

ASHLAND PETROLEUM COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6399—Claimant awarded \$1,632.34.)

BUNN CAPITOL COMPANY, Claimant, *us.* STATE OF ILLINOIS,
DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed March 24, 1972.

SORLING, CATRON AND HARDIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6403—Claimant awarded \$419.02.)

MORTON SALT COMPANY, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed March 24, 1972.

MORTON SALT COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6406—Claimant awarded \$305.90.)

PHILLIPS BUSINESS SYSTEMS, INC., Claimant, vs. STATE OF ILLINOIS, POLLUTION CONTROL BOARD, Respondent.

Opinion filed March 24, 1972.

PHILLIPS BUSINESS SYSTEMS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6420—Claimant awarded \$265.00.)

**OMS SURGICAL SUPPLY, INC., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC AID, Respondent.**

Opinion filed March 24, 1972.

OMS SURGICAL SUPPLY, INC., Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6421—Claimant awarded \$54.50.)

**BELMONT COMMUNITY HOSPITAL, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed March 24, 1972.

BELMONT COMMUNITY HOSPITAL, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6422—Claimant awarded \$62.50.)

**BELMONT COMMUNITY HOSPITAL, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed March 24, 1972.

BELMONT COMMUNITY HOSPITAL, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When *the* appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6427—Claimant awarded \$450.00.)

MACNEAL MEMORIAL HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS,
DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed *March* 24, 1972.

MACNEAL MEMORIAL HOSPITAL, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J

(No. 6430—Claimant awarded \$47.00.)

BERZ AMBULANCE SERVICE, INC., Claimant, *vs.* STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed *March* 24, 1972.

BERZ AMBULANCE SERVICE, INC., Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6447—Claimant awarded \$400.50.)

VICTORY MEMORIAL HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS,
DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed *March* 24, 1972.

VICTORY MEMORIAL HOSPITAL, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6451—Claimant awarded \$940.00.)

**STANLEY R. ROSEN, M.D., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed March 24, 1972.

DR. STANLEY R. ROSEN, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6453—Claimant awarded \$59.87.)

**WARGA'S WALCREEN AGENCY DRUG STORE, Claimant, vs. STATE OF
ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed March 24, 1972.

FLYNN & FLYNN, Attorney for Claimant.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

BERLIN, C.J.

(No. 6455—Claimant awarded \$39.96.)

**JEREMY SIMPSON, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF
PUBLIC AID, Respondent.**

Opinion filed March 24, 1972.

JEREMY SIMPSON, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6457—Claimant awarded \$4,923.15.)

**RIDGEWAY HOSPITAL, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.**

Opinion filed March 24, 1972.

BLOWITZ AND PASTIN, Attorney for Claimant.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6458—Claimant awarded \$220.00.)

**EDWARD A. GLENN, M.D., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed March 24, 1972.

DR. EDWARD A. GLENN, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6465—Claimant awarded \$416.65.)

**GEORGE L. WOCKENYOS, d/b/a SENTINEL INSECT CONTROL
LABORATORY, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF
CONSERVATION, Respondent.**

Opinion filed March 24, 1972.

GEORGE L. HOCKENYOS, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6357—Claimant awarded \$48,269.40.)

ROY T. CHRISTIANSEN—S. TINUCCI, ARCHITECTS, INC., Claimant, *us*.
STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES,
Respondent.

Opinion filed April 11, 1972.

ROY T. CHRISTIANSEN—S. TINUCCI, ARCHITECTS, INC.,
Claimant, *pro se*.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court **will** enter an **award** for the amount due claimant.

PERLIN, C.J.

(No. 5417—Claimant awarded \$3,480.00.)

ROBERT C. MINOR, Claimant, *us*. STATE OF ILLINOIS, Respondent.

Opinion filed April 12, 1972.

WILLIAM E. AULGUR, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

PRISONERS AND INMATES—damage by escaped inmates. Where claimant was injured by escaped prisoner, and the prisoner escaped by reason of respondent's negligence, an **award** would be entered for claimant.

DAMAGES—lost wages. Where claimant lost wages. The measure of damages is the gross wage not the net, or take-home wage.

Burks, J.

Claimant was assaulted in his home by three convicts who had escaped from one of respondent's penal institutions and brings this action for damages resulting from his personal injuries and property stolen by the convicts.

Jurisdiction is conferred upon this Court to hear and determine such claims by a special statute: Ch. 23, *Sec. 4041, Ill. Rev. Stat., 1971.*

The facts relating to the escape of the three inmates from the Illinois State Penitentiary, Vienna Branch, on

December 16, 1966, their subsequent assault on the claimant, and their theft of his personal property are not in dispute. The escape was admittedly made possible by the negligence of respondent's employees at this minimum security prison. Among other things, one of the three convicts was permitted to possess the keys to an automobile at the prison. This car was used by the three inmates as a means of transportation in escaping from the institution.

On the following day the three convicts arrived at the home of the claimant in a rural area of Saline County near Equality while claimant was away.

It was just getting dark when claimant came home from work. He arrived in his own automobile. As he started into the house to change clothes, he heard a noise, knew there was somebody in the house and started back to get into his car when the three convicts grabbed him. Claimant was then 62 years old. The convicts were armed with a shotgun. They threw him down, kicked him in the side, tied him up and took \$40.00 out of his billfold. Then they stole his car and drove away. Claimant's car was never recovered.

Respondent concedes liability, and the only disputed question before us is the amount of claimant's damages.

Claimant's only apparent physical injury consisted of a cracked rib. According to the record, he saw Dr. Denton Ferrell three or four times and treatment consisted of shots and a heat pad for 30 minutes 3 times a day for a while. His total doctor's bill was \$32.00. There was no medical testimony or sufficient evidence in the record to support a finding of any permanent disability or residual effects.

The record does establish that, for a period of just over 3 months following his injury, claimant was physically unable to perform the duties of his occupation. He was employed by Stanley Edmister in the construction business,

an occupation claimant had followed for 30 years, and his duties were those of a concrete finisher for which he was paid wages of \$28.00 per day. According to claimant's testimony, he lost **61** days of work which would amount to a loss of wages totaling \$1,708.00.

Claimant's other known financial loss was the \$40.00 which the convicts took from his billfold and his 1956 Buick which the convicts stole. The parties agreed that the fair market value of claimant's car was \$200.00.

The above mentioned items show that claimant's actual financial loss as a result of the injuries he sustained was at least \$1,980.00. The major item was claimant's loss of wages amounting to \$1,708.00. Respondent does not question the amount of time lost from employment, but suggests that claimant's damages for this loss should be based on his take-home pay, instead of gross pay, since any award for damages would be tax exempt. Respondent offers no authority in support of this contention. The Illinois Supreme Court, considering this question for the **first** time in *Hall vs. Chicago & N. W. Ry. Co.*, **5 Ill. 2d 135**, at page **149**, quoted with approval the following rules stated in **9 A.L.R. 2d 320**:

"Where the question has arisen, in reported cases, the courts generally have been of the **opinion** that in fixing **damages** for impairment of earning capacity the fact that the damage award will be exempt from income tax, whereas if the awardee had not sustained the **loss** of earning capacity and had gone to work and received the income forming the basis of such damage award, he would have become subject to income tax liability on such earnings, is not a matter to be taken into consideration and is no ground for diminishing the amount of damages for impairment of earning capacity."

In addition to claimant's actual financial loss, the Court has also carefully considered claimant's testimony as to the pain and suffering he experienced while he was off work and his discomfort after returning to his job, when, as was generally the case, his duties required him to lift heavy objects such as concrete blocks and forms. As we stated

above, the record does not support a finding of any permanent injury, but there was unquestionably some pain and suffering during the period that claimant was unable to work and for some time thereafter. There is no fixed rule of compensation for such damages, and they are incapable of exact mathematical calculation. See *I.L.P. Damages \$141, 142*. But in estimating damages, consideration may be given to physical pain and suffering, *Kocimski vs. Yellow Cab Co.*, *45 Ill. App. 2d*, *288*. We believe that the case before us is one that merits such consideration, and that a reasonable amount should be included in the award for claimant's pain and suffering.

The claimant, Robert C. Minor, is hereby awarded the sum of **\$3,480.00**.

(No. 5559—Claim denied)

SARAH M. CRAWFORD, Claimant, *vs.* STATE OF ILLINOIS,
Respondent.

Opinion filed April 12, 1972.

ROBERTS AND KEPNER, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; LEE W. MARTIN
and WILLIAM E. WEBBER, Assistant Attorneys General, for
Respondent.

HIGHWAYS—negligence—accumulation of ice. Requiring State to keep open private driveways while plowing off the street, would place an impossible burden on State.

HOLDERMAN, J.

Claimant, Sarah M. Crawford, brings this action to recover for personal injuries which she suffered on February 3, 1967.

Mrs. Crawford, a widow and sixty-three years of age,

lives in East Peoria, Illinois, on 1112 Meadow Street, which is also State Route 150.

There are no sidewalks in this particular area and the claimant, who worked at a Fannie Mae Candy Shop in Peoria, was in the habit of catching a bus in front of her home in the morning to go to work.

She would use her driveway to get to the roadway and then walk to the **bus** stop which was a short distance away.

It is her contention that the State Highway Department, in removing the snow from the highway, piled up snow on her driveway and upon which rain had later fallen causing it to become very slippery and, in attempting to walk over this ridge of snow and ice, she slipped and fell, fracturing her right ankle.

She was confined to the hospital for some period of time and was off work for several weeks.

On January 26th and January 27th approximately ten inches of snow fell and from January 27th to January 29th there were strong winds which caused the snow to drift. On February 2nd and February 3rd there was five more inches of snow with some rain.

The record discloses that the State snow plow had pushed snow onto the driveway in question as it endeavored to keep Route 150 open for the traveling public on several different occasions.

The records show that on at least three occasions, a path was cut through the snow piled on the driveway so that Mrs. Crawford could get to the road and catch her bus. On at least one of these occasions, Mrs. Crawford cleared the driveway herself, in one instance, a neighbor cleared it for her, and her grandson and a neighbor boy made a path on one other occasion.

On the morning in question, she stated that she had not cleared it because she was going to work and when she endeavored to cross the ridge of snow, which was approximately knee deep and was somewhat icy due to the rain that had fallen previously, she slipped and fell causing the damage complained of.

Claimant maintains that it was the duty of the State to keep this driveway open so that she would have a means of getting to the road and catching her bus.

It is the State's contention that it is not the responsibility of the State to remove the snow from individuals' driveways and the only way possible to keep the State highway open is to plow the accumulated snow on the roadway onto the shoulders; otherwise, there is no other place for the snow to be placed.

Claimant also allows that in view of the fact that some of this snow had accumulated for several days at the place where the accident took place, even though there is evidence of repeated falling of snow and some rain, it is still the duty of the State to maintain each driveway in a condition that is safe to be used by pedestrians.

There is a great deal of law in this State on the liability of the municipalities, particularly in cities and villages, when accidents of this nature take place.

One of the leading cases where the State of Illinois was involved is the case found in **23 C.C.R.** on page 172. In this particular case, the claimant fell and sustained injuries while on the shoulder of State Route 40. The actual fall evidently was caused by the claimant stepping into a depression or hole which was $2\frac{1}{2}$ to 3 feet in diameter and from 2 to $2\frac{1}{2}$ inches deep. The question was argued in this case as to what the liability of the State is in maintaining the shoulders of the road in such condition that they are safe for pedestrians and people using the State right-of-way and it

was determined that the State is not an insurer of all persons injured on its rights-of-way.

Claimant contends that it was the duty of the State to maintain the open driveway, particularly in view of the fact that this accident happened some six days after the original snowstorm and it is suggested that the State had a duty, at intervals, to open paths or maintain breaks so that people could get to the street despite the fact that there were not any sidewalks or intersections involved in this particular accident.

Claimant takes the position that it apparently is the duty of the State, even in situations such as this where there are no sidewalks or intersections, to keep open the private driveways so the street can be reached.

To do this would place an impossible burden upon the State because the crews would be so busy opening up private driveways, they would have little or no time left for keeping the road itself open for the benefit of the traveling public.

Claimant knew the condition that existed and had cleared the area on at least three separate occasions for her own use but still failed to do so on the morning in question even though she knew she was going to take the bus and knew the condition of the driveway.

It would be difficult to find her free from contributory negligence in going in to a place that was as dangerous as she claims it was and there is nothing in the record to show why, on that morning in question, a small path could not have been cleared by her before attempting to get to the street.

We are denying this claim for the reason that to place the burden upon respondent, which claimant is now contending in this particular area, would be placing a burden upon it, which the law does not contemplate.

The burden of maintaining an "open driveway" which claimant seeks to place upon the State is not a responsibility imposed by law. We do not believe that claimant has established the proof necessary to justify recovery.

For the reasons above stated, the claim is hereby denied.

(No. 5637—Claimant awarded \$1,500.00.)

CHRIS STRATAKOS, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed April 12, 1972.

SUDAK AND GRUBMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General: SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

DOC BITE—*absolute liability*. Where claimant was bitten by dog, kept in the grounds of a school by respondent, there is absolute liability on the respondent, an award will be entered.

BURKS, J.

Claimant was bitten by a dog owned or kept by the respondent and brings this action for damages resulting from the injury he sustained. The pertinent facts which are undisputed in this case are as follows:

At the time of the incident, claimant, an employee of the Edward **Don** Company, was delivering a package to the office of the DuPage State Boys School located at Naperville, Illinois. After making his delivery and while leaving the said office, claimant was bitten on the lower calf of his right leg by a medium sized collie dog, which was kept on the grounds of the school by the respondent.

Ronald J. **Fos**, acting principal of the DuPage State Boys School, testified that the dog was a Toy Collie that had been at the school about two months after he had been given to the school by a family that was leaving the state.

Mr. Fos said the dog was generally kept on a chain to prevent him from running around and from leaving the school, but had never previously bitten or threatened to bite anyone.

Being in his office at the time of the incident, Mr. Fos examined the claimant's wound and then called the Naperville Police who had the dog checked for rabies. Shortly thereafter, claimant went to the Edwards Hospital in Naperville where he received first aid. Subsequently, he was treated by his own physician, Dr. Stanley Budrys.

In the absence of any evidence to the contrary, we conclude that the dog attacked the claimant without provocation and that claimant was peaceably conducting himself in a place where he had a lawful right to be. Under these circumstances, the **liability of the respondent for claimant's injuries** is absolute, by statute, even though respondent did not know of the vicious propensities of the dog. See *Ch. 8, Sec. 12d, Ill.Rev.Stat.*, 1971.

The only remaining question to be determined is the amount of injury sustained by the claimant.

Claimant's medical specials are as follows:

Edwards Hospital	\$ 6.60
Dr. Stanley Budrys	185.00
Medicines	20.00

Claimant testified that he saw Dr. Budrys ten or twelve times over a period of one month and that, as a result of the treatments, he suffered an allergic reaction which caused him much pain and difficulty. He further testified that he lost approximately six **days** from work, or a monetary loss of about \$300.00.

Medical reports of Dr. Stanley Budrys and Dr. Lydia Serenyński, who treated claimant at the Edwards Hospital, were admitted into evidence by stipulation. Claimant was examined on behalf of the respondent by Dr. Zygmunt

Buchsbaum, and his report was also introduced into evidence by stipulation. Dr. Buchsbaum states that claimant now has “A well healed wound, very faint, hardly visible small scar on his right calf” antl “Probability of no residuals in the future”. Dr Lydia Serenynski’s report concurs with that of Dr. Buchsbaum. Nevertheless, we cannot entirely discount the less favorable prognosis of Dr. Budrys who stated, “In view of the persistence of the cornplaints of pain upon activities of standing, walking and driving, there is a strong probability of deep tissue damage to the leg, which, if present, will continue to plague him indefinitely.” Nothing that this opinion is based nierely on “complaints of pain” given by the claimant, we must conclude that the weight of the medical evidence does not support a finding of any injury of long duration.

It is our judgment that an award be made to the claimant in the amount of \$1,500.00.

(No. 5803—Claimant awarded \$10,000.00.)

BURLINGTON NORTHERN, INC., Claimant, *us.* **STATE OF Illinois,**
DIVISION OF WATERWAYS, Respondent.

Opinion filed April 12, 1972.

T. G. SCHUSTER, J. L. PILON AND P. M. LEE, antl **BARRY N. GUTTERMAN,** Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6220—Claimant awarded \$995.67.)

RIVEREDGE HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed April 14, 1972.

RIVEREDGE HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6435—Claimant awarded \$44.00.)

BERZ AMBULANCE SERVICE, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 14, 1972.

BERZ AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6436—Claimant awarded \$48.00.)

BERZ AMBULANCE SERVICE, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 14, 1972.

BERZ AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6439—Claimant awarded \$50.00.)

AERO AMBULANCE SERVICE, INC., Claimant, *vs.* STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 14, 1972.

AERO AMBULANCE SERVICE, INC., Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has **lapsed**, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5244—Claimant awarded \$25,000.00.)

WILLIAM BURKE, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 18, 1972.

RUSSELL J. GOLDMAN, JOHN R. SNIVELY, Attorneys for
Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.

NEGLIGENCE—structural work act. Where claimant's injuries resulted from the use of a ladder the respondent should have **known** was defective, respondent was actively negligent.

PRISONERS AND INMATES—contributory negligence. Prison inmate could not be found guilty of contributory negligence where he could not refuse to take orders.

HOLDERMAN, J.

This is a claim for severe injuries sustained by the claimant when he was an inmate at Menard Penitentiary. The complaint, stated in three separate counts, contends that claimant's injuries were caused by respondent's negligence; a violation of the Structural Work Act; and by respondent's failure to provide claimant with timely and proper medical care and treatment after he was injured.

Claimant, in his testimony, gave a detailed account of the circumstances and events before and after his injury which have a bearing on his claim. Respondent offered no rebuttal testimony but challenges the conclusions as to liability that may be drawn from claimant's statement of the facts.

Claimant was a bricklayer by trade and had followed that occupation for over 17 years prior to his incarceration. On October 22, 1963, while an inmate at Menard, claimant was ordered by the respondent to do certain tuck pointing and masonry work on the penitentiary wall. The wall was approximately 22 feet high. Although claimant had asked the officers in charge for a swinging scaffold, he was required to work on a plank suspended between two 20 ft. wooden ladders with inserted brackets to support the platform plank. Claimant described the wooden ladders as having been repaired with wire and protested to the guards that he did not believe they were safe. He again asked for a swinging scaffold which he said would go **up** fast and be safer for the workers. In claimant's unrefuted testimony he quoted Sgt. Kistro, one of the guards, as saying that the ladders were in; that claimant would have to use them and ordered him to do so.

While claimant was engaged in the directed work, another prisoner who was assigned to the same task came up one of the ladders and stepped onto the plank. As he did so, the supporting brackets gave way, causing the plank to

tilt and the claimant to fall to the ground. Claimant suffered a compound fracture of the left leg. He saw the bone sticking out about three inches above the ankle.

Claimant's unrefuted account of the medical care and treatment he received shortly after his fall, and for a long period of time thereafter, paints a vivid picture of intense pain and suffering.

Immediately after the accident, claimant lay on the ground for a short period of time before he was finally administered a shot requested for him by a Catholic priest. About 10 minutes later, he was removed on a stretcher to the prison hospital. There his leg was set by Dr. Wham and placed in a cast. No anesthesia was administered.

The leg became swollen and he ran a high temperature. When the leg became very discolored, the cast was cut off, the leg was opened and drained without benefit of anesthesia.

For several months, the condition of his leg did not improve. It was constantly draining. Three or four months after the original accident another doctor was called in for consultation. Claimant had requested an orthopedic surgeon shortly after the accident, but none was provided until after he was transferred to Stateville. There Dr. Duffy, an orthopedic surgeon from Joliet, was brought in to see him on April 23, 1964. One week later Dr. Duffy performed an operation on the leg, scraped and cleaned the bone, and put in a hose to keep it draining. There was further surgical procedure in November of 1964 when Dr. Duffy performed a bone graft and put in a pin or a rod in the claimant's leg.

In March of 1965, after claimant was paroled, he was transferred to Hines Hospital where he stayed for approximately three and one half to four weeks. From Hines he was transferred to Rockford Memorial Hospital where

Dr. Sam Behr took over. Dr. Behr removed the cast which extended from the left hip down to the toes. The leg was still troubling the claimant, emitting a strong odor, and started swelling again. After several months of therapy treatment, Dr. Behr performed a final operation and removed the pins in August of **1965**.

Respondent, in a well presented brief, has analyzed claimant's testimony and bases its conclusion, that liability should be denied, on four theories:

1. Respondent did not know and, in the exercise of reasonable care, could not have known that the rungs would **pull** out from the ladder at the time in question.

2. Respondent was not guilty of a "willful" violation of the Structural Work Act.

3. **Respondent** exercised reasonable care in providing medical treatment for claimant's injuries.

4. Claimant did not carry his duty of proof by the preponderance of the evidence.

The Court finds that the facts do not support respondent's first theory. It need not have been foreseeable that "the rungs would pull out from the ladder at the time in question". We hold that, if the respondent had exercised reasonable care for claimant's safety, it could have determined that the ladders used were unsafe as claimant had warned, particularly for two men, a plank, and the weight of the working materials. Claimant was a man with long experience in the type of work he was required to do for the respondent, knew the dangers and hazards of such work, and the type of equipment needed to protect the workman. Yet respondent did not heed claimant's professional opinion and warning that the ladders were not safe and refused his request for a scaffold which he deemed proper. In the absence of any contradictory evidence, we

also accept claimant's statement that Captain Fry, a prison employee, admitted to the claimant that the ladders had been condemned and should not have been used.

We find that the facts in this case support a finding of actionable negligence by the respondent.

The record also clearly shows that claimant could not be found guilty of any contributory negligence. The defenses of assumption of risk and contributory negligence are often properly available to the respondent in actions brought by a convict, but certainly not under the facts in this case. The rule is well stated in *Moore vs. State*, 21 C.C.R. 282, p. 290:

"Claimant, as a convict, was required to take orders, and carry them out. To refuse to do so would subject him to disciplinary action, and the forfeiture of his limited privileges, including prompt consideration for parole. Thus, he did not occupy a position of independence, which a person outside a penitentiary occupies. His choice of action being limited, he, therefore, kept silent and did as he was ordered. In fact, he did not possess, under the circumstances in this case, the freedom of choice inherent in the doctrines of assumed risk and contributory negligence."

Respondent undertakes to distinguish *Moore* from the case at bar. The facts are different, but the rules of law stated in *Moore* are applicable here.

Having determined that claimant is entitled to an award for his injuries, we need not discuss the conflicting arguments presented by the parties concerning the Structural Work Act. Nor do we need to elaborate on the question as to whether respondent exercised reasonable care in providing medical treatment for claimant's injuries. Suffice it to say that claimant's injuries are serious and permanent, according to the testimony of Dr. Rehr. The appearance of claimant's leg, which the Court saw when he appeared before us on his crutches, left no doubt in our mind as to the accuracy of Dr. Behr's conclusion and prognosis.

Dr. Behr stated that claimant has permanently lost ap-

proximately 50% of the use of his left leg and can do no work that requires the use of that leg. He can walk with the use of crutches but can no longer work at his former trade of bricklayer and stone mason. Claimant was 36 years old, bodily sound, and in good health at the time he sustained his permanent injuries.

Claimant is hereby awarded damages in the amount of \$25,000.00.

(No. 5494—Claimant awarded \$20,000.00.)

GERALD T. KOEHLER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 18, 1972.

RAY H. FREEARK, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

HIGHWAYS—accumulation of ice. Where it was reasonably foreseeable that roadway would become icy, the failure of respondent to erect signs, barricades, or other warnings, was negligent.

PERLIN, C.J.

Claimant seeks recovery of \$25,000 for injuries suffered on December 22, 1967, as a result of a motor vehicle accident.

Claimant contends that the accident was the result of respondent's negligence in permitting flood water to cover U.S. Route 50 at a point where it crosses Silver Creek; negligently failing to apply salt to prevent the flood water from freezing; failing to prevent the water escaping from Silver Creek onto the highway; failing to make inspections; failing to warn the plaintiff of the icy condition on the highway; failing to detour traffic around the alleged dangerous condition; and failing to close the highway.

Claimant testified that he was a teacher and basketball

unavoidably swerved to the right: that claimants' auto had been in a place of safety behind the **snowplow**; that there were warning lights on the truck; that claimant left the area of safety and tried to pass the snowplow truck on an un-cleared path without giving sufficient clearance to pass respondent's vehicle; and that the driver of claimants' car was contributorily negligent.

The respondent further charges that the passengers, Marie Rivoltorto *and* Yolanda Romanazzi, were guilty of contributory negligence because they allowed themselves to be placed in a condition of danger and did nothing to reduce or correct the danger, such as asking the driver of their auto to stay in the cleared path behind the snowplow or to avoid passing the truck too closely.

While the witnesses were not **in agreement** as to whether the snowplow blade suddenly fell in front of claimants' car or whether the truck skidded in front of claimants' car, it would appear that respondent was negligent.

There was no evidence that claimant was contributorily negligent in passing the snowplow by traveling in the middle lane or not swerving into the third lane. Weather conditions were not too dangerous to permit driving on the expressway, as evidenced from the testimony which established heavy traffic using the road at the time of the accident.

The claimant cites the similar case of *Hargrave vs. State*, 24 C.C.R. 463, 467, in which the court stated:

"Respondent claims that this was an unavoidable accident. It is the opinion of the Court that the doctrine of *res ipsa loquitur* is properly applied in the case at hand, since, if proper care had been used, a snowplow frame does not ordinarily fall off a truck causing the truck to come to a sudden stop."

The doctrine of *res ipsa loquitur* has been defined as follows:

coach at Althoff High School in Belleville on the date of the accident and at the time of the hearing; that he drove from Belleville to a school game at Breese by way of Route 50, having left Belleville about 6:00 p.m. The eastbound lane of the road was dry and in good condition. Claimant followed the same route back to Belleville about 9:30 p.m. The weather was clear, and he was going fifty to fifty-five miles per hour (the speed limit was 65 miles per hour) when the car started to spin. He then blacked out and woke up in the car. He had no previous warning of slickness or icy conditions prior to spinning and sliding and the accident occurred at a level stretch of road. Prior to the accident, he enjoyed good health. Injuries included having his spleen removed, a damaged liver and heart, an injured kidney, a hole knocked in the orbit of the eye and a broken bone below the left eye.

Claimant further testified that he was confined in the hospital from the date of the accident until January 29, 1968, with a second confinement for an operation to the orbit of his left eye. He lost weight and at the time of the hearing in 1968, was still unable to work a full day or play tennis or basketball, activities he had previously enjoyed.

State Trooper John R. Mayer, who investigated the accident, testified that he arrived at the scene about 10:25 p.m. He observed that there was rain or water that had come up on the highway in the eastbound lane and that it was freezing, causing slick conditions. He further testified that there were both water and ice on the westbound lane and that after he arrived on the scene, another car swerved off the road at that point. His investigation showed that the Mustang car driven by claimant apparently lost control and came across into the eastbound lane where it was struck in the side by a 1966 Chevrolet pickup truck. There was a low spot on the road where the water came up. There

was no rain at the time of the occurrence. After the witness completed his investigation, he called the highway department to cinder and salt the highway and put a low spot warning that there was ice on the road. The following day, the road was closed for high water and traffic was re-routed. At the time of the accident, there were no barricades, signs, cinders, or salt on the road.

Leon Streif, who operated a garage and wrecking service, was called to the scene of the accident. Road conditions were "a sheet of ice," but it was not raining at the time of the accident. He had seen water over the road on other occasions, but he had not seen icy conditions. He testified that during the five previous years, water had been on the road after a heavy rain because of Silver Creek "obstruction or congestion." He remembered floods closing the road at the point in question in 1951 and 1954, and that within five years there had been water on the road on several occasions.

Michael Pier, a student, testified that on the date of the accident, he was driving along Route 50 at the point in question between 8:00 and 8:30 p.m. and noticed the water was high and almost on the road and was up to the side of the pavement. He came home on the highway about 9:00 and slowed down because the road was becoming slick. He had seen water on the road before. He had also, on occasion, seen the highway barricaded when water was on the road.

Charles Gray testified that he was a member of the volunteer fire department for Lebanon and was called to the accident between 10 and 11 p.m. The creek was on the verge of going over the road. He remembered that 1958 was a time of a big flood. He stated that there is usually a small amount of water which collects after a rain at several

spots. He did not remember if the creek had gone over the road in the last five years.

William Pfeffer, a farmer, testified that part of his farm is between Silver Creek and the channel. He has seen water from Silver Creek overflow at the banks at Highway 50 many times, although he could not give the dates. Water would come up to the edge of the concrete and the wind would cause it to splash over the road.

Another farmer in the area, Terry Plab, testified that Silver Creek has overflowed its bank and gone up on the pavement at Route 50 about 3 or 4 times during the past five years.

Witnesses for respondent included the following: Edward Jankowski, Assistance District Maintenance Engineer of the area in question, a job which he had held since April, 1967, who testified that between December 20-21, 1967, there were 3.35 inches of rain and a trace of rain on December 22, 1967. He did not know of Silver Creek overflowing its banks between 1961 and the date of the accident.

George Huhman, civil engineer with the Division of Highways testified that he inspects highways and oversees twenty-three maintenance sections. On the day of the accident, he encountered flooding at another point and spent most of the day there. He had passed through Silver Creek at 7:00 a.m. and 4:30 p.m. that day, but could not see too much because of darkness. He had come into the maintenance section in October and was not familiar with the Silver Creek bottom area. He was called to the scene of the accident where he observed ice and water completely across the road. On the day in question, there were floods throughout the area and the maintenance personnel were so

concerned about other areas that they “weren’t hardly paying any attention to Silver Creek.” Mr. Huhnan explained that the Silver Creek bottom area is a large, flat, marshy area and that whenever Silver Creek is high, it overflows into the area and causes a backup area in the bottom. Mr. Huhman further testified that there is a low place along Silver Creek “where the road has a tendency to collect water after a heavy rain.”

Walter Dawson, a section man for the State Highway Department, testified that he was familiar with the water in the Silver Creek area, and that he has known water to come over Silver Creek in 1961 or 1962. He was called to the scene of the accident where he put salt on the pavement and noticed about six inches of water on a small strip of pavement. On the afternoon of the accident, he had looked at a red flag he had placed along the water edge to see what the water level was and he had “Water on Pavement” signs with him, but did not put any at that place.

Another section helper, Ralph George Herman, testified that he passed through the Silver Creek area about 8:45 p.m. the evening of the accident and the highway condition looked normal, but noticed water on the highway upon his return at the scene of the accident. He stated that he had worked for the Highway Department since 1963, and that this was the first time he had seen water on the highway.

Joe Madura, also a Highway Department worker testified that he noticed that the water level had risen during the day of the accident, but the workers did not put up any signs, although they did put up a stake.

Respondent contends that there was no verified flooding since 1961 and that not one witness testified that he had ever seen ice on the pavement due to flooding, therefore the State had no reason to believe that water would encroach upon the highway or if it did, that it would

constitute any more than a nuisance. “Reasonable care,” according to respondent would not appear to include having to anticipate simultaneous circumstances of encroachment and freezing, when encroachment was very rare and encroachment and freezing combined was never known to have occurred before. Respondent also suggests that claimant did not use due care, although no evidence was introduced to support that allegation. The Court fails to understand why no apparent effort was made toward this end to obtain the testimony of Vernon Coleman, the driver of the pickup truck which collided with claimant’s automobile.

No one disputed that there were no barricades or warning signs advising the public of the condition of Silver Creek, nor that there was a history of water upon the road at the spot in question, due to the overflow conditions of Silver Creek.

The instant case is similar to the following Court of Claims cases: in *Carr vs. State*, No. 4901, the respondent was held negligent for failing to take precautions where an unusual accumulation of ice existed on the highway and the surrounding area was dry. In *Bovey vs. State*, 22 C.C.K. 95, the respondent was held liable for an accident which occurred on an icy bridge, although it had taken precautions to help alleviate conditions and posted a “Bridge Slippery When Wet—Frosty” sign, because its precautions were inadequate to remedy the situation. The bridge was subject to freezing when there was no evidence of ice, snow, or extremely cold weather in the surrounding area . . . “thus creating a trap for the unwary traveler.” (p. 111) The court cited other cases which involved traps created by unexpected icy areas.

Although the area in question may never have become icy in the past when there was water on it, it was reasonably

foreseeable that it would become icy and hazardous when the temperature dropped below freezing after the amount of rainfall it sustained. The failure of respondent to erect signs, barricades, or other warnings of the "trap" was negligent and was the proximate cause of claimant's accident.

Claimant's physician, John S. Hipskind, testified that claimant suffered interabdominal hemorrhage, a lacerated spleen, which was removed, and a lacerated liver, as well as pneumothorax of the left lung. He testified that there would be residual effects because of loss of the spleen and that there could be a problem with regard to the lung, which would take surgical procedure to correct.

Dr. Lorenzo P. Maun testified that he performed plastic surgery on claimant to correct the eye receding into the skull. The doctor stated that claimant would need additional surgery to correct the condition if it recurred and that he has a residual disability causing a sinus problem and numbness on one side of the face. That surgery was performed on April 10, 1968.

Claimant has incurred substantial damages and medical fees, and is entitled to recover therefor. A total award in the amount of \$20,000.00 is hereby made in this case, payable as follows:

Gerald T. Koehler	\$ 8,229.03
Althoff Catholic High School and the Maryland Casualty Company, as subrogees	11,770.97

(No. 5543—Claimant awarded \$7,500.00.)

SEBRON BEARD, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April 18, 1972.

GLENN C. FOWLKES, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

PRISONERS AND INMATES—*wrongful* incarceration. Where claimant has made a prima facie case that he is innocent of murder, and proved his case by a preponderance only because his was the only evidence, the court **would be forced to grant an award.**

BURKS, J.

For time unjustly served in prison, according to the complaint in this action, the claimant asks payment of damages from the State of Illinois pursuant to the provisions of Ch. 37, Sec. 439.8(c), Ill.Rev.Stat., 1971, which confers upon this Court exclusive jurisdiction to hear and determine:

(c) All claim against the State for time unjustly served in prisons of this State where the persons imprisoned prove their innocence of the crime for which they were imprisoned; provided, the court shall make no award in excess of the following amounts: for imprisonment of 5 years or less, not more than \$15,000; for imprisonment of 14 years or less but over 5 years, not more than \$30,000; for imprisonment of over 14 years, not more than \$35,000; and provided further, the court shall fix attorney's fees not to exceed 25% of the award granted.

The claimant, Sebron Beard, was arrested in the City of Chicago on February 24, 1961, charged with and indicted for the murder of one Herbert Holmes.

The case was tried before a jury in the Criminal Court of Cook County. The jury rendered a verdict finding the defendant guilty. His motions for a mistrial, for a directed verdict, for a new trial, and in arrest of judgment were overruled by this trial court. Judgment was entered on the verdict and Beard was sentenced to a term of 50 years in the State penitentiary.

About 5 years later, on January 21, 1966, the Appellate Court of Illinois reversed the judgment of the Circuit Court of Cook County and remanded the case for a new trial. (*People vs. Beard*, 67 Ill.App.2d 83; 214 N.E. 2d 577).

The matter was again placed on the docket of the Criminal Division of the Circuit Court of Cook County for

trial. At the new trial the People did not present any evidence against Beard. No witnesses were called to testify. On Beard's motion, an order was entered by the Court discharging him on July 25, 1966.

From February 24, 1961, the date of his arrest, until July 25, 1966, the date of his final discharge, claimant spent a total of five years and five months in custody in the Illinois State Penitentiary and the Cook County Jail.

The key question before this Court is whether the claimant, Sebron Beard, has proved that he was innocent of the crime for which he was imprisoned. This Court has consistently held that Illinois Statute, cited above, makes it clear in plain language that such proof of innocence is a condition precedent to any recovery of damages under Illinois law.

This Court in *Jonnia Dirkans vs. State of Illinois*, 25 C.C.R. 343 (1965) was called upon for the first time to interpret the then comparatively new §439.8(c) in the Illinois Court Claims Act, which the Legislature had added to this Court's jurisdiction in 1958, the subsection under which this claim is brought. Our opinion in *Dirkans* dealt in depth with the intent and meaning of the said subsection and particularly with the words, "Where the persons imprisoned prove their innocence of the crime for which they were imprisoned". *Dirkans* held, inter alia, that said language, which is unique in the Illinois law, means that a claimant filing under this subsection must prove affirmatively in this Court, by a preponderance of the evidence, that claimant was innocent of the "fact" of the crime for which he was convicted.

To hold otherwise would distort the clearly expressed intent of the legislature and open the treasury of Illinois to a flood of claims that were never contemplated by this subsection (c).

Consistent with the *Dirkans* decision, *supra*, which has been cited and reaffirmed many times by this Court, we would merely add a principal of law that is long and well established in this state, namely, "Statutes in derogation of the common law must be strictly construed." *Z.L.P. Statutes §176*.

To make a fair determination and judgment of the evidence submitted by the claimant to this Court as proof of innocence, it is necessary to review briefly the conflicting evidence submitted at the original trial.

Evidence in the trial court on behalf of the people was as follows: the decedent, Herbert Holmes, was employed part-time as a bartender at the Anchor Inn Tavern in Chicago. The proprietor of that establishment refused to serve defendant Beard further at about 10:30 or 11:00 p.m. on February 24, 1961. Beard left the premises and returned almost immediately. The decedent, Holmes, went up to Beard, talked with him for two or three minutes, then escorted him out of the tavern. Ten or fifteen minutes later a gun went off, and Holmes was dead. The People's key witness, Jearlean Rubio, testified that she had seen the two men "tussle" with each other in front of the Anchor Inn; that Beard pushed Holmes onto the hood of an automobile, and that Beard then came up with a gun. Mrs. Rubio turned her head away and then heard the gun go off three times. When she looked back, Beard was standing over Holmes and was holding the gun in his hand. Holmes staggered onto the street before collapsing and dying. The police arrived about fifteen minutes later, arrested the defendant, and charged him with murder. The police took a gun which the defendant was holding in his hand.

The defendant (claimant before this Court) took the stand in his own behalf and testified that when the decedent pushed him out of the door, the claimant asked

Holmes if he was crazy. Thereupon, Holmes kicked him. Beard started to grab him, and Holmes came up with this gun. The claimant then grabbed for the gun and the two men started tussling over it. During the struggle the gun went off, and Holmes toppled over dead.

The claimant Beard, also testified that the gun was not his, nor did he have it on his person prior to the tussle. By the testimony an issue was raised as to whether or not the gun belonged to the decedent and as to whether or not it was discharged while the defendant and the decedent were struggling for its possession.

In the Appellate Court, the claimant, Sebron Beard, successfully argued that many alleged errors were committed in the trial court; among others, that the court erred in admitting into evidence People's Exhibit One—a revolver; in restricting the cross-examination of the State's principal witness; in ruling that the defendant's request addressed to the Assistant State's Attorney for statements of witnesses taken before trial would be refused unless the request was made in the presence of the jury; and in preventing the defendant from having a fair trial because of the prejudicial conduct and remarks of both the trial judge and the Assistant State's Attorney.

The Appellate Court, after agreeing with several of Beard's specific charges of errors at his trial, concluded:

"It is unnecessary to dwell upon the many claims of defendant that he did not receive a fair trial because of the tactics of the State's Attorney and the rulings and comments of the trial judge during the trial. There were endless objections to the form of questions and to the answers made. There were countless interruptions and continual bickering. We hope that this will not be repeated when the case is retried. The judgment of the Circuit Court of Cook County is reversed and the case is remanded."

Apparently there was **no** bickering at the claimant's new trial in the Circuit Court of Cook County as the People offered no evidence against Beard **and** he was discharged. There is no explanation in the record **as** to why the State's key witness, Mrs. Jearlean Rubio, was not called by the State at Heard's second trial since her testimony had undoubtedly carried weight with the jury in securing claimant's original conviction. The record shows that Mrs. Rubio died in Chicago on August 7, 1968, nearly two years after Beard's second trial and shortly after he filed his case in the Court of Claims. Circumstantial evidence, supported by the record, suggests a motive and the probability that Mrs. Rubio gave perjured testimony at the claimant's original trial and, therefore, refused to appear at his second trial.

In claimant's presentation **of** his case before this Court, he called as a witness, Stonewall Barksdale who completely denied all of the statements made by the State's key witness, Jearlean Rubio, at Beard's first trial. Barksdale testified that he was in the company of the said Jearlean Rubio in The Budweiser Tavern across the street all the time while the fight between claimant and the decedent was going **on**: that they knew nothing of the matter until they heard the shots fired: that when they got out onto the street, Holmes had already been shot: that, contrary to Jearlean Rubio's testimony in the original trial, she had not seen the shooting or any part of it.

Barksdale's rebuttal of Jearlean Rubio's testimony in the trial court, while interesting!, is by no means conclusive nor entirely relevant to the essential issue before this Court. Barksdale's testimony, which we accept for such probative value as it may have, merely impeaches the credibility of the State's key witness and supports the conclusion that Beard **did** not receive a fair trial in the Circuit Court. But that fact was established by the Appellate Court's order

reversing and remanding. In this Court, to sustain his claim for damages, it is incumbent upon the claimant to prove, by a preponderance of the evidence, that he is innocent of the crime for which he was imprisoned.

Confining ourselves to this issue and to the evidence submitted before this Court, we next consider a summary of claimant's own testimony at the hearing before this Court.

The Anchor Inn was located on the northwest corner of Madison and Hermitage Streets in Chicago. On the northeast corner was located the other tavern known as The Budweiser. Claimant testified that he had spent the evening of February 24, 1961, going from the one tavern to the other from 4:30 p.m. until approximately 10:00 p.m. At about 10:00 p.m., as claimant was leaving The Anchor Inn, the owner of the tavern told him "to get out; that he didn't want my business." As claimant was inquiring of him why he took this attitude, Herbert Holmes, the bartender, came up and struck claimant saying, "Get out of here. You heard what the man said. Get out of here. He don't want your business." Holmes then pushed claimant out the door of the tavern and closed the door. The door had a small glass pane in it and claimant tried to talk to Holmes through the glass. Holmes opened the door and kicked claimant. The two men started to fight with each other. While they were struggling, Holmes reached back and pulled a pistol out of his right hip pocket.

Claimant said, "When I went to grab him, he upped with his pistol. I grabbed him and we began tussling; we were going around and around. The gun went off two or three times; somehow, I don't know exactly how it happened, the gun twisted around and it went off and the bullet hit him in the shoulder and he began to weaken and he turned

the gun loose to me and fell. I did not get the gun in my hand until after he was shot.”

“I do not know which hand the deceased used to pull out his pistol; I grabbed the first hand I seen; I never did turn that hand loose; I do not know if he shifted the pistol from one hand to the other; if he did, I don’t know anything about it; I was holding onto the hand that had the pistol in it.”

As respondent points out in its brief, the only person alive when the hearing was held before this Court who could testify as to whether Holmes was murdered, died accidentally, or was killed by the claimant in self defense, was the claimant. Naturally, as respondent contends, claimant’s statement must be viewed as likely to be self-serving. But, self-serving or not, claimant’s statement stands unimpeached before this Court. The respondent failed to offer any rebuttal testimony or any evidence of any kind before this Court. As stated in Gard, Illinois Evidence Manual, on page **661**;

“Where testimony is uncontradicted and is not inherently improbable or otherwise self-impeaching it may not be disregarded.”

To this Court the claimant also presented William Henry, Jr., an eye witness, who testified that while the struggle was going on he and his girl friend were sitting in the front seat of his car parked immediately east of the intersection on the north side of the street, facing west. They were parked in front of The Riidweiser Tavern and looking towards The Anchor Inn. He stated that his view of the struggle was unobstructed and he was sufficiently close to the scene to watch it. He testified that the gun was at all times in Holmes’ hand until after Holmes was shot.

The testimony of this eye witness also stands unimpeached before this Court except for his inswerving in-

sistence that the incident took place in the late afternoon rather than late at night. However, the witness Barksdale testified that there was ample light from a Budweiser sign and a street light so that a person “could see good”. “You could see from one side of the street to the other”. Barksdale said.

Respondent challenged the credibility of claimant’s witnesses, William Henry, Jr. and Stonewall Harkscdale, because neither of them had testified at the original trial of the claimant even though both of them were accessible at the time. Respondent contends that this Court, in the *Dirkans* case, announced the position that the production of a witness at a Court of Claims hearing who was accessible to the claimant at the criminal trial, but not called at that time to testify, so impairs that witness’s credibility as to impeach him. We **do not find** that the *Dirkans* case went that far nor stated respondent’s conclusion as an inflexible rule. These circumstances are merely factors which this Court will consider in assessing the credibility of witnesses, as we did in questioning the credibility of the State’s key witness, Mrs. Rubio, who helped convict the claimant at his original trial but was not presented by the State at his second trial although she was accessible.

Finally, respondent states in its brief, “If Heard has raised a doubt as to whether he committed murder, it seems clear that he was guilty), of manslaughter”. This suggestion overlooks the plain language of the statute which states that the claimant **must** prove only that he is innocent of the crime “*for which he was imprisoned*”. That crime was murder, not manslaughter or some lesser crime of which he might well have been found guilty under the admitted facts in this case. Obviously we cannot apply a rule of strict **con**-struction to **one** part of the statute and place a liberal **con**-struction on another part of the same sentence.

It appears to us that, under the ordinary rules of evidence, claimant has made a prima facie case before this Court that he is innocent of murder, the crime for which he was imprisoned. He has done so by a preponderance of the evidence. We are obliged to acknowledge claimant's evidence as preponderant because his was the only evidence presented at the hearings before this Court.

We realize that the task of obtaining competent evidence concerning a crime committed more than five years earlier is often extremely difficult. In this case the respondent apparently found the task impossible, as did the State's Attorney of Cook County.

This Court takes no pleasure, under these circumstances, in granting an award for time "unjustly" served in prison when the admitted facts in this case would appear to justify a prison sentence had the claimant been charged with a lesser crime than that of murder. However, we must conclude that the time claimant served in prison for the crime of murder was time served for the wrong reason and was, therefore, technically, time unjustly served.

It is the judgment of this Court that claimant be awarded the sum of \$7,500.00.

(No. 5588—Claim denied.)

HAROLD HENRY STEGE, Claimant, *vs.* **STATE OF ILLINOIS**
Respondent.

Opinion filed April 18, 1972.

GABRIELE AND NUDO, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL K. WEXLER,
Assistant Attorney General, for Respondent.

HIGHWAYS—*maintenance of roadway.* To recover for damages arising out of a defect in the roadway, the defect must be substantial enough, and it must exist for

such a length of time that reasonable persons would conclude that immediate repairs should be made, or warning signs posted.

HOLDERMAN, J.

In this case claimant is seeking to recover for personal injuries he received under the following circumstances.

On April 1, 1968, at about 2:00 a.m., claimant was operating his automobile in a northerly direction on and along Route 43 (commonly known as Oak Park Avenue), at or near 18020 South in the Village of Tinley Park, Cook County, Illinois; claimant testified his automobile struck a hole in the road as a result of which his automobile veered off the road, struck a concrete culvert or abutment, and as a result of the impact, sustained severe and permanent personal injuries.

Claimant testified that he was driving about 35 miles per hour. He stated that he saw the rut in the road and attempted to avoid hitting it but that in doing so, caught his right wheel in the rut and that this caused the car to veer to the right striking the cement abutment. As a result of injuries received, he was taken to South Suburban Hospital where he remained for 8 days. Several of his teeth were knocked out and the cuts he received required about 100 stitches.

The law involved in a case like this has been stated on many previous occasions. The State has the duty to maintain its highways in a safe condition or to warn traffic of the existence of unsafe conditions. *Rickelman vs. State of Illinois*, 19 C.C.R. 54. Also, if the State has knowledge, either actual or constructive, of a dangerous condition on its highway and fails to warn the public of the danger, then it must respond in damages for injuries received as a result. *Bovey vs. State of Illinois*, 22 C.C.R. 95, page 108. We have also held, however, that the State is not an insurer

against accidents on its highways. *Bloom vs. State of Illinois* 22 C.C.R. 582. The law is the law of negligence and not the law of warranties.

The issues in cases where a member of the traveling public is injured as a result of a claimed defect in the highway are issues of fact to be determined by the Court.

In the case at hand, the claimant had the burden of proving that there was a defect in the highway, that the State had actual or constructive notice of the defect, and that claimant was free of contributory negligence.

The test of whether or not a fact has been proven is best set forth in Illinois Pattern Jury Instruction where it is said, in defining burden of proof: that this means

“you must be persuaded, considering all the evidence in the case that the proposition on which (claimant) has the burden of proof is more probably true than not true.”

Thus, there is room for reasonable doubt and still a fact has been proven. The crux of the definition is whether or not the evidence persuades the Court that the fact is more probably true than not.

In the case at hand, claimant described the hole in the road as being about two or three feet long, seven inches deep at its deepest point and about four inches deep on the edge. His observation was made while traveling and immediately before he hit the hole. The hole was on the right-hand edge of the road. Claimant testified that he had traveled over this road at least once a week for over a year and that approximately one month after the accident the hole had been repaired.

Two police officers of Tinley Park testified. One stated that he viewed the area for approximately 300 feet south of the scene and that he observed no chuck holes. The other

police officer testified that on the morning of the accident that he too did not observe any chuck holes. Neither testified, however, that they were on the look out for defects in the highway.

In answer to this, however, claimant produced a photograph of the road at the approximate place at where the accident happened. The pictures showed definitely that a repair had been made to the highway at sometime. The pictures were taken in June of 1968, approximately two months after the accident.

The Court believes that it is more probably true that there was a hole in the road of some sort though not necessarily the size and shape stated by claimant. On this issue the claimant has met his burden of proof.

The claimant also was required to **meet the burden** of proving that the State had actual or constructive notice of such a defect. The record is silent as to any actual notice, and, therefore, the ultimate issue in the case at hand is whether or not there is sufficient evidence in the record to persuade the Court that the State had constructive notice of a defect which required fixing or of giving warning. The Court is of the opinion that claimant has failed to meet his burden of proof of this fact. While there is some evidence supporting claimant, it is believed that the evidence is insufficient.

The two police officers did not notice any hole in the pavement. No other person testified as to the presence of the hole or of having any knowledge of the hole other than an attorney who at one time apparently had some interest in the case on behalf of the claimant. The attorney's testimony was inconclusive in identifying the hole in the highway noticed by him as being the same hole that was involved in the claimant's accident. The attorney's testimony was weakened by the fact that he said there was no white line

along the edge of the road. However, photos taken the day after the accident show clearly and plainly that there was a white line along the east side of the road. His observations were not accurate. The Court believes his testimony was too weak to be persuasive.

The Court therefore is of the opinion that the claimant has failed to prove by competent evidence that the alleged defect was of a nature to have been noticed by the State in ample time to repair or to post warnings.

It would be unreasonable for the State to be held liable for every possible defect in its highways.

There are unnumerable rough spots in public highways and such should be anticipated by motorists. Some defects are more unusual or are more glaring than others. These could well be the basis for requiring the State to respond in damages where they exist for such a time that it is reasonable to say that the State should have known of their existence.

The defect must be substantial enough, and it must exist for such a length of time that reasonable persons would conclude that immediate repairs should be made or warning signs posted. The traveling public must anticipate some defects. There is no absolute duty on the State, however, to discover and remedy all defects. *Joyner vs. State of Illinois*, 22 C.C.R.213.

It is evident that claimant has failed to prove his asserted cause of action by preponderance or greater weight of the evidence.

Award to claimant is hereby denied.

(No. 6025—Motion of Respondent to dismiss allowed.)

RONALD LANDSMAN and DAVID ZARANSKY, As Co-Administrator of the Estate of Lou FUSHANIS, Deceased, Claimants, vs. STATE OF ILLINOIS, Respondent.

Opinion filed April 18, 1972.

BERNARD ALLEN FRIED, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General, for Respondent.

LIMITATIONS—*vendors to state*. Landlords come within purview of Section 22 of Court of Claims Act, which limits cause of action by vendors to one year.

BURKS, J

This cause is now before the Court on respondent's motion to dismiss claimants' amended complaint. A reply to respondent's motion, filed by the claimants on January 17, 1972, is also before us.

Respondent makes a persuasive argument on several points, in support of its motion, which raises a serious doubt as to the merits of the claim. However, the Court finds that the statute of limitation, having run before claim was filed, is a bar to the action and is sufficient grounds for dismissal. Therefore, we need not discuss the other issues presented in the pleadings.

We, will, however, explain the Court's interpretation of the statute of limitation involved since claimants have urged a different interpretation in their reply to respondent's motion to dismiss.

In this action claimants sought to collect the sum of \$1,800.00 for rent withheld by the Illinois Department of Public Aid because of building violations on property located at 705 S. Claremont Avenue, Chicago, Illinois, for the period of October 1, 1967, through March, 1969. The claim was filed in this Court on January 12, 1971, some 22 months after the end of the period for which claim is made.

Claimants subsequently offered in evidence a "Certificate of Inspection" dated September 30, 1971, as proof that the building was brought into full compliance on that date. An examination of this document shows it to contain the following statement which indicates that there were still

violations then: "Replace broken, missing or defective window panes." In any event, the date of this certificate, showing violations rather than compliance, is **2** years and 7 months after the period for which rent was withheld by the Department of Public Aid.

The statute of limitations which bars this claim is found in the following language of **§22** of the Court of Claims Act (Ch. 37, Sec. **439.22**, Ill.Rev.Stat., 1971) which reads as follows:

"Claims cognizable against the State by vendors of goods or services under 'The Illinois Public Aid Code', approved April 11, 1967, as amended shall have a **period of limitation of 1** year after the accrual of the cause of action, as provided in Section 11-12 of that Code."

Claimants contend, in a reply to respondent's motion, that the above limitation does not apply to landlords who rent housing to Public Aid recipients but only to "vendors of goods and services directly to the State". We do not agree. The statute does not contain the words "directly to the State". On the contrary, it uses the words, "goods and services under the Illinois Public Aid Code". Section **2-5** of the Public Aid Code defines "Vendor Payment" as a payment made directly to a person or firm. . . . "supplying goods or services to a recipient". (Ch. **23**, Sec. **2-5** Ill. Rev.Stat., 1971) A common example of claims by vendors in this category, which this Court receives in abundance, is the claim of a doctor or hospital which supplies medicine, medical or hospital services to public aid recipients.

Similarly, a landlord is a vendor of services if the landlord purports to furnish a tenant with such necessities as light, water, heat or janitor services. A landlord is **also** a vendor of an interest in real estate when renting or leasing housing to a tenant, as the term vendor is used in the Public Aid Code.

Section 11-13 of the Public Aid Code contains a restate-

ment of the one-year statute of limitation contained in §22 of the Court of Claims Act and we repeat it here for emphasis. (Ch. 23, Sec. 11-13, Ill.Rev.Stat., 1971)

“Vendors seeking to enforce obligations of a governmental unit or the Illinois Department of Public Aid for goods or services (1) furnished to or in behalf of recipients and (2) subject to a vendor payment as defined in Section 2-5, shall commence their actions in the appropriate Circuit Court or the Court of Claims, as the case may require, within one year next after the cause of action accrued.”

THEREFORE, IT IS HEREBY ORDERED that respondent's motion be, and the same is, granted and the instant cause is herewith dismissed.

(No. 6111—Claimant awarded \$108.32.)

DAVE NARRO, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID**, Respondent.

Opinion filed April 18, 1972.

DAVE NARRO, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6207—Claimant awarded \$4,194.63.)

MOBIL OIL CORPORATION, Claimant, *vs.* **STATE OF ILLINOIS, VARIOUS AGENCIES**, Respondent.

Opinion filed April 18, 1972.

GIFFIN, WINNING, LINDNER, NEWKIRK AND COHEN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6256—Claimant awarded \$850.00.)

ROBERT T. FIELDING, M.D., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed April 18, 1972.

DR. ROBERT T. FIELDING, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLEH,
Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6354—Claimant awarded \$25.66.)

SKELLY OIL COMPANY, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 18, 1972.

SKELLY OIL COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6391—Claimant awarded \$285.00.)

ROBERT M. QUESENBERRY, Claimant, vs. STATE OF ILLINOIS
DEPARTMENT OF TRANSPORTATION, Respondent.

Opiniori filed April 18, 1972.

ROBERT M. QUESENBERRY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6442—Claimant awarded \$46.00.)

**INTERNATIONAL BUSINESS MACHINES CORPORATION, Claimant, us.
STATE OF Illinois, DIVISION OF HIGHWAYS, Respondent.**

Opinion filed April 18, 1972.

**INTERNATIONAL BUSINESS MACHINES CORPORATION,
Claimant, pro se.**

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6444—Claimants awarded \$203.70.)

**GERALD HELLER, ROSCOE WISE, JOHN RALBACH, LOGAN PARKINSON,
HALDOR SCHAP, ELDON HESSELRACHER AND EARL PHILLIPS,
Claimants, vs. STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC
INSTRUCTION, Respondent.**

Opinion filed April 18, 1972.

PETER A. HINDRICH, Attorney for Claimants.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6468—Claimant awarded \$300.00.)

**VILLAGE OF WESTCHESTER, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF CIVIL DEFENSE, Respondent.**

Opinion filed April 18, 1972.

VILLAGE OF WESTCHESTER, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6470—Claimants awarded \$179.80.)

**J. H. SCHMITT, JR., VAUGHN BROWN, RAYMOND CARTER, W. ORLOFF
SMITH, RALPH E. CAMPBELL, JESSE HUNLEY, JR., CHARLES L. DU
LANEY, Claimants, vs. STATE OF ILLINOIS, SUPERINTENDENT OF
PUBLIC INSTRUCTION, Respondent.**

Opinion filed April 18, 1972.

VIRGIL D. SHAFER, Attorney for Claimants.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6487—Claimant awarded \$68.00.)

TRIANGLE TIRE AND BATTERY Co., INC., Claimant, vs. STATE OF ILLINOIS, DIVISION OF HIGHWAYS, Respondent.

Opinion filed April 18, 1972.

TRIANGLE TIRE AND BATTERY Co., INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 3025—Claimant awarded \$11,362.10.)

ELVA JENNINGS PENWELL, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed May 9, 1972.

GOSNELL, BENECKI AND QUINDRY, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

AWARDS—The Court can make awards on a continuing basis when the claimant continues to have expenses as a result of compensable injury.

PERLIN, C.J.

Claimant filed her petition for reimbursement for monies expended for nursing care and help, medical services and expenses from January 1, 1971, to December 31, 1971, praying for an award in the sum of \$11,377.60.

Claimant was seriously injured in an accident on the 2nd day of February, 1936, while employed as a Supervisor at the Illinois Soldiers' and Sailors' Children's School at Nor-

mal, Illinois. The complete details of this injury can be found in the original cause of action, *Penwell vs. State of Illinois*, 11 C.C.R. 365, in which an initial award was made, and at which time jurisdiction was retained to make successive awards in the future, and this Court has periodically made supplemental awards to claimant to cover expenses incurred by her, the last award covering the time period from January 1, 1970, through December 31, 1970.

A joint motion of claimant and respondent was filed herein requesting leave to waive the filing of briefs and arguments. This motion was granted, and no further pleadings have been filed herein.

Since the Attorney General does not contest the veracity nor the propriety of the items and amounts set forth in claimant's petition, except for the following items set out in claimant's bill of particulars:

May 22, 1971, Alfred Reed, repair air conditioner	\$ 3.50
June 19, 1971, Alfred Reed, repair bedlamp switch.....	2.50
December 31, 1971, Dale Newburn, checking ambulance before trip	<u>9.50</u>
	\$15.50

this court must assume that the Attorney General agrees with all other amounts thus set forth.

The Court, therefore, enters an award in favor of the claimant in the sum of **\$11,362.10** (**\$11,377.60** less the above **\$15.50**). The matter of the claimant's need for additional care is reserved by this Court for future determination.

(No 5233—Claim denied.)

SAM WEISMAN, Claimant, **vs. STATE OF ILLINOIS**, **Respondent**.

Opinion filed May 9, 1972.

BARBERA AND FRIEDLANDER, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **BRUCE FINNE**, Assistant Attorney General, for Respondent.

NEGLIGENCE—*contributory negligence*. Where proximate cause of accident was the lack of due care exercised by claimant, and was not in any way the result of an act or omission by State of Illinois, the claim would be denied.

HOLDERMAN, J.

Claimant, Sam Weisman, filed a claim under date of May 27, 1965.

Claimant alleges in his claim that on February 14, 1964, respondent maintained and operated a certain expressway known as Dan Ryan Expressway, which expressway merged into and became designated as Calumet Expressway, at a point about 9900 South on said expressway in the City of Chicago.

Claimant further alleges that at the juncture of said underpass road with the Dan Ryan Expressway, the respondent constructed a V shaped metal guard rail approximately one and one-half feet high from the surface of the road, which guard rail was placed at the separation point of the inner lane of the northwest bound Dan Ryan Expressway and the outer lane of the intersecting road leading to the Halstead Street Underpass.

Claimant further states that the State of Illinois did one of several things which was the proximate cause of the collision and the injuries and damages sustained by claimant:

a. Allowed said guard rail to be constructed at a dangerous and excessive height above the surface of said highways at the dividing point of said highways, although respondent knew or in the exercise of ordinary care should have known that said highways were heavily traveled at that point and that northwest bound automobiles would be liable to collide into the point of said V shaped divider while in the exercise of reasonable care.

b. Failed to keep said area properly and adequately lighted in the nighttime.

c. Failed to give motorists any warning by appropriate

sign, signals, reflectors or other means of warning northwest bound motorists of the presence of said dangerous and hazardous divider on said highway.

d. Failed to remove said dangerous divider and replace said divider with a low level concrete curb or separator, although respondent knew or should have known that said metal divider was dangerous, hazardous and unsafe for vehicular traffic prior to the happening of the occurrence herein, and although the removal of said metal divider and its replacetnent with a low level curb or concrete separator could have been done by said respondent at a relatively small cost.

Claimant testified that he was driving his car in a north-westerly direction on the expressway in the inner or third lane, and that somewhat to his right and in front of him in the outer or first lane was a truck; that in the second lane to his right and in front of him was a tractor and trailer; that he slowed down to let the second truck get in front of him so that he could get into the lane going northbound to the Chicago **loop**; that this truck interfered with his vision ahead and that he did not see the guard rail.

Claimant also testified that certain signs that appear in the photographs in evidence as claimant's Exhibits 3, 4, 5, 6 and 7 were not present on the night of the accident. The photographs in question were taken approximately one month after the accident.

Claimant testified that his automobile ran up on the guard rail and he was injured and taken to Roseland Community Hospital and from there to Jackson Park Hospital.

Claimant testified that he lost three weeks from work; that his weekly salary was \$135.00per week and that he lost approximately \$2,000.00 in bonuses from his employer, Goldblatt Bros., Inc.

The testimony of the doctors and the x-rays show that the claimant had a fracture of the twelfth thoracic vertebra.

Edward Chrapla, Special Studies Engineer for the Division of Highways, produced the records of his department showing where the signs were on the expressway on the date of the accident. He also testified to the existence of a corrugated or rumble strip at the divider and that a driver at 50 miles per hour would have thirty-four seconds after seeing the signs to choose his lane before reaching the divider.

Irving Lang, a commercial photographer, called as a witness for claimant, testified that he observed a rumble strip about one hundred feet long in front of the divider.

The evidence also shows that the area in question was lighted on the evening of the accident and also that claimant had been over this road on at least one previous occasion.

Refor recovery can be rmade by the claimant, it must be proved that he was in the exercise of due care and caution for his own safety; that the State was negligent and that such negligence was the proximate cause of the accident.

The record seems clear in that the area was well-lighted, that signs warning the approaching public of the existence of the divider were in place and, in addition, there was a rumble strip which would give every driver ample warning of the existence of the divider ahead.

The evidence is that this divider was in such a position that drivers exercising due care for their own safety would have seen the same and avoided it.

The proximate cause of this accident was the lack of due care exercised by the claimant and was not in any way the result of any act of omission by the State of Illinois.
Court of Claims, Vol. 24, Page 324.

Claimant has failed to prove that he was free from contributory negligence or that the negligence of the respondent was the proximate cause of the accident.

An award to claimant is therefore denied.

(No. 6072—Claimant awarded \$621.81.)

MAX SHAPS, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed May 9, 1972.

MAX SHAPS, Claimant, pro se.

WILLIAM J. SCORN, Attorney General; EDWARD L.S. ARKEMA, JR., Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6163—Claimant awarded \$24,266.57.)

UNION OIL COMPANY OF CALIFORNIA, Claimant, vs. STATE OF ILLINOIS, VARIOUS AGENCIES, Respondent.

Opinion filed May 9, 1972.

UNION OIL COMPANY OF CALIFORNIA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6371—Claimant awarded \$70.16.)

RAYMON A. OBERLANDER, Claimant, *vs.* **STATE OF ILLINOIS,**
DEPARTMENT OF FINANCIAL INSTITUTIONS, Respondent.

Opinion filed May 9, 1972

RAYMON A. OBERLANDER, Attorney, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6418—Claimant awarded \$238.78.)

CONTINENTAL OIL COMPANY, Claimant, *vs.* **STATE OF ILLINOIS,**
DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed May 9, 1972

CONTINENTAL OIL COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6459—Claimant awarded \$500.21.)

BARNES HOSPITAL, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT**
OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed May 9, 1972.

BARNES HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6477—Claimant awarded \$527.00.)

MAIJA I. MEDNIEKS, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent..

Opinion filed May 9, 1972.

MAIJA I. MEDNIEKS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6479—Claimant awarded \$166.75.)

ROCKFORD MEMORIAL HOSPITAL, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 9, 1972.

ROCKFORD MEMORIAL HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; EDWARD L.S. ARKEMA, JR., Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6484—Claimant awarded \$253.00.)

MARSHA C. SCHACHT, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 9, 1972.

MARSHA C. SCHACHT, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Hespndent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(So. 6492—Claimant awarded \$111.00.)

MOBIL OIL CORPORATION, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION? Respondent.

Opinion filed May 9, 1972.

MOBIL OIL CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Hespndent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6495—Claimant awarded \$29.64)

DAVID LYNN BENDER, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed May 9, 1972.

DAVID LYNN BENDER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6497—Claimant awarded \$73.74.)

WILMA KAY (POLLEY) DANGREMOND, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 9, 1972.

WILMA KAY (POLLEY) DANGREMOND, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6512—Claimant awarded \$74.64.)

ESTHER M. VATTHAUER, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 9, 1972.

ESTHER M. VATTHAUER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(So. 6516—Claimant awarded \$556.00.)

RELDEN MANOR SHELTER HOME, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 9, 1972.

CENCO CARE CORPORATION, for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6521—Claimant awarded \$39.00.)

**A-1 AMBULANCE SERVICE, INC., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed May 9, 1972

A-1 AMBULANCE SERVICE, INC., Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6534—Claimant awarded \$807.60.)

**MEMORIAL HOSPITAL OF SPRINGFIELD, An Illinois Not-For-Profit
Corporation, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF
MENTAL HEALTH, Respondent.**

Opinion filed May 9, 1972.

BROWN, HAY AND STEPHENS, Attorney for Claimant.

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6536—Claimant awarded \$60.00.)

KENNETH R. KOCHER, Claimant, *vs.* **STATE OF ILLINOIS, MILITARY AND NAVAL DEPARTMENT**, Respondent.

Opinion filed May 9, 1972.

KENNETH R. KOCHER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6549—Claimant awarded \$382.03.)

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF AERONAUTICS**, Respondent.

Opinion filed May 9, 1972.

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6557—Claimant awarded \$3.97.)

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF REGISTRATION AND EDUCATION**, Respondent.

Opinion filed May 9, 1972.

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6573—Claimant awarded \$40.00.)

KENT I. RICKEY, Claimant, *vs.* STATE OF ILLINOIS, MILITARY AND NAVAL DEPARTMENT, Respondent.

Opinion filed May 9, 1972.

KENT D. RIKEY, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6580—Claimant awarded \$1,157.40.)

ST. MARY HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 9, 1972.

ST. MARY HOSPITAL, Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(So. 6581—Claimant awarded \$799.30.)

ST. MARY HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 9, 1972.

ST. MARY HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6582—Claimant awarded \$816.00.)

ST. MARY HOSPITAL, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 9, 1972.

ST. MARY HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6583—Claimant awarded \$190.80.)

ST. MARY HOSPITAL, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 9, 1972.

ST. MARY HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6584—Claimant awarded \$172.25.)

ST. MARY HOSPITAL, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 9, 1972.

ST. MARY HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6585—Claimant awarded \$934.35.)

ST. MARY HOSPITAL, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 9, 1972.

ST. MARY HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6586—Claimant awarded \$172.00.)

ST. MARY HOSPITAL, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 9, 1972.

ST. MARY HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5765—Claimant awarded \$770.60.)

THE COUNTY OF LIVINGSTON, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed June 13, 1972.

JOHN G. SATTER, JR., Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

DAMAGES—stipulation. Where claimant and respondent stipulate to, facts and damages an award will be entered accordingly.

PERLIN, C.J.

This cause coming on 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 claim is for filing fees, sheriffs' fees, and state's attorneys' fees for the County of Livingston.

IT IS HEREBY ORDERED that the sum of \$770.60 be awarded claimant in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause.

(No. 5931—Claimant awarded \$668.00.)

WEST PUBLISHING COMPANY, Claimant, vs. STATE OF ILLINOIS, APPELLATE COURT, Respondent.

Opinion filed June 13, 1972.

WEST PUBLISHING COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER**, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 5990—Claimant awarded \$486.50.)

**DES PLAINES FUNERAL HOME, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed June 13, 1972.

DES PLAINES FUNERAL HOME, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6021—Claimant awarded \$1,291.51.)

**THEODORE R. BECK, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT
OF PERSONNEL, Respondent.**

Opinion filed June 13, 1972.

THEODORE R. BECK, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6139—Claimant awarded 892.20.)

**CARLE FOUNDATION HOSPITAL, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.**

Opinion filed June 13, 1972.

CARLE FOUNDATION HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6154—Claimant awarded \$402.00.)

MAX SHAPS, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed June 13, 1972.

MAX SHAPS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6156—Claimant awarded \$928.50.)

ALTON MEMORIAL HOSPITAL, Claimant, vs. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed June 13, 1972.

ALTON MEMORIAL HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6164—Claimant awarded \$2,025.29.)

ILLINOIS BELL TELEPHONE COMPANY, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed June 13, 1972.

ILLINOIS BELL TELEPHONE COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6332—Claimant awarded \$249.00.)

CALIFORNIA COMPUTER PRODUCTS, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed June 13, 1972.

CALIFORNIA COMPUTER PRODUCTS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(So 6381—Claimant awarded \$1,167.00.)

REG MOVERS AND VAN LINES, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed June 13, 1972.

REG MOVERS AND VAN LINES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6390—Claimant awarded \$998.50.)

BEVERLY J. BICKNELL, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 13, 1972.

MEDANSKY, COHAN, MEDANSKY AND VALENTINO, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6407—Claimant awarded \$22.00.)

CHARLES F. KNEEDLER, M.D., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed June 13, 1972.

DR. CHARLES F. KNEEDLER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation*. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6414—Claimant awarded \$186.49.)

SAVIN BUSINESS MACHINES, Claimant, vs. STATE OF ILLINOIS, OFFICE OF THE LIEUTENANT GOVERNOR, Respondent.

Opinion filed June 13, 1972.

NORMANDT AND NORMANDT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant

PERLIN, C.J.

(No. 6431—Claimant awarded \$27.16.)

BERZ AMBULANCE SERVICE, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 13, 1972.

BERZ AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6433—Claimant awarded \$55.00.)

BERZ AMBULANCE SERVICE, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 13, 1972.

BERZ AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6434—Claimant awarded \$53.00.)

**BERZ AMBULANCE SERVICE, INC., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed June 13, 1972.

BERZ AMBULANCE SERVICE, INC., Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6480—Claimant awarded \$43.00.)

**JAMES H. BREIHAN, M.D., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed June 13, 1972.

DR. JAMES H. BREIHAN, Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6493—Claimant awarded \$1,315.00.)

**MPATI, INC., Claimant, vs. STATE OF ILLINOIS, SUPERINTENDENT OF
PUBLIC INSTRUCTION, Respondent.**

Opinion filed June 13, 1972.

MPATI, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6500—Claimant awarded \$604.00.)

FRANKLIN-CRESS CONSTRUCTION Co., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed June 13, 1972.

FRANKLIN-CRESS CONSTRUCTION Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6503—Claimant awarded \$27.60.)

WILLET TRUCK LEASING COMPANY, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed June 13, 1972.

WILLET TRUCK LEASING COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6513—Claimant awarded \$81.72.)

MONTEREY CONVALESCENT HOME, INC., (DREXEL BRANCH), Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 13, 1972.

CENCO CARE CORPORATION, for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Corirt will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6522—Claimant awarded \$38.00.)

A-1 AMBULANCE SERVICE, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 13, 1972.

A-1 AMBULANCE SERVICE, INC., Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL K. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Corirt will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6525—Claimant awarded \$39.00.)

A-1 AMBULANCE SERVICE, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 13, 1972.

A-1 AMBULANCE SERVICE, INC., Claimant, *pro se.*

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6533—Claimant awarded \$248.00.)

**AERO AMBULANCE SERVICE, INC., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed June 13, 1972

AERO AMBULANCE SERVICE, INC., Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL K. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6538—Claimant awarded \$122.40.)

**V. M. MARKETS, INC., A/K/A VITO'S CERTIFIED FOOD MARKET,
Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID,
Respondent.**

Opinion filed June 13, 1972.

MALKIN AND GOTTLIEH, Attorney for Claimant.

**WILLIAM J. SCOTT, Attorney General; SAUL, R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6540—Claimant awarded \$39.00.)

**A-1 AMBULANCE SERVICE, INC., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed June 13, 1972.

A-1 AMBULANCE SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6546—Claimant awarded \$3,637.53.)

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed June 13, 1972.

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6547—Claimant awarded \$3.44.)

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, vs. STATE OF ILLINOIS, LOCAL GOVERNMENTAL LAW ENFORCEMENT OFFICERS TRAINING BOARD, Respondent.

Opinion filed June 13, 1972.

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a

claim should have been paid has **lapsed**, the Court will enter an **award** for the amount due claimant.

PERLIN, C.J.

(No. 6548—Claimant awarded \$3,382.00.)

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed June 13, 1972.

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6550—Claimant awarded \$24.51.)

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF LOCAL GOVERNMENT AFFAIRS, Respondent.

Opinion filed June 13, 1972.

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6551—Claimant awarded \$109.25.)

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed June 13, 1972.

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, pro se.
WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6553—Claimant awarded \$55.61.)

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed June 13, 1972.

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, pro se.
WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6554—Claimant awarded \$6,939.05.)

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed June 13, 1972.

SUN OIL, COMPANY OF PENNSYLVANIA, Claimant, pro se.
WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEHHER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6555—Claimant awarded \$961.49.)

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed June 13, 1972.

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6556—Claimant awarded \$18.41.)

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC HEALTH, Respondent.

Opinion filed June 13, 1972.

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6558—Claimant awarded \$41.40.)

CURRY COURT REPORTING AGENCY, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 13, 1972.

CURRY COURT REPORTING AGENCY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant

PERLIN, C.J.

(No. 6559—Claimant awarded \$26.00.)

CURRY COURT REPORTING AGENCY, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed June 13, 1972

CURRY COURT REPORTING AGENCY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

DAMAGES—stipulation Where claimant and respondent stipulate to facts and damages, an award will be entered accordingly.

PERLIN, C.J.

This cause coming on 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 claim is for court reporter fees for two depositions taken from the *Claude J. Flynn* vs. *George E. Mahin, et al.*, case in the Circuit Court of Sangamon County, a copy of said report being attached to the Joint Stipulation of the parties.

IT IS HEREBY ORDERED that the sum of \$26.00 be awarded claimant in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause.

(No. 6564—Claimant awarded \$48.00.)

AERO AMBULANCE SERVICE, INC., Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 13, 1972.

AERO AMBULANCE SERVICE, INC., Claimant, pro se.

**WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER,
Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J

(No. 6569—Claimant awarded \$40.00.)

**UNIVERSITY OF WISCONSIN—EXTENSION, Claimant, vs. STATE OF
ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed June 13, 1972.

**UNIVERSITY OF WISCONSIN—EXTENSION, Claimant, pro
se.**

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6598—Claimant awarded \$186.50.)

**THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY, Claimant, vs.
STATE OF ILLINOIS, APPELLATE COURT, Respondent.**

Opinion filed June 13, 1972

**THE LAWYERS CO-OPERATIVE PUBLISHING COMPANY,
claimant, pro se.**

**WILLIAM J. SCOTT, Attorney General; WILLIAM E.
WEBBER, Assistant Attorney General, for Respondent.**

CONTRACTS—*lapsed appropriation.* When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6600—Claimant awarded \$72.90.)

**OZARK AIR LINES, INC., Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF PERSONNEL, Respondent.**

Opinion filed June 13, 1972.

OZARK AIR LINES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6619—Claimant awarded \$144.00.)

CENTRAL OFFICE EQUIPMENT COMPANY, Claimant, vs. STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed June 13, 1972.

DRACH, TERRELL AND DEFFENBAUGH, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—lapsed appropriation. When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6640—Claimant awarded \$118.80.)

**JOSEPHINE BIRDSONG, Claimant, vs. STATE OF ILLINOIS,
DEPARTMENT OF PUBLIC AID, Respondent.**

Opinion filed June 13, 1972.

JOSEPHINE BIRDSONG, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6642—Claimant awarded \$350.00.)

ILLINI MOVING AND STORAGE COMPANY, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF INSURANCE, Respondent.

Opinion filed June 13, 1972.

ILLINI MOVING AND STORAGE COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

(No. 6647—Claimant awarded \$399,999.67.)

COUNTY OF COOK AND COOK COUNTY DEPARTMENT OF PUBLIC AID, Claimant, vs. STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed June 13, 1972.

EDWARD V. HANRAHAN, State's Attorney for Cook County, for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a

claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

[No. 6648—Claimant awarded \$2,500.00.]

SALVATORE SALLA, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF FINANCE, Respondent.

Opinion filed June 13, 1972.

PAUL W. BRUST, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed appropriation.* When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due claimant.

PERLIN, C.J.

CASES IN REFERENCE TO THE LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT

(No. 00006—Claimant awarded \$10,000.00.)

MARY JO GILLAN, as wife of MARTIN M. GILLAN, deceased, Claimant, vs. STATE OF ILLINOIS, Respondent.

Opinion filed June 13, 1972.

MARY JO GILLAN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, and VINCENT BISKUPIC, Special Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION Act—Where investigation by Attorney General's office shows that claim falls within scope of the Act, death resulting from smoke inhalation while fighting a fire is compensable.

PERLIN, C.J.

This claim was filed pursuant to Ch. 48, Sec. 281, Ill. Rev.Stat., 1971. "Law Enforcement Officers and Firemen Compensation Act". The Court is in receipt of the Application for benefits and Statement Supervising Officer, as well as an investigative report by the Illinois Attorney General's office. Based upon these documents the Court finds as follows:

That the claimant, MARY JO GILLAN, is the wife of decedent and is the named beneficiary under the Application for Benefits. That the decedent, MARTIN M. GILLAN, was a fireman for the Village of Maywood, Illinois, engaged in the scope of duty on December 25 and 26, 1971, within the meaning of Section 282 of the aforesaid act. On said dates he suffered heavy smoke inhalation while fighting a fire, resulting in his death on January 18, 1972. The court further

finds that the Attorney General's office in its investigation has determined that this claim is within the scope of the above cited statutes:

"Section 282(e) '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 . . ."

IT IS HEREBY ORDERED that the sum of \$10,000.00 (TEN THOUSAND DOLLARS) be, and the same hereby is *granted* to MARY JO GILLAN as wife and next of kin of the decedent, MARTIN M. GILLAN.

(No. 00010—Claimant awarded \$10,000.00.)

BIRDA TOWNS, as wife of **JIMMIE C. TOWNS**, deceased, Claimant,
vs. **STATE OF ILLINOIS**, Respondent.

Opinion filed June 13, 1972.

BIRDA TOWNS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, and VINCENT BISKUPIC, Special Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION Act—Where Attorney General's investigation determines that claim is within the scope of the Act, claim will be allowed.

PERLIN, C.J.

This claim was filed pursuant to Ch. 48, Sec. 281, Ill. Rev.Stat., 1971, "Law Enforcement Officers and Firemen Compensation Act". The Court is in receipt of the Application for Benefits and Statement of Supervising Officer, as well as an investigative report by the Illinois Attorney General's office. Based upon these documents the Court finds as follows:

That the claimant, BIRDA TOWNS, is the wife of the decedent and is the named beneficiary under the Application

for Benefits. That the decedent, **JIMMIE C. TOWNS**, was a patrolman for the Village of Brooklyn, engaged in the scope of duty on December **18, 1971**, within the meaning of Section **282** of the aforesaid act. On said date he suffered gunshot wounds in his back and chest resulting in his death. The Court further finds that the Attorney General's office in its investigation has determined that this claim is within the scope of the above cited statutes:

"Section **282 (c)** 'killed in the line of duty' means losing one's life as a result of injury received in the ~~act~~ 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. . . ."

IT IS HEREBY ORDERED that the sum of \$10,000.00 (TEN THOUSAND DOLLARS) be, and the same hereby is, *granted* to **BIRDA TOWNS** as wife and next of kin of the decedent, **JIMMIE C. TOWNS**.

**CASES IN WHICH ORDERS OF DISMISSAL WERE
ENTERED WITHOUT OPTION**

- 4710 Norma G. Elliott, Admx., et al.
- 4772 Weldon **Powell** ,
- 4852 Elnoris Eugenia Howling, et al
- 4853 Hazel XI. Magee, Conservator, et al.
- 4903 John Roberts, A Minor, By Margaret Roberts, His Mother and Next Friend
- 4934 Charles E. Walz
- 4955 Rose Mandelbaum, Admx. of the Estate of Raymond Mandelbaum, Deceased
- 4994 Claudette Bachmura, A Minor, Etc.
- 5003 Stanley Rajca, Admr., Etc.
- 5010 Thomas Keating anti Betty Keating
- 5043 James Dale
- 5133 Eugene H. Lembke
- 5200 Ernest D. Rizzo, Jr., Admr., Etc.
- 5219 Diane Johnson, et al.
- 5237 Gary Dean Grossman, Sr., As Admr. of the Estate of Ellen Diana Grossman
- 5255 Donna Pearson
- 5264 Dorothea M. Beckett
- 5265 Rockford Memorial Hospital Association, A Corporation
- 5281 J. K. Frost
- 5327 Patrick Halle and Barbara Halle
- 5366 T. M. Huddleston
- 5371 Kathryn De Less
- 5379 Walter Mark, Admr. of the Estate of Peggy Mark, Deceased
- 5385 Boyzie **Sears**
- 5387 Amanda Gieseke
- 5400 Roland J. Urban, et al.
- 5406 **Ralph** Bolda, A Minor. Etc.

- 5409 Theodore Kerrigan, **Admr.**, Etc.
- 5423 Harry E. Grob, Jr., Individually, Etc.
- 5457 Joseph Zerwan
- 5463 Robert J. Pelster
- 5481 Phillip M. Lee
- 5496 South Chicago Community Hospital, An Illinois Not-For-Profit Corporation
- 5520 Anthony Gonia
- 5540 Levander McGee
- 5558 American Electric Construction Company, Inc., **A Corporation**
- 5563 Ronald W. Drewett
- 5572 A. F. Tochalauski
- 5575 Jo Anne Lombardo and Beata Urban
- 5577 William R. Matthys
- 5578 Harold F. Thomas
- 5579 Ange M. Yates and Marie Cortecero
- 5587 Mary Paulsen
- 5596 Richard Joel Grant
- 5604 Edgar Raymond Curtis
- 5609 Clarence Tysse and Florence Tysse, **His Wife**
- 5610 Ronald G. Pedersen, et al.
- 5611 Ronald G. Pedersen, et al.
- 5616 William Alongi, **A Minor**, Etc.
- 5622 Mary Usher
- 5629 Ervin Schaefer, et al.
- 5630 Ricardo A. Godinez, a/k/a Ricky Codinez, **A Minor**, Etc.
- 5635 Sisters of the Third Order of St. Francis, d/b/a St. Anthony Hospital
- 5636 Sisters of the Third Order of St. Francis, d/b/a St. Anthony Hospital
- 5640 Stanley Heklowski, et al.
- 5648 Alfred Smith
- 5649 Donald Hudson, **A Minor**, et al.
- 5651 Uniroyal, Inc., **A New Jersey Corporation**
- 5656 H. Gersten, d/b/a Heatmasters

- 5666 The L. R. Foster Company, Inc.
5680 David Realty Accounty
5698 Logan Printing Company
5709 Grubb Advertising, Inc., A Corporation
5728 Gayle Sheedy
5734 Presbyterian—St. Lnkes Hospital
5740 C. W. Phillips, Etc.
5762 Kilborn Motors, Inc.
5763 International Business Machines Corporation
5777 Wabash General Hospital District
5781 Dennis A. Roberts
5802 Scully Walton Services, Inc.
5813 Robert Grodecki and American Motorists Insurance Company
5814 George Lancaster
5823 Martin E. Gardnrr, Adnir., Etc.
5824 Edward Carl Brooks, Admr., Etc.
5825 Frances Shilts, Admx., Etc.
5826 Agnes Mangan, Admx., Etc.
5827 Virginia Hollen, Admx., Etc.
5839 Charles McGuire
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5851 Nussbaum Trucking, Inc.
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5883 William M. Lewis
5890 Judy Peters
5896 Xerox Corporation
5905 Claude E. Berry, et al.
5915 Carl Vangeloff
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5918 Lillian I. Tourek, Individually, Etc.
5933 Theodore F. Bermuth
5953 Robert Hoerneman

- 5958 Herbert Smiley, et al.
- 5960 Central Illinois Light Company
- 5980 Arthur J. Wolski, M.D.
- 5999 Grace Gunterman
- 6048 Mildred Mabry
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- 6080 Rose Marie Dellorto, Admx., et al.
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- 6125 Will J. Jones and Iva Jones
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- 6178 Bermont Community Hospital
- 6187 Albert Ballard, et al.
- 6227 Sue Ann Dickey, As Admr. of the Estate of Jimmy Wislon, Deceased
- 62-34 Charles Kovarik and Hilda Kovarik
- 6271 William V. Dezulskis and South Side Antomotive Co., An Illinois Corporation
- 6288 Wallace White, Jr.
- 6297 Maria M. Jury, M.D.
- 6305 Timothy R. Dixon
- 6312 Moline Heating and Constrction Co., A Corporation
- 6353 Bartlett Developmental Learning Center
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