REPORTS

OF

Cases Argued and Determined

IN THE

COURT OF CLAIMS

OF THE

STATE OF ILLINOIS

VOLUME 29

Containing cases in which opinions were filed and orders of dismissal entered, without opinion, between July 1, 1973 and June 30, 1974

SPRINGFIELD, ILLINOIS

1975

(Printed by authority of the State of Illinois.)

14

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; Ch. **37,** Sec. **439.18,** Ill. Rev. Stat., **1973.**

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

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

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—

MICHAEL J. HOWLETT
Secretary of State and Ex Officio Clerk of the Court
January 8, 1973—

GARY F. STRELL, ***Deputy Clerk***
Springfield, Illinois
March 15, 1973—October 31, 1973

ROBERT S. O’SHEA, ***Deputy Clerk***
Springfield, Illinois
November 1, 1973—

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

(No. 73-CC-130—Claimant awarded $337.65.)

MEMORIAL HOSPITAL OF SPRINGFIELD, ILLINOIS, AN ILLINOIS NOT-FOR-PROFIT CORPORATION, Claimant, *us.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed *July 9, 1973.*

BROWN, HAY & STEPHENS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-233—Claimant awarded $219.69.)

RAYMOND W. MILES, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed *July 9, 1973*

DUHADWAY, SUDDES & DAVIS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-283 — Claimant awarded $506.75.)

PAUL D. Mc CURRY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF REGISTRATION AND EDUCATION, Respondent.

Opinion filed July 9, *1973.*

PAUL D. Mc CURRY, FAIA, 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.

PER CURIAM.

(No. 6404 — Claimant awarded $900.00.)

XEROX CORPORATION, Claimant *us.* STATE OF ILLINOIS, DEPAKTMENT OF MENTAL HEALTH, Respondent.

Opinion filed July *9, 1973.*

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.

PER CURIAM.

(No. 6803 — Claimant awarded $329.55.)

DE NORMANDIE INDUSTRIAL GARMET SUPPLY COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed July *9, 1973.*

DE NORMANDIE INDUSTRIAL GARMET 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.

PER CURIAM.

(No. 6969—Claimant awarded $129.95.)

CENTRAL OFFICE EQUIPMENT COMPANY, Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion *filed* July *9, 2973.*

CENTRAL OFFICE EQUIPMENT 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.

PER CURIAM.

(No. 6971—Claimant awarded $59.50.)

CENTRAL OFFICE EQUIPMENT COMPANY, Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed *July* 9, *1973.*

CENTRAL OFFICE EQUIPMENT 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.

PER CURIAM.

(No. 6981—Claimant awarded $30.00.)

KANKAKEE INDUSTRIAL SUPPLY COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed *July 9, 1973.*

KANKAKEE INDUSTRIAL SUPPLY 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.

PER CURIAM.

(No. 7018—Claimant awarded $4,668.00.)

SHELCO CONSTRUCTION, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed *July 9, 1973.*

SHELCO CONSTRUCTION, 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.

PER CURIAM.

(No. 7080—Claimant awarded $360.00.)

MINDEL, EUGENE D., M.D., Claimant, *us.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed *July 9, 1973.*

EUGENE D. MINDEL, 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. 73-CC-&Claimant awarded $7,850.00.)

HUSTON-PATTERSON CORPORATION, Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed July ***12,*** *1973.*

HUSTON-PATTERSON CORPORATION, Claimant, pro se.

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

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

PER CURIAM.

(No. 73-CC-34—Claimant awarded $9,578.20.)

VELDE FORD SALES, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed *July 12, 1973.*

VELDE FORE 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.

PER CURIAM.

(No. 73-CC-161 — Claimant awarded $4.75.)

CLIFFORD L. BISHOP, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed ***July** 12, 1973.*

CLIFFORD L. BISHOP, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-214 — Claimant awarded $7,703.59.)

ATLANTIC RICHFIELD, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed ***July** 12, 1973.*

ATLANTIC RICHFIELD, 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

PER CURIAM.

(No. 73-CC-224 — Claimant awarded $290.75.)

ATLANTIC RICHFIELD COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed ***July** 12, 1973.*

ATLANTIC RICHFIELD 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.

PER CURIAM.

(No. 73-CC-226—Claimant awarded $12.91.)

ATLANTIC RICHFIELD COMPANY, Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed *July 12, 1973.*

ATLANTIC RICHFIELD 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,

PER CURIAM.

(No. 73-CC-261—Claimant awarded $37.50.)

KEITH JONES, MEMBER OF REGIONAL BOARD OF SCHOOL TRUSTEES, VERMILION COUNTY, Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed *July 12, 1973.*

KEITH JONES, 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.

PER CURIAM.

(No. 73-CC-309 — Claimant awarded $210.00.)

MORRIS P. SILVER, D.P.M., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed *July 12, 1973.*

MORRIS P. SILVER, D.P.M., 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.

PER CURIAM.

(No. 73-CC-327 — Claimant awarded $200.00.)

WILLIAM H. KOPP, JR., Claimant, us. STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed *July 12, 1973.*

GLAESER, BURSTEIN & GATES, 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.

PER CURIAM.

(No. 73-CC-337 — Claimant awarded $522.54.)

URBAN TECHNICAL CENTERS, INC., Claimant, *us.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed *July 12, 1973.*

URBAN TECHNICAL CENTERS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-348—Claimant awarded $1,310.40.)

AMERICAN HOSPITAL SUPPLY, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed *July 12, 1973.*

AMERICAN HOSPITAL SUPPLY, 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.

PER CURIAM.

(No. 73-CC-369—Claimant awarded $734.42.)

VREDENBURGH LUMBER COMPANY, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES,** Respondent.

Opinion filed *July 12, 1973.*

VREDENBURGH 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.

PER CURIAM.

(No. 73-CC-388—Claimant awarded $901.00.)

STERN'S CARRIAGE HOUSE, INC., Claimant, *us.* STATE OF ILLINOIS, ECONOMIC AND FISCAL COMMISSION, Respondent.

Opinion filed July 12, 1973

ROUTMAN AND LAWLEY, 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.

PER CURIAM.

(No. 5998—Claim denied.)

WILMA WALKOWITZ a/k/a WILMA WALKOWICZ, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed July 12, 1973.

JOHN D. DEMPSEY AND ROSEMARY DUSCHENE, Attorneys for Claimant.

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

HIGHWAYS—*knowledge of* defect. Where claimant failed to show respondent had, or should have had, knowledge of alleged defect, recovery should be denied.

PERLIN, C. J.

Claimant seeks recovery of $25,000 for injuries she sustained on November 7, 1969, when she caught her foot in a hole and fell while crossing Touhy Avenue in the Village of Skokie.

The parties have stipulated that the highway in question was under the auspices and control of the State of Illinois at the time and place of the occurrence.

Claimant was the only witness to testify in the proceedings. She stated that she crossed the street in question on her way to lunch at noon. She was crossing Touhy Avenue in an area generally used by the public as a crosswalk to cross from Teletype Corporation where claimant worked, to the restaurant. Claimant testified that she stepped in a hole in the street approximately six inches in diameter and four or five inches deep and fell forward on her knees, shoulder and head, sustaining a fracture of the left patella, bruises and contusions to her shoulder, head, and knee and back strain. Claimant introduced photographs over the objections of respondent, purporting to show the hole in question.

Claimant contends that there was no evidence of contributory negligence. It is difficult, however, to understand why claimant was unable to see and avoid the alleged defect. Claimant further contends that respondent did not introduce evidence to show that it conducted regular inspection of that area of the roadway "as ordinary care would require." ***(City of Peru v. Frence, 55*** Ill. ***3,*** 7, etc.) Claimant further argues that the color of the sides of the hole, plus the smooth edges demonstrate that it had existed for a long time.

Respondent argues that in order for claimant to recover on the basis of an alleged defect, she must show that the State had either actual or constructive notice of the defect. ***(Weygandt v. State of Illinois,*** 22 C.C.R. ***478)*** In denying recovery to the claimant who had injured himself in the case of ***Palmer v. State of Illinois, 25*** C.C.R. **1,** the Court stated:

"The mere fact that a defective condition existed, if, in fact, it did exist, is not in and **by** itself sufficient to constitute an act of negligence on the part of Respondent."

In absence of any testimony or other witnesses

which would establish the Respondent either knew or should have know of the existence of the hole, claimant has failed to show that Respondent was negligent and, therefore, recovery must be denied.

(No. 6327 — Claimant awarded $800.00.)

MOORE BUSINESS FORMS INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed ***July*** *12, 1973.*

MOORE BUSINESS FORMS 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.

PER CURIAM.

(No. 73-CC-326 — Claimant awarded $345.00.)

FRANK O. CARLSON & CO., INC., Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed *July 13, 1973.*

FRANK O. CARLSON & 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.

PER CURIAM.

(No. 73-CC-371—Claimant awarded $120.78.)

ASCOT HOUSE, Claimant, *us.* STATE OF ILLINOIS, GOVERNOR'S OFFICE OF HUMAN RESOURCES, Respondent.

Opinion filed *July 13, 1973.*

ASCOT HOUSE, 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.

PER CURIAM.

(No. 6496—Claimant awarded $6,712.52.)

ATLANTIC RICHFIELD COMPANY, Claimant, *us.* STATE OF ILLINOIS, VARIOUS AGENCIES, Respondent.

Opinion filed *July 13. 1973.*

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.

PER CURIAM.

(No. 73-CC-155—Claimant awarded $677.00.)

ANDREW J. WIGGINS, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed *July 16, 1973.*

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.

PER CURIAM.

(No. 7095—Claimant awarded $780.95.)

RICHARD N. LYONS, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS,** Respondent.

Opinion filed ***July 16, 1973.***

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.

PER CURIAM.

(No. 73-CC-157—Claimant awarded $50.00.)

HURSCHEL SAPP, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed ***July 19, 1973.***

HURSCHEL SAPP, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-158—Claimant awarded $50.00.)

EDWARD R. LANE, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed *July 19, 1973.*

EDWARD R. LANE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-159—Claimant awarded $23.75.)

CHARLES RUFFINI, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed *July 19, 1973.*

CHARLES RUFFINI, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-160—Claimant awarded $14.25.)

BILLY D. MYERS, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed *July 19, 1973.*

BILLY D. MYERS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-207—Claimant awarded $149.60.)

FLORENCE CRITTENTON PEORIA HOME, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed July *19, 1973.*

FLORENCE CRITTENTON PEORIA HOME, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-221—Claimant awarded $59.23.)

ATLANTIC RICHFIELD COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion ***filed*** *July 19, 1973*

ATLANTIC RICHFIELD COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-227—Claimant awarded $10.35.)

ATLANTIC RICHFIELD COMPANY, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT, Respondent.

Opinion filed July *19, 1973.*

ATLANTIC RICHFIELD COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-229—Claimant awarded $159.52.)

ATLANTIC RICHFIELD COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF REVENUE, Respondent.

Opinion filed July *19, 1973.*

ATLANTIC RICHFIELD 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.

PER CURIAM.

(No. 73-CC-231—Claimant awarded $86.51.)

ATLANTIC RICHFIELD COMPANY, CLAIMANT, *us.* STATE OF ILLINOIS, DEPARTMENT OF REVENUE, Respondent.

Opinion filed *July* ***19,*** *1973.*

ATLANTIC RICHFIELD 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.

PER CURIAM.

(No. 73-CC-245—Claimant awarded $11.79.)

PHILLIPS PETROLEUM COMPANY, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed *July 19,* 1973.

PHILLIPS PETROLEUM COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-340—Claimant awarded $34,094.72.)

DESAULNIERS AND COMPANY, Claimant, *us.* **STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION,** Respondent.

Opinion filed *July 19,* 1973.

DESAULNIERS AND COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-359—Claimant awarded $222.00.)

M. S. GINN AND COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT, Respondent.

Opinion filed *July 19, 1973.*

M. S. GINN AND 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.

PER CURIAM.

(No. 73-CC-396—Claimant awarded $178.70.)

DAMARIN, KUHLE, SUHRE, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed *July 19, 1973.*

DAMARIN, KUHLE, SUHRE, 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.

PER CURIAM.

(No. 5547—Claimant awarded $102.44.)

HOLIDAY INNS OF AMERICA, INC., Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed *July 19, 1973.*

M. HUE SMITH, III, 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.

PER CURIAM.

(No. 6669—Claimant awarded $178.00.)

OZARK AIR LINES, INC., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES,** Respondent.

Opinion filed *July 19, 1973.*

OZARK AIR LINES, Inc., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 6895—Claimant awarded $26.00.)

SHOSS RADIOLOGICAL GROUP, INC., Claimant, *us.* **STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION,** Respondent.

Opinion filed *July 19, 1973.*

SHOSS RADIOLOGICAL GROUP, 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.

PER CURIAM.

(No. 73-CC-17—Claimant awarded $965.79.)

ORVILLE ST. CLAVEY, Sheriff of Lake County, Illinois, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion ***filed*** *July* 26, *1973.*

ORVILLE ST. P. CLAVEY, Sheriff of Lake County, Illinois, Claimant, *pro* ***se.***

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

APPROPRIATION—*return of fugitives.* Claimant would recover for cost of return of fugitives from justice, where State was unable to anticipate the amount necessary **to** appropriate for this expertise.

PER CURIAM.

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 reimbursement of travel expenses incurred by the Claimant in connection with the return of prisoner Joseph Varanelli, Sr., from Phoenix, Arizona on May 31, 1972, and June 1, 1972, and the return of prisoner Leon Lloyd from Houston, Texas, on October 26 and 27, 1971, authorized by the Department of Finance. The sole reason said claim was not previously paid is due to the lapse of the appropriation for the period during which the debt was incurred, the same having been confirmed by the written report of the Department of Finance, a copy of said report being attached to the Joint Stipulation of the parties.

There were not sufficient monies at the time the obligation was incurred from which this debt could have been paid, however, in ***Fergus*** vs. ***Brady,*** 277 Ill. 272, the Illinois Supreme Court ruled that express authority is implied by law to extend an agency's appropriation where the following factors are present: a) no accurate advance

estimate of expenses is possible, and b) there is a requirement by law to provide the services. Accordingly, the instant claim meets the criteria established in the ***Fergus*** case and the claim is a just one.

It is hereby ordered that the sum of $965.79 (nine hundred and sixty-five dollars and seventy-nine cents) be awarded to Claimant in full satisfaction and any and all claims presented to the State of Illinois under the above captioned cause.

(No. 73-CC-55 — Claimant awarded $618.20.)

DICTAPHONE CORPORATION, Claimant, *us.* STATE OF ILLINOIS, GOVERNOR'S OFFICE OF HUMAN RESOURCES, Respondent.

Opinion filed July ***26, 1973.***

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.

PER CURIAM.

(No. 73-CC-178 — Claimant awarded $2,025.00.)

WALART MANAGEMENT CO., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF PERSONNEL, Respondent.

Opinion filed *July* ***26,*** 1973.

Foss, SCHUMAN AND DRAKE, 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.

PER CURIAM.

(Ng. 73-CC-284 — Claimant awarded $41,400.00.)

FRANK HUBBARD ELECTRIC COMPANY, INC., Claimant, *us.* STATE OF ILLINOIS, STATE FAIR AGENCY, Respondent.

Opinion filed July ***26,*** 1973.

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.

PER CURIAM.

(No. 73-CC-361 — Claimant awarded $76.83.)

BRIGANCE CHEVROLET SALES, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed July ***26,*** 1973.

BRIGANCE CHEVROLET SALES, 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,

PER CURIAM.

(No. 73-CC-409—Claimant awarded $377.50.)

NELSEN CONCRETE PRODUCTS, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed July 26, 1973.

NELSEN CONCRETE 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.

PER CURIAM.

(No. 73-CC-135—Claimant awarded $268.02.)

IBM CORPORATION, Claimant, *us.* STATE OF ILLINOIS, ADMINISTRATIVE OFFICE OF THE ILLINOIS COURTS, Respondent.

Opinion filed July 26, 1973.

IBM 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.

PER CURIAM.

(No. 73-CC-439—Claimant awarded $85.26.)

ATLANTIC RICHFIELD COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF REVENUE, Respondent.

Opinion filed July 26, 1973.

D. K. MC INTOSH, 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.

PER CURIAM.

(No. 6013—Claimant awarded $7,678.78.)

FEDERAL BARGE LINES, INC., Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed *July* 26, *1973*

LUCAS & MURPHY and MALCOLM D. DURR, Attorneys for Claimant.

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

NEGLIGENCE—failure *to* raise bridge. Where respondent was in control of bridge, and negligently failed to warn on-coming barge so it could heave-to, respondent was negligent.

HOLDERMAN, J.

Federal Barge Lines, Inc. filed a claim against the State of Illinois alleging that on the 11th day of March, 1969, one of their barges was damaged at Joliet, Illinois.

On the day in question, the JOHN ALEXA, which was the vessel supplying the power for the moving of the eight barges and the tow, was bound upstream. When it left Brandon Road Piers in the area of Joliet, it became necessary to go under a series of bridges. Most of these bridges are lift bridges which have to be lifted to allow vessels of certain size to pass underneath.

In this particular tow, one of the barges, the same being barge T-2052, was empty; consequently, it was riding much higher in the water than the rest of the tow.

The tow, while passing under the Jefferson Street

bridge which is approximately 1,000-1,200 feet downstream from the Cass Street bridge, blew one long blast on the whistle to warn the tender of the Cass Street bridge that they were coming and which signal is for the purpose of alerting the bridge tender.

It is the duty of the bridge tender when he has heard the long blast of the whistle to either signify that he cannot raise the bridge by turning on a red light, or if he can raise the bridge, to turn on a green light.

After the long whistle blast from the **JOHN ALEXA** was given, the bridge tender on the Cass Street bridge turned on a green light, which was the signal that the bridge tender had received the warning and that the bridge would be raised.

When the motor vessel and tow were approximately 500 feet from the Cass Street bridge, the bridge tender changed the green light to a red light.

The pilot immediately on seeing the change in the signal light, ordered both engines stopped and then put them at full astern in an effort to stop the tow and then back it up. He also piloted the tow so that the barge that was subsequently injured would be in midstream, this being where the bridge was highest and where it had the best possible chance of avoiding the accident which later occurred.

The momentum of the tow was too great to be stopped in the distance that remained after the receiving of the red light signal. The tow continued its forward momentum with the result that the covers of barge T-2052 hit the underside of the bridge, rolling the covers back, and causing the damage complained of.

After the incident, the pilot of the tow was informed by the bridge tender that the bridge had been involved in

an accident on the previous day and that he did not have sufficient power to get his west gates down.

The bridge is under the sole control of the respondent and there is not any evidence to the effect that the users of the waterway, including claimant, were informed of the condition of the bridge.

Claimant's Exhibit No. 1 was identified by the first witness to testify, George Leithner, an independent surveyor. This individual testified that it was his job to examine damages such as had been sustained in this accident and to estimate the approximate cost of repairs. He further testified that the low bid to repair the barge was from Material Service in the amount of $5,333.78, and that subsequently a contract was drawn up between Federal Barge Lines and Material Service for the repair work.

This witness also identified claimant's Exhibit No. 2, which was a service invoice from his firm in the amount of $123.00 which was paid by Federal Barge and covered the expense of the surveyor in determining the amount of damages to the barge.

The shipyards superintendent of Material Service testified concerning the repairs done to the barge, and stated the work started on the 12th of March, 1969 and was completed on the 4th of April, 1969. He also stated Exhibit No. 3 was the invoice for repairs to the barge.

Claimant's Exhibit No. 4 was a letter written to the Attorney General of the State of Illinois, signed by John J. Bennett, technical advisor of the Department of Transportation, stating that the charge of $101.00 per day for the use of the barge for a period of 22 days was reasonable and that the cost for repairing the barge was reasonable and not disputed by the department.

Claimant's Exhibit No. 5 was a copy of the rules and regulations dealing with situations such as are present in this case.

The respondent filed a motion for summary judgment, which was denied, and the case was assigned to a Commissioner for hearing.

The respondent did not offer any evidence, did not contest the amount of damage, and the bridge tender's testimony was not offered. He apparently was available but was not called by the respondent.

The respondent filed a brief in this cause contending that the claimant was guilty of contributory negligence in not having the barge under control and not being able to stop the same prior to the collision with the bridge.

It is apparent from the record in this case that the bridge tender of the Cass Street bridge was in a position that he not only should have seen the tow coming but also heard the signal not only for the Cass Street bridge but also for the Jefferson Street bridge, which was approximately 1,000-1,200 feet away. It would have been a very simple matter for him to have at that time tested the equipment on his bridge, and if found inoperative, to have given the red light in the first instance instead of the green light.

The green light is the signal to come ahead, which is exactly the procedure followed by the captain of the tow.

The Court has had occasion to pass upon similar situations. The Court calls attention to the case of *Fabick Tugboat Rental Co., Inc.* vs. *State of Illinois,* 21 CC Page 360. In that case, the claimant sustained damages as the result of a collision of the boat, NINA F, with the Jefferson Street bridge in Joliet. The captain of the tow gave

the proper signal and stopped his tow as it approached the Rock Island Railroad bridge, which is downstream from the Jefferson Street bridge. After the bridge was reopened, he signaled the Jefferson Street bridge to open but received no reply. The Captain went about half way between the two bridges, or some 600 feet south of the Jefferson Street bridge, and gave the proper signal again but received no return signal from the bridge tender. At that time, the Captain of the tow stated that he could see the bridge tender at his post and he signaled him with the lights but still received no return signal. He continued on toward the bridge and gave another signal when approximately 300 feet from the bridge, and then, upon still not receiving any signal, he have a distress signal, and immediately reversed his engine to full astern but he was unable to stop the NINA F, and a crash resulted, causing the damages complained of.

The Court, in passing upon those facts, stated:

"We are of the opinion that failing to raise the bridge when it had ample notice of the approach of the vessel, was a neglect of duty on the part of the respondent. The State of Illinois, acting by and through its agent, was guilty of negligence, which proximately caused the damages complained of by the claimant. In the case of ***Clement*** vs. *Metropolitan West Side EL.* ***Ry.*** *CO.,* 123 Fed. 271 (C.C.A. 7th Cir., 1903), which involves facts similar to those in the instant case, the Court said:

"**A** bridge spanning a navigable river is an obstruction to navigation tolerated because of necessity and convenience to commerce upon land. Such a structure must be so maintained and operated that navigation may not be impeded more than is absolutely necessary, the right of navigation being paramount. It is incumbent upon the owner that the bridge be so constructed that it may be readily opened to admit the passage of craft, and maintained in suitable condition thereto. It is also his duty to place in charge those who are competent to operate the bridge, to watch for signals, and to open the bridge for the passage of vessels, and for the performance of such delegated duty he is

responsible. It is also his duty to equip the bridge with proper lights giving warning of the position of the bridge and of its opening and closing. If for any reason the bridge cannot be opened, proper signals should be given to that effect such as will warn the approaching vessel in time to heave to. **A** vessel, having given the proper signal to open the bridge and prudently proceeding under slow speed has, in the absence of proper warning, the right to assume that the bridge will be timely opened for passage. She is not bound to heave to until the bridge has been swung or raised and locked, and to critically examine the situation before proceeding (City *of* Chicago vs. *Mullen*, 54 **C.C.A.**94, 116 Fed. 292), but may carefully proceed at slow speed upon the assumption that the bridge will open in response to the signal, and may so proceed until such time as it appears by proper warning, or in reasonable view of the situation, that the bridge will not be, opened (Mainistee Lumber Company vs. *City* of Chicago *(D.C.)*, 44 Fed. 87; Central Railroad Company *of* New Jersey vs. Pennsylvania Railroad Company, 8 **C.C.A.**86, 59 Fed. 192), when it become the duty of the vessel, **if** possible, to stop, and, if necessary, to go astern."

A similar situation presented to this Court was the case of *J. E. Vickers, et al* vs. *State of Illinois, 22* C.C., Page 660.

The facts in this case are nearly identical with the case at bar. In that case, the **NITA DEAN** was proceeding upstream at Joliet and as it neared the Ruby Street bridge, it properly signaled its approach when it was between one-half and one-quarter mile from the bridge. The return signal from the bridge tender was a flashing green light given for a period of time in accordance with existing regulations. The **NITA DEAN** continued toward the bridge at the rate of approximately 1½ miles per hour. No other signal was given until the **NITA DEAN** was too close to avoid the collision. The bridge was clear of traffic, and nothing was apparent to cause the pilot to believe that it would not open in sufficient time. When the **NITA DEAN** was approximately **250** feet from the bridge, the red flasher came on, and the pilot immediately reversed his engines, and thereafter did all that could have been reasonably expected of him to stop.

This Court finds that it was the duty of the bridge tender in situations such as this to give proper signals to

the approaching vessels when the bridge will not open. These signals should be given the approaching vessels in sufficient time so that they can heave to, and once the pilot of a vessel has been given the proper signal to proceed, the vessel has the right to assume that the bridge will be opened for passage.

It is the opinion of this Court that the claimant was not guilty of contributory negligence and that the only negligence involved was that of the respondent by its failure to give the red light to the oncoming tow in sufficient time so that it could stop. This it failed to do and the damages complained of resulted.

Claimant's claim is hereby allowed in the amount of $7,678.78.

(No. 6423—Claimant awarded $40.00.)

BOBBY GENE SHAW, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed *July* 26, 1973.

BOBBY GENE SHAW, 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.

PER CURIAM.

(No. 73-CC-356 — Claimant awarded $855.67.)

FOSTER G. MC GAW HOSPITAL, LOYOLA UNIVERSITY OF CHICAGO, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed August 2, *1973.*

FOSTER G. MC GAW 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.

PER CURIAM.

(No. 73-CC-367 — Claimant awarded $3,824.00.)

HAZELTINE CORPORATION, Claimant, us. **STATE OF ILLINOIS, DEPARTMENT OF PUBLIC HEALTH,** Respondent.

Opinion filed August 2, *1973*

SAMUEL WEISBARD AND BYRON L. GREGORY, 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.

PER CURIAM.

(No. 73-CC-431 — Claimant awarded $104.00.)

EDWARD S. PETERKA, M.D., Claimant, us. **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed August 2, *1973.*

EDWARD S. PETERKA, 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.

PER CURIAM.

(No. 73-CC-436—Claimant awarded $78.00.)

ASSOCIATED ANESTHESIOLOGISTS OF DECATUR, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed ***August*** *2, 1973.*

ASSOCIATED ANESTHESIOLOGISTS OF DECATUR, 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.

PER CURIAM.

(No. 73-CC-443—Claimant awarded $268.00.)

PFIZER, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed *August* 2, 1973.

PFIZER, 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.

PER CURIAM.

(No. 6560 — Claimant awarded $230.46.)

KANKAKEE INDUSTRIAL SUPPLY COMPANY, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed ***August 2, 1973.***

KANKAKEE INDUSTRIAL SUPPLY 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.

PER CURIAM.

(No. 6976 — Claimant awarded $133.17.)

TEXACO INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF PERSONNEL, Respondent.

Opinion filed ***August*** 2, 1973.

TEXACO 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.

PER CURIAM.

(No. 7062 — Claimant awarded $49.00.)

BURTON E. BAGBY, M.D., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed ***August*** 2, ***1973.***

DR. BURTON E. BAGBY, 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.

PER CURIAM.

(No. 73-CC-67—Claimant awarded $3,355.37.)

AMERICAN LAUNDRY MACHINERY, A MCGRAW-EDISON COMPANY DIVISION, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion ***filed*** August 6, *1973*

TELLER, LEVIT & SILVERTRUST, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **MARTIN** A. **SOLL,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-75—Claimant awarded $75.19.)

BECK'S BOOK STORE, Claimant, *us.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed August 6, 1973.

BECK'S BOOK 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.

PER CURIAM.

(No. 73-CC-219 — Claimant awarded $103.24.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF REGISTRATION AND EDUCATION, Respondent.

Opinion* filed *August 6, 1973.

ATLANTIC RICHFIELD COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-225 — Claimant awarded $23.69.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC HEALTH, Respondent.

Opinion* filed *August 6, 1973.

ATLANTIC RICHFIELD 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.

PER CURIAM.

(No. 73-CC-232 — Claimant awarded $186.85.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, RESPONDENT.

Opinion filed August 6, 1973

ATLANTIC RICHFIELD 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.

PER CURIAM.

(No. 73-CC-249—Claimant awarded $90.95.)

PHILLIPS PETROLEUM COMPANY, Claimant, *us.* **STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.**

Opinion filed August 6, ***1973.***

PHILLIPS PETROLEUM COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-289—Claimant awarded $655.50.)

SCIENTIFIC PRODUCTS DIVISION OF AMERICAN HOSPITAL SUPPLY CORPORATION, Claimant, *us.* **STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY, Respondent.**

Opinion filed August 6, ***1973.***

SCIENTIFIC PRODUCTS DIVISION OF AMERICAN HOSPITAL SUPPLY 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,

PER CURIAM.

(No. 73-CC-324 — Claimant awarded $374.20.)

SARGENT-WELCH SCIENTIFIC COMPANY, Claimant, *us.* **STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY,** Respondent.

Opinion filed ***August*** 6, ***1973.***

SARGENT-WELCH SCIENTIFIC Co., 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,

PER CURIAM.

(No. 73-CC-362 — Claimant awarded $8.37.)

BRIGANCE CHEVROLET SALES, INC., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT,** Respondent.

Opinions filed ***August*** 6, ***1973***

BRIGANCE CHEVROLET SALES, 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.

PER CURIAM.

(No. 73-CC-364—Claimant awarded $2,412.69.)

LAKE FOREST COLLEGE, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed ***August* 6, *1973.***

DEVOE, SHADUR, KRUPP, MILLER, ADELMAN, AND HAMILTON, 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.

PER CURIAM.

(No. 73-CC-392—Claimant awarded $44.50.)

THE SALVATION ARMY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed ***August* 6, *1973***

THE SALVATION ARMY, 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.

PER CURIAM.

(No. 73-CC-399—Claimant awarded $440.70.)

MODERN BUSINESS SYSTEMS, INC., Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed ***August* 6, *1973.***

MODERN BUSINESS SYSTEMS, 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.

PER CURIAM.

(No. 73-CC-405—Claimant awarded $798.43.)

JOHN N. CHAPPEL, M.D., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed *August* 6, *1973*

JOHN N. CHAPPEL, M.D., 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.

PER CURIAM.

(No. 73-CC-420—Claimant awarded $13.60.)

ROBERT J. BARTH, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion *filed* August 6, *1973*

ROBERT J. BARTH, 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.

PER CURIAM.

(No. 73-CC-433—Claimant awarded $11,961.71.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed ***August* 6, *1973.***

D. K. MC INTOSH, 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.

PER CURIAM.

(No. 73-CC-434—Claimant awarded $1,353.54.)

ATLANTIC RICHFIELD COMPANY, Claimant *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed ***August* 6, *1973.***

D. K. MC INTOSH, 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.

PER CURIAM.

(No. 73-CC-441—Claimant awarded $46.85.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, OFFICE OF THE STATE COMPTROLLER, Respondent.

Opinion filed August 6, ***1973.***

D. K. MC INTOSH, 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.

PER CURIAM.

(No. 73-CC-442 — Claimant awarded $131.30.)

ATLANTIC RICHFIELD COMPANY, us. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed August 6, *1973.*

D. K. Mc INTOSH, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **EDWARD** L. S. **ARKEMA, JR., Assistant Attorney General, for Respond-**ent.

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

PER CURIAM.

(No. 73-CC-452 — Claimant awarded $268.00.)

WATERMAN FLAMEGAS CORP., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.**

Opinion filed August 6, *1973.*

WATERMAN **FLAMEGAS CORP.,** Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **EDWARD** L. S. **ARKEMA, JR.,** Assistant Attorney General, for Respond-ent.

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

PER CURIAM.

(No. 73-CC-463—Claimant awarded $172.00.)

OLIVER B. FIFER, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed ***August* 6, *1973.***

OLIVER B. FIFER, 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.

PER CURIAM.

(No. 74-CC-1—Claimant awarded $120.00.)

SMITH OIL CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed ***August* 6, *1973.***

SMITH OIL 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.

PER CURIAM.

(No. 4995—Claim denied.)

FRANCES WASILKOWSKI and JOHN WASILKOWSKI, Claimants, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed ***August* 6, *1973.***

LOUIS M. MARCH, Attorney for Claimants.

WILLIAM J. SCOTT, Attorney General; MORTON ZASLAVSKY, EDWARD ARKEMA AND SAUL WEXLER, Assistant Attorney General, for Respondent.

NEGLIGENCE—*contributory negligence.* Where claimant has failed to prove freedom from contributory negligence, and award would be denied.

PER CURIAM.

Claimant Frances Wasilkowski seeks recovery of $25,000 damages for injuries suffered in a collision between her automobile and a truck owned by respondent, State of Illinois on March 8, 1961. John Wasilkowski seeks recovery for loss of consortium due to the injuries of claimant.

It appears from the evidence that on the date in question, at 5:30 p.m., Claimant was traveling southbound on Route 31 approximately one mile North of Route 176. It was windy and snowing and snow was on the ground. The roads were icy. According to Claimant, she was traveling between 15 and 20 miles per hour. The highway was two lanes, with one northbound and one southbound lane. She was traveling on an unplowed lane and was following tracks in the snow which was approximately six to eight inches deep. Claimant had left the restaurant where she worked as a waitress at approximately five p.m. She testified that she had finished working at 2:00 p.m. and that she may have had between two to four drinks before leaving. According to claimant, she was driving on her side of the road and noticed respondent's snow plow approaching her at five or six car lengths on the other side of the road. Claimant testified that as she came alongside the respondent's vehicle something whipped out from the back of the snow plow truck and hit her car. The next memories of the witness were of regaining conciousness in the car and being driven in an ambulance to the hospital where she re-

mained for five or six days. The claimant, her physician and her husband John Wasilkowski testified concerning the injuries suffered in the accident.

Former State Trooper Walter Ziel testified that he had been called to investigate the accident on the day in question. The witness testified that he had personally given or taken part in 25,000 breath tests concerning alcoholic beverages, and that he spent approximately 5 to 7 minutes with claimant in her automobile waiting for the ambulance and noticed that she had an "extremely strong odor of alcohol on her breath." Claimant was unconscious during this time. He further testified that because of the snow he couldn't determine whether either the truck or the auto was on the road at the time of the accident.

The driver of the truck with the snow plow, Frank E. Krueger, an employee of the Division of Highways testified that on the day of the accident, he was driving northbound on Route **31.** Paul Schmidt accompanied the witness as an assistant or driver's helper. Mr. Krueger had been driving trucks for eight to ten years prior to the accident. Krueger testified that he was traveling between 10 and 12 miles per hour which is normal when traveling with the "equipment down" and that his headlights were on. He was plowing snow off the highway and there was approximately one inch of frozen ice under the snow. It was very slippery and the visibility was poor with snow falling and blowing. The truck had snow tires on both front and rear and was being driven in "creeper gear" which could be brought to an instant halt within four or five feet. The snowplow is mounted on an angle on the front of the truck. The plow measures approximately nine feet across and protrudes approximately two and one half feet beyond the left side of the truck. **A** cinder

spreader is mounted on the rear of the truck and does not protrude beyond either side of the truck. Krueger further testified that he had been plowing the road in a straight line with the edge of the highway as a guide. The truck that he was driving has four wheels in the rear and two in the front, with three wheels off the road on the right shoulder at all times. No portion of the truck was protruding beyond the center line at the time of the collision. Mr. Krueger observed claimant's car at a distance of approximately three or four hundred feet. He estimated that she was traveling forty to forty-five miles per hour. The witness reduced his speed upon seeing claimant's car. Claimant continued in a straight line for until approximately 200 feet from the truck, and then began to weave. Krueger stated: "Her rear end of her car was going over the center line coming back and going over the center line and coming back." Krueger instructed his helper to pull up the wing of the plow and then he drove the truck onto the shoulder of the highway. According to Krueger, the truck was completely stopped when he heard the click of claimant's car striking the truck. After the impact the claimant's car continued about fifty feet straight south and ended up facing south in a snow bank off the shoulder of the highway. The claimant's car struck the body of the truck, the rear wheel and the cinder spreader, severing the spreader from the truck. After the accident Krueger observed weaving tire tracks in the snow. The accident occurred in the northbound lane of traffic.

Stanley Brown, testified on behalf of claimant that he was driving a truck tractor northbound about 90 to 100 feet in back of the truck with the snow plow. He testified that the plow seemed to dig into the ground and that the rear end of the truck veered into the southbound lane.

Before claimant may recover, it must be proved by a preponderance of the evidence that **(1)** that claimant was free from contributory negligence; **(2)** that respondent was negligent; and **(3)** that such negligence was the proximate cause of the accident.

Claimant has failed to prove either that she was free from contributory negligence or that respondent was negligent. Although the witnesses differed with regard to the speed of the claimant's car, claimant did not prove that she was in control of the vehicle she was driving, nor that she was not under the influence of alcohol at the time of the collision.

The Court therefore holds that the claim is denied.

(No. 5738 — Claimant awarded **$309.48.)**

ADDRESSOGRAPH MULTIGRAPH CORPORATION, Claimant, ***us.*** STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed *August 6,* ***1973.***

ADDRESSOGRAPH MULTIGRAPH 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.

PER CURIAM.

(No. 6902 — Claimant awarded $350.00.)

HENRY G. GIRAGOS, M.D., Claimant, ***us.*** STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed *August 6,* ***1973.***

THE PROFESSIONAL BOOKKEEPER, 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.

PER CURIAM.

(No. 6977—Claimant awarded $77,82.)

TEXACO, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT of CONSERVATION, Respondent.

Opinion filed August *6, 1973.*

TEXACO, 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.

PER CURIAM.

(No. 73-CC-329—Claimant awarded $140.00.)

ROBERT TRAISMAN, PH.D., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed ***August** 15, 1973.*

ROBERT N. TRAISMAN, PH.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

PER CURIAM.

(No. 73-CC-334—Claimant awarded $23.78.)

JOE DAMICO, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed August *15, 1973.*

JOE DAMICO, 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.

PER CURIAM.

(No. 73-CC-363—Claimant awarded $10,502.43.)

LAKE FOREST COLLEGE, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed August *15. 1973*

MILTON I. SHADUR, 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.

PER CURIAM.

(No. 73-CC-386 — Claimant awarded $1,308.00.)

LUCIANO SUSINI, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed ***August 15, 1973.***

LUCIANO SUSINI, 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,

PER CURIAM.

(No. 73-CC-397 — Claimant awarded $348.00.)

LESLIE C. ELLIOTT, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF LOCAL GOVERNMENT AFFAIRS,** Respondent.

Opinion filed ***August 15, 1973.***

LESLIE C. ELLIOTT, 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. 73-CC-454 — Claimant awarded $5,774.73.)

WEBBER MANUFACTURING CO., INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed ***August 15, 1973.***

WEBBER MANUFACTURING 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.

PER CURIAM.

(No. 74-CC-11—Claimant awarded $46.00.)

BLOOMINGTON CORNBELT BIOCHEMICAL LAB, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed ***August 15, 1973.***

BLOOMINGTON CORNBELT **BIOCHEMICAL LAB, 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.

PER CURIAM.

(No. 74-CC-15—Claimant awarded $589.50.)

DEAN BUSINESS EQUIPMENT COMPANY, Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed ***August 15, 1973.***

FLOYD R. **DEAN,** 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.

PER CURIAM.

(No. 74-CC-31—Claimant awarded $29.76.)

HAENIG ELECTRIC COMPANY, Claimant, *vs.* STATE OF ILLINOIS, CIVIL DEFENSE AGENCY, Respondent.

Opinion filed August *15, 1973.*

HAENIG 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.

PER CURIAM.

(No. 6970—Claimant awarded $69.95.)

CENTRAL OFFICE EQUIPMENT COMPANY Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed August *15, 1973*

CENTRAL OFFICE EQUIPMENT 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.

PER CURIAM.

(No. 7090 — Claimant awarded $125.54.)

V. M. MARKETS, INC., a/k/a VITO'S CERTIFIED FOOD MARKET Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed *August 15, 1973.*

MALKIN & GOTTLIEB, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; MARTIN A. SOLL, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-247 — Claimant awarded $105.66.)

PHILLIPS PETROLEUM COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed *August 23,* 1973.

PHILLIPS PETROLEUM COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-296 — Claimant awarded $153.90.)

GERALDINE A. TUCKER, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed *August 23, 1973.*

GERALDINE A. TUCKER, 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.

PER CURIAM.

(No. 73-CC-312—Claimant awarded $6.00.)

LEONARD STURMAN, D.P.M., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, RESPONDENT.**

OPINION FILED AUGUST 23, 1973.

LEONARD STURMAN, D.P.M., 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.

PER CURIAM.

(No. 73-CC-338—Claimant awarded $279.93.)

LINDA L. FITZSIMMONS, Claimant, *vs:* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed August *23, 1973.*

LINDA L. FITZSIMMONS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-400 — Claimant awarded $2,797.80.)

MODERN BUSINESS SYSTEMS, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed August *23, 1973.*

MODERN BUSINESS SYSTEMS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for' Respondent.

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

PER CURIAM.

(No. 73-CC-437 — Claimant awarded $96.28.)

ATLANTIC RICHFIELD COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed August *23, 1973.*

D.K. MCINTOSH, 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.

PER CURIAM.

(No. 73-CC-440 — Claimant awarded $53.41.)

ATLANTIC RICHFIELD COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF REGISTRATION AND EDUCATION, Respondent.

Opinion filed August *23, 1973.*

D. K. MC INTOSH, 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.

PER CURIAM.

(No. 73-CC-462—Claimant awarded **$39.55.)**

DANNY N. MICHEL, SHERIFF FAYETTE COUNTY ILLINOIS, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed ***August 23, 1973.***

DANNY N. MICHEL, SHERIFF FAYETTE COUNTY ILLINOIS, 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.

PER CURIAM.

(No. 74-CC-10—Claimant awarded $47.50.)

ATLANTIC RICHFIELD COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed ***August 23, 1973***

D. K. MC INTOSH, 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.

PER CURIAM.

(No. 74-CC-32 — Claimant awarded $76.61.)

BRAWN AUTOMOTIVE, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed August *23, 1973.*

BRAWN 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.

PER CURIAM.

(No. 5545 — Claimant awarded $681.18.)

SCM CORPORATION, Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed August *23, 1973.*

SCM 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,

PER CURIAM.

(No. 5821 — Case dismissed.)

ROBERT LEE HACKER, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed August *23, 1973.*

WARD, WARD, CASTENDYCK, MURRAY AND PACE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General, for Respondent.

PRISONERS AND INMATES—*duty to protect patients.* **Where adult controlled the dose of librium he was taking, and voluntarily played paddle ball, respondent was not liable for damages arising therefrom.**

HOLDERMAN, J.

Complaint was filed in this cause by one Robert Lee Hacker who alleges that on January 2, 1969, he was a patient under the care, control and supervision of the Singer Zone Center located in Rockford, Illinois, which is a center established for the treatment of alcoholics.

Claimant alleges that at approximately 2:00 p.m. on the date in question, he was in the Singer Zone Center gymnasium for the purpose of rehabilitative exercise and that he was present as a result of the instruction of an employee of the center.

Claimant, a man of 43 years of age, had been at the Singer Zone Center for approximately two weeks. This is a voluntary treatment center and a participant is free to leave at any time he so desires.

On the afternoon in question, he went to the gymnasium and found the door was locked. It was opened by an attendant and he and another individual went into the gymnasium.

Claimant was not wearing gymn shoes when he went in but selected a pair in the gymnasium, which he states were too large and did not fit him. According to his testimony, he played paddle ball with two other patients for approximately 45 minutes, all of this being done without any attendant or director being present to either instruct or to offer counseling services.

Paddle ball, according to the evidence, is a very strenuous game and one that requires a great deal of physical stamina.

Claimant alleges that at this time and place and while participating in the game, he suffered a fall on the gymnasium floor which resulted in a fracture of the bone in his right elbow.

The Complaint alleges that the claimant was required to be present for said gymnastic exercises and further alleges that the State was negligent for the following reasons:

A. Directed plaintiff to participate in strenuous physical exercise with knowledge or reckless disregard of the fact that plaintiff at the time was under medication which rendered plaintiff groggy and unstable.

B. Directed plaintiff to participate in strenuous physical exercise without first determining whether plaintiff was at that time under medication which would render plaintiff groggy and unstable.

C. Failed to supervise the fitting of shoes and failed to maintain an adequate stock of rubber soled footwear available in the gymnasium for use by the patients so that plaintiff was required to wear an improperly fit pair of shoes.

D. Failed to provide any control of supervision whatsoever for the plaintiff while plaintiff was in the gymnasium.

E. Otherwise was careless and negligent in the care, control and supervision of the plaintiff.

The facts show that claimant was given medication upon his admission to the center in the form of vitamins and Librium pills. He took these latter pills three times a day, the first prescription was for 25 grains a day, and the second dosage was changed to 10 grains of Librium four times a day.

The evidence discloses that on January 2, 1969, claimant was in the gymnasium immediately after lunch, which was the first time he had been in the gymnasium for approximately two weeks. He had taken his last Librium pill at 12:30.

The undisputed evidence shows that there was not an employee of the State present at the time of the accident but that one Karen Hatfield, an employee of the

State, had unlocked the gymnasium for the use by claimant and two other men. This was done contrary to the rules of the institution because there was no physical education therapist present while the three men were using it.

Claimant stated that he normally wears a size 8 shoe but on the day in question, due to the fact that he was unable to find a size 8 shoe, he was using a size 9 or 9%.

Claimant also alleges that he had never played paddle ball before. He was playing paddle ball when he slipped and fell, fracturing his right elbow.

Claimant alleges that he felt groggy as a result of medication he was taking and was unsteady on his feet.

The claimant and respondent introduced conflicting evidence as to the effect of the drug Librium upon the human system.

This Court must decide whether or not the State was guilty of negligence as charged and also as to whether or not there was any contributory negligence on the part of claimant.

A thorough review of the evidence discloses that the claimant was under no duress or compulsion to play paddle ball nor was he under any duress to wear the shoes that did not fit him.

The Court would like to point out that the claimant was an adult and was in a position to decide for himself if it was unwise for him to play paddle ball and he was also free at all times to question the amount of Librium that he was taking.

It is the opinion of this Court that claimant has not proven himself free from contributory negligence in

donning the shoes that he wore at the time of the accident and to play under the conditions that he did.

It is further quite evident that he tripped or stumbled over his own feet and that, while the State may have been somewhat negligent in not having an attendant present at all times, we do not believe it is the main or contributing cause to the accident in question.

The mere presence of an attendant would not have prevented the fall which occasioned the injury.

The undisputed facts are that all of the acts in which the claimant participated were voluntary acts on his part and were not done under the direction of or occasioned by any member of the staff of the institution.

Claimant having failed to establish his case by a preponderance of the evidence, said cause is hereby dismissed.

(No. 73-CC-311—Claimant awarded **$6.40.)**

WALTER **A.** MOEHLE, Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

*Opinion **filed** August 27, **1973.***

WALTER **A. MOEHLE,** Claimant, pro se.

WILLIAM **J.** SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-320—Claimant awarded $0.80.)

RAY J. HAGIST, Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed August *27, 1973.*

RAY J. HAGIST, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-459—Claimant awarded $767,625.39.)

COUNTY OF COOK, AND COOK COUNTY DEPARTMENT OF PUBLIC AID, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed August *27, 1973.*

BERNARD CAREY, Cook County State's 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.

PER CURIAM.

(No. 6588—Claimant awarded $237.95.)

ROCKFORD MEMORIAL HOSPITAL, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed August *27, 1973.*

ROCKFORD 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.

PER CURIAM.

(No. 6639—Claimant awarded $432.50.)

SALON TRUCKING CO., INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES,** Respondent.

Opinion filed *August* 27, *1973.*

SALON TRUCKING 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. 73-CC-77—Claimant awarded $530.00.)

BRANIFF INTERNATIONAL, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS,** Respondent.

Opinion filed September *5,* 1973.

BRANIFF INTERNATIONAL, 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.

PER CURIAM.

(No. 73-CC-222—Claimant awarded $18.02.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF REGISTRATION AND EDUCATION, Respondent.

Opinion filed September *5, 1973.*

ATLANTIC RICHFIELD 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,

PER CURIAM.

(No. 73-CC-223—Claimant awarded $124.45.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF AGRICULTURE, Respondent.

Opinion filed September 5, *1973.*

ATLANTIC RICHFIELD 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.

PER CURIAM.

(No. 73-CC-230—Claimant awarded $117.38.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF AGRICULTURE, Respondent.

Opinion filed September *5, 1973.*

ATLANTIC RICHFIELD 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.

PER CURIAM.

(No. 73-CC-313—Claimant awarded $2.40.)

RALPH HABBE, JR., Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed September 5, *1973.*

RALPH HABBE, JR., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-315—Claimant awarded $8.00.)

RAY E. GARLICH, Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed September *5, 1973.*

RAY E. GARLICH, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-319—Claimant awarded $4.00.)

ART LEHDE, Claimant, *vs.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed September 5, *1973.*

ART LEHDE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-389—Claimant awarded $309.65.)

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

Opinion filed September 5, *1973.*

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.

PER CURIAM.

(No. 73-CC-390—Claimant awarded $960.00.)

LP-GAS EQUIPMENT CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed September 5, *1973.*

LP-GAS EQUIPMENT CORP., 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. 73-CC-417—Claimant awarded $160.00.)

BEHAVIOR MODIFICATION TECHNOLOGY, INC., Columbus, Ohio, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed September 5, *1973.*

BEHAVIOR MODIFICATION TECHNOLOGY, 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.

PER CURIAM.

(No. 73-CC-425—Claimant awarded $9.50.)

CATHOLIC CHARITIES OF ARCHDIOCESE OF CHICAGO, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed September 5, *1973.*

CATHOLIC CHARITIES OF ARCHDIOCESE OF CHICAGO, 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.

PER CURIAM.

(No. 73-CC-426—Claimant awarded $9.50.)

CATHOLIC CHARITIES OF THE ARCHDIOCESE OF CHICAGO, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed September *5, 1973.*

CATHOLIC CHARITIES OF THE ARCHDIOCESE OF CHICAGO, 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.

PER CURIAM.

(No. 73-CC-427—Claimant awarded $11.00.)

CATHOLIC CHARITIES OF THE ARCHDIOCESE OF CHICAGO, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed September *5, 1973.*

CATHOLIC CHARITIES OF THE ARCHDIOCESE OF CHICAGO, 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.

PER CURIAM.

(No. 73-CC-428—Claimant awarded $20.00.)

CATHOLIC CHARITIES OF THE ARCHDIOCESE OF CHICAGO, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed September *5, 1973.*

CATHOLIC CHARITIES OF THE ARCHDIOCESE OF CHICAGO, 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.

PER CURIAM.

(No. 73-CC-429—Claimant awarded $10.38.)

CATHOLIC CHARITIES OF ARCHDIOCESE OF CHICAGO, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed September ***5, 1973.***

CATHOLIC CHARITIES OF ARCHDIOCESE, 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.

PER CURIAM.

(No. 73-CC-445—Claimant awarded $21.18.)

ATLANTIC RICHFIELD, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed September ***5, 1973.***

D.K. MC INTOSH, 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.

PER CURIAM.

(No. 74-CC-18—Claimant awarded $674.11.)

VOLKSWAGON SOUTH SHORE, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed September 5, 1973.

VOLKSWAGON SOUTH SHORE, 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.

PER CURIAM.

(No. 74-CC-27—Claimant awarded $2,028.70.)

MOUNT SHELTER CARE HOME, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed September 5, 1973.

MOUNT SHELTER 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.

PER CURIAM.

(No. 74-CC-28—Claimant awarded $79.00.)

HELEN E. HUGHES, Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed September 5, 1973.

HELEN E. HUGHES, 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.

PER CURIAM.

(No. 6608—Claimant awarded $1,207.00.)

ACE SIGN COMPANY, Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed September *5, 1973.*

ACE SIGN 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.

PER CURIAM.

(No. 7069—Claimant awarded $337.10.)

ROBERT W. MILAM, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed September *14, 1973.*

ROBERT W. MILAM, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER and MARTIN SOLL, Assistant Attorneys General, for Respondent.

PRISONERS AND INMATES—damages by escaped inmates. Where three inmates of a boy's school, escapes, and stole claimants auto, the loss was the result of respondent's failure **to** provide adequate security.

BURKS, J.

Claimant, Robert Milam, seeks recovery of **$337.10** for damages incurred when three wards of the Illinois

Valley View Boys School escaped and stole claimant's automobile and personal property, which was stored in the vehicle.

Departmental reports of the Department of Corrections by John R. Platt, Superintendent of the Valley View Boys School, were submitted along with a Joint Stipulation entered into between the parties.

The submitted departmental reports, recommending that an award be made to claimant, contained the following information:

"On the evening of September 24,1972, at approximately 8:35 p.m., three students in the custody of this Institution effected an escape. The students, Andre Smith, Randall Reaves and Robert Davis, had been committed to the Department as delinquents and, in the case of Reeves and Davis, had had previous histories involving auto theft, criminal trespass to vehicles, and robbery.

The students apparently hid in a large field in a gulley adjacent to the Institution and, in spite of our search efforts, were undetected. The Institution shift change occurred at 10:00 p.m., and Mr. Milam reported to work.

Because of shortages in personnel, we were unable to man the Institution gate and consequently it was left open to permit search vehicles access to the Institution grounds. Our failure to provide security on the gate permitted the students to leave their place of concealment, re-enter the Znstitution and have unhampered access to Mr. Milam's vehicle, which they broke into, hot-wired and drove to Chicago.

Because of our lack of adequate personnel, we neglected to provide security for the parking area. Mr. Milam had exercised ordinary care in terms of locking his vehicle in conforming with the regulation of the Institution.

Retrospectively, we were at fault in not taking adequate precautions to insure the integrity of our employee's property. As indicated, two of the three students involved have histories involving theft and criminal trespass to vehicles.

The students were subsequently apprehended and admitted to the auto theft and wrecking the car. They were transferred to more secure facilities per the Department's decision."

Since the State is not an insurer, claimant must prove negligence on the part of respondent before any award is granted for damage from an escaped inmate. ***Jones*** v. ***State,*** 26 ***C.C.R. 163*** *(1967).*

It is the opinion of this court that the investigation and report of the Department of Corrections establish and concede respondent's negligence in permitting three youths who had had previous histories in such criminal propensities, to escape from the Valley View Boys School and, while on escape, steal the automobile belonging to Robert Milam. Respondent has stipulated as to the amount of claimant's loss.

Claimant, Robert Milam, is hereby awarded damages in the sum of **$337.10.**

(No. 73-CC-101—Claimant awarded $5,474.22.)

DESAULNIERS AND COMPANY, Claimant, *vs.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed September *17, 1973.*

DESAULNIERS AND 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.**

PER CURIAM.

(No. 73-CC-204—Claimant awarded $11.65.)

HUCK MANUFACTURING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed September *17, 1973.*

HUCK MANUFACTURING 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.

PER CURIAM.

(No. 73-CC-339—Claimant awarded $400.00.)

CITY AUTO SALES COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent

Opinion filed September *17, 1973.*

CITY AUTO SALES 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.

PER CURIAM.

(No. 73-CC-466—Claimant awarded $120.00.)

THE PERKIN-ELMER CORPORATION, Claimant, *us.* STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY, Respondent.

Opinion filed September *17, 1973.*

THE PERKIN-ELMER 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.

PER CURIAM.

(No. 6411—Claimant awarded $4,225.00.)

MT. ALVERNO SCHOOL FOR BOYS, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed September 17, 1973.

MT. ALVERNO SCHOOL FOR BOYS, 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.

PER CURIAM.

(No. 6689—Claimant awarded $2,588.15.)

CHARLES Mc CORKLE, JR., Claimant, *vs.* STATE OF ILLINOIS, VARIOUS AGENCIES, Respondent.

Opinion filed September 17, 1973.

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.

PER CURIAM.

(No. 6911—Claimant awarded $61.44.)

MARATHON OIL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed September 17, 1973.

MARATHON 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.

PER CURIAM.

(No. 6974—Claimant awarded $748.27.)

TEXACO, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF AGRICULTURE, Respondent.

Opinion filed September 17, 1973.

TEXACO, 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.

PER CURIAM.

(No. 6982—Claimant awarded $835.64.)

ILLINOIS STATE UNIVERSITY FOUNDATION, Claimant, us. STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed September 17, 1973

RONALD V. MAYS, 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.

PER CURIAM.

(No. 7089—Claimant awarded $312.51.)

BOWMAN PRODUCTS COMPANY, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.**

Opinion filed September *17, 1973.*

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.

PER CURIAM.

(No. 7105—Claimant awarded $37.78.)

JAMES J. TRAVERS, Claimant, *vs.* **STATE OF ILLINOIS, SUPERINTENDENT OF Public INSTRUCTION, Respondent.**

Opinion filed September *17, 1973.*

JAMES J. TRAVERS, 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.

PER CURIAM.

(No. 73-CC-86—Claimant awarded $30.08.)

LLOYD GENE PERRY, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.**

Opinion filed September 20, *1973.*

LLOYD GENE PERRY, 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.

PER CURIAM.

(No. 73-CC-106—Claimant awarded $2,232.90.)

MICHAEL REESE HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed September 20, 1973.

MICHAEL REESE HOSPITAL & 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.

PER CURIAM.

(No. 73-CC-114—Claimant awarded $489.75.)

WELDOTRON CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed September 20, 1973.

WELDOTRON CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-314—Claimant awarded $21.60.)

KENNETH L. MC KINZIE, Claimant, *us.* **STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION,** Respondent.

Opinion filed September 20, *1973*

KENNETH L. MC KINZIE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-317—Claimant awarded $4.00.)

HAROLD EVANS, Claimant, *us.* **STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION,** Respondent.

Opinion filed September 20, *1973.*

HAROLD EVANS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-318—Claimant awarded $19.00.)

VICTOR SCHUBERT, Claimant, *us.* **STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION,** Respondent.

Opinion filed September 20, *1973.*

VICTOR SCHUBERT, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-394—Claimant awarded $502.00.)

ELNORA WHITLOW, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed September 20, *1973.*

ELNORA WHITLOW, 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.

PER CURIAM.

(No. 73-CC-438—Claimant awarded $288.16.)

ATLANTIC RICHFIELD COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF AGRICULTURE, Respondent.

Opinion filed September 20, *1973.*

D. K. MC INTOSH, 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.

PER CURIAM.

(No. 73-CC-448—Claimant awarded $2,764.38.)

JOSEPH L. DONAHUE, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed September 20, 1973.

ASHER, GREENFIELD, GUBBINS & SEGALL, 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.

PER CURIAM.

JOHN E. MULHOLLAND, 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.

PER CURIAM.

(No. 74-CC-39—Claimant awarded $400.00.)

RESEARCH APPLIANCE COMPANY, Claimant, *us.* STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY, Respondent.

Opinion filed September 20, 1973.

RESEARCH APPLIANCE 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.

PER CURIAM.

(No. 74-CC-45 — Claimant awarded $31.69.)

DEAN BUSINESS EQUIPMENT COMPANY, INC., Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed September 20, ***1973.***

DEAN BUSINESS EQUIP. CO., 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.

PER CURIAM.

(No. 74-CC-57 — Claimant awarded $427.93.)

FISHER SCIENTIFIC COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF REGISTRATION AND EDUCATION, Respondent.

Opinion filed September 20, 1973.

FISHER SCIENTIFIC 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.

PER CURIAM.

(No. 6860—Claimant awarded $242.80.)

CARL P. BIRK, M.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed September 20, 1973.

MIDWEST CREDIT, for Claimant.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 7012—Claimant awarded $15.00.)

V. KACHGAL, M.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed September 20, 1973.

DR. V. KACHGAL, 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.

PER CURIAM.

(No. 73-CC-38 — Climant awarded $97.35.)

KENT INDUSTRIES, INC., A Corporation, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES,** Respondent.

Opinion filed October 2, *1973.*

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.

PER CURIAM.

(No. 74-CC-2 — Claimant awarded $120.00.)

FLAMEGAS CHICAGO CORP., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed October 2, *1973.*

FLAMEGAS CHICAGO CORP., 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,

PER CURIAM.

(No. 74-CC-22 — Claimant awarded $2,925.00.)

DIGITAL EQUIPMENT CORP., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed October *2, 1973.*

DIGITAL EQUIPMENT CORP., 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.

PER CURIAM.

(No. 74-CC-44—Claimant awarded $95.78.)

DEAN BUSINESS EQUIPMENT COMPANY, INC., Claimant, *us.* **STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.**

Opinion filed October 2, *1973.*

DEAN BUSINESS EQUIP. Co., 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.

PER CURIAM.

(No. 74-CC-59—Claimant awarded $351.00.)

ANTA CORPORATION, d/b/a Four Seasons Nursing Center of Wheaton, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed October 2, *1973.*

FOUR SEASONS NURSING CENTER OF WHEATON, 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.

PER CURIAM.

(No. 74-CC-66—Claimant awarded $388.55.)

A. B. **DICK PRODUCTS** Co., Ralph B. Jones, Claimant, *us.* **STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION,** Respondent.

Opinion *filed* October 2, *1973.*

A. **B. DICK PRODUCTS** Co., Ralph **B.** Jones, 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.

PER CURIAM.

(No. 5430 — Claimant awarded $203.08.)

PRINCETON ELECTRIC SUPPLY, INC., Claimant, *us.* **STATE OF ILLINOIS, SECRETARY OF STATE,** Respondent.

Opinion *filed October* 2, *1973.*

PRINCETON ELECTRIC 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,

PER CURIAM.

(No. 5608 — Claimant awarded $1,925.78.)

SCM **CORPORATION,** Claimant, *us.* **STATE OF ILLINOIS, SECRETARY OF STATE,** Respondent.

Opinion filed October 2, *1973.*

BROWN, STINE, COOK AND HANSON, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General, for Respondent.

CONTRACTS—*service* rendered. Where evidence showed that claimant had provided goods and services to the State, an award would be entered accordingly.

HOLDERMAN, J.

(No. 73-CC-6 — Claimant awarded $142.66.)

GULF OIL COMPANY — US., Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed October *11, 1973.*

GULF OIL COMPANY — U.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.

PER CURIAM.

(No. 73-CC-240 — Claimant awarded $625.00.)

SCIENTIFIC PRODUCTS, Division of American Hospital Supply Corp., Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF REGISTRATION AND EDUCATION, Respondent.

Opinion filed October *11, 1973*

SCIENTIFIC PRODUCTS, Division of American Hospital Supply Corporation, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER and EDWARD L. S. ARKEMA, Assistant Attorneys General, for Respondent.

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

PER CURIAM.

(No. 73-CC-316—Claimant awarded $12.00.)

ARTHUR G. HAKE, Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed October *11, 1973.*

ARTHUR G. HAKE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-351—Claimant awarded $23.78.)

DANIEL ROGERS, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed October *11, 1973.*

DANIEL ROGERS, 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.

PER CURIAM.

(No. 73-CC-393—Claimant awarded $115.40.)

WILLIAM COHN, Executor of the Estate of NETTIE B. COHN, deceased, Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed October *11, 1973.*

MELVIN N. ROUTMAN, 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.

PER CURIAM.

(No. 74-CC-64—Claimant awarded $30.05.)

BRINKMANN INSTRUMENTS, INC., Claimant, *us.* STATE OF ILLINOIS, NATIONAL HISTORY SURVEY, Respondent.

Opinion filed October *11, 1973.*

BRINKMANN INSTRUMENTS, 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,

PER CURIAM.

(No. 6079—Claimant awarded $372.61.)

GULF OIL CORPORATION, Claimant, *us.* STATE OF ILLINOIS, VARIOUS AGENCIES, Respondent.

Opinion filed October *11, 1973.*

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.

PER CURIAM.

(No. 6787—Claimant awarded $408.12.)

STANDARD OIL DIVISION OF AMERICAN OIL COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed October *11, 1973.*

STANDARD OIL DIVISION OF AMERICAN 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.

PER CURIAM.

(No. 6900—Claimant awarded $315.00.)

ANESTHESIOLOGISTS, INC., Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed October *11, 1973.*

THE PROFESSIONAL BOOKKEEPER, 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.

PER CURIAM.

(No. 6901 — Claimant awarded $1,316.00.)

DUMANIAN MEDICAL CORPORATION, Claimant, us. STATE OF ILLINOIS, STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed October *11, 1973.*

THE PROFESSIONAL BOOKKEEPER, 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.

PER CURIAM.

(No. 6921 — Claimant awarded $3,291.62.)

ST. FRANCIS HOSPITAL, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed October 11, *1973*

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.

PER CURIAM.

(No. 73-CC-268 — Claimant awarded $1,642.44.)

TOOL & HOIST DIVISION OF INGERSOLL-RAND COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed October *15, 1973.*

INGERSOLL-RAND **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.

PER CURIAM.

(No. 74-CC-3—Claimant awarded $103.33.)

TOWN HOUSE HOTEL, Claimant, *us.* **STATE** OF **ILLINOIS, DEPARTMENT OF CONSERVATION,** Respondent.

Opinion ***filed*** October 15, ***1973.***

TOWN HOUSE HOTEL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **MARTIN** A. **SOLL,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-53—Claimant awarded $950.00.)

ROBERT T. FIELDING, M.D., Claimant, ***us.*** **STATE** OF **ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES,** Respondent.

Opinion ***filed October*** 15, ***1973.***

ROBERT T. **FIELDING, 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.

PER CURIAM.

(No. 74-CC-55—Claimant awarded $1,060.00.)

JOHN F. FLYNN, JR., M.D., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed October *15, 1973.*

JOHN F. FLYNN, JR., 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.

PER CURIAM.

(No. 74-CC-78—Claimant awarded $95.00.)

THOMAS KOVACHEVICH, D.O., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed October *15, 1973.*

THOMAS KOVACHEVICH, D.O., 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.

PER CURIAM.

(No. 74-CC-79—Claimant awarded $47.00.)

GEORGE T. CALEEL, D.O., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion *filed* October *15, 1973.*

GEORGE T. CALEEL, D.O., 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.

PER CURIAM.

(No. 74-CC-80 — Claimant awarded $35.00.)

GEORGE T. CALEEL, D.O., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed October *15, 1973.*

GEORGE T. CALEEL, D.O., **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.

PER CURIAM.

(No. 74-CC-81 — Claimant awarded $25.00.)

GEORGE T. CALEEL, D.O., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed October 15, *1973.*

GEORGE T. CALEEL, D.O., **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.

PER CURIAM.

(No. 6491 — Claimant awarded $750.00.)

ANDREW J. KOZAK, Claimant, *us.* **STATE** OF ILLINOIS, Respondent.

Opinion filed October 15, 1973.

JOHN O. HEIMDAL, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; MARTIN A. **SOLL,** Assistant Attorney General, for Respondent.

NEGLIGENCE—*proximate* cause. That the claimant who was free **of** contributary negligence was entitled to recover damages to his soybean crop in the amount of $750 caused by the respondent's failure to exercise reasonable care in restraining its cattle which was the proximate cause **of** the damage.

BURKS, J.

This cause of action arose in August of 1971, when the claimant suffered personal property damage to his soybean crop in the stipulated amount **of $750.00** after 60 head of cattle from the adjacent Illinois Penitentiary Farm at Joliet broke through the respondent's fence and entered onto claimant's property.

The parties agreed by a stipulation that the respondent owned and operated the Illinois Penitentiary System; that the claimant was the tenant in possession of a farm adjacent to the Joliet Branch of the Penitentiary; that the claimant had presented this claim previously to Warden John J. Twomey of the Joliet Branch; that the claimant was the sole owner of his claim; and that the amount of claimant's damages was **$750.**

The only issue is one of negligence.

The claimant testified that on the day of the occurrence, at approximately 3:30 p.m., he discovered about 60 head of the State's cattle that entered on to his land through the "wrecked" fence that surrounded the penitentiary's farm. The penitentiary was then called by the claimant and informed of the incident.

Mr. Donald Rentz, the Farm Superintendent, testified as to the manner by which the cattle broke through the fence. He said that, at the point where the cattle entered, there had been a gully under the fence which had been filled in with logs and dirt; and that the cattle were, therefore, able to push the fence up and go under it on the claimant's farm. Mr. Rentz added that this gully had been filled with dirt "many a time" and that, although the logs had never been pushed out before, after this incident another method was employed to repair the fence more permanently.

As to the manner in which the cattle were removed, Mr. Rentz related that four horsemen were brought on to the claimant's farm by the penitentiary to round up the cattle and in so doing the soybeans were damaged. It appears that most of the damage was caused when the penitentiary's horsemen tried to corral the cattle.

Both parties concede that the question of liability arising from this occurrence is covered by the following provision stated in Ch. 8, Sec. 1, Ill. Rev. Stat., 1971:

> "Hereafter, it shall be unlawful for any animal of the species of horse, ass, mule, cattle, goat, swine or geese, to run at large in the State of Illinois: Provided, that no owner or keeper of such animals shall be liable for damages in any civil suit for injury to the person or property of another caused by the running at large thereof, without the knowledge of such owner or keeper, when such owner or keeper can establish that he used reasonable care in restraining such animals from so running at large."

After a careful review of the testimony, it is the finding of this court that the respondent failed to exercise reasonable care in restraining its cattle from running at large; that the respondent had knowledge of the stray animals at the time they caused the damage to the claimant's soybean crop; and that no negligence of the claimant contributed to the occurrence. Therefore, the claimant has established the necessary elements for re-

covery of his damages consistent with the ruling of this court in *Country Mutual Insurance Co., et al.* v. *State,* No. **5391** (1972).

The claimant, Andrew J. Kozak, is hereby awarded damages in the amount of $750.00.

(No. 6874—Claimant awarded $1,400.00.)

HOWARD WORTHINGTON, INC., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION,** Respondent.

Opinion filed October 15, 1973.

HOWARD WORTHINGTON, 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.

PER CURIAM.

(No. 73-CC-66—Claimant awarded $10,790.32.)

THE JEWISH CHILDREN'S BUREAU OF CHICAGO, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES,** Respondent.

Opinion filed October 18, 1973.

AARON, AARON, SCHIMBERG & HESS, 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.

PER CURIAM.

(No. 73-CC-76—Claimant awarded $515.00.)

MATTHEWS TRANSFER COMPANY, Claimant, *vs.* STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY, Respondent.

Opinion filed October 18, 1973.

MATTHEWS TRANSFER 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.

PER CURIAM.

(No. 73-CC-153—Claimant awarded $22.00.)

CHARLES MC CORKLE, JR., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, RESPONDENT.

Opinion filed October 18, 1973.

CHARLES MC CORKLE, 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.

PER CURIAM.

(No. 73-CC-198—Claimant awarded $75.68.)

NORTHBROOK LUMBER COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed October 18, 1973.

NORTHBROOK LUMBER 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.

PER CURIAM.

(No. 73-CC-414—Claimant awarded $211.00.)

AMERICAN INSTITUTE OF REAL ESTATE APPRAISERS OF THE NATIONAL ASSOCIATION OF REAL ESTATE BOARDS, An Illinois Not-For-Profit Corporation, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed October 18, 1973.

MCDERMOTT, WILL & EMERY, 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.

PER CURIAM.

(No. 73-CC-432—Claimant awarded $2,705.11.)

ATLANTIC RICHFIELD COMPANY, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed October 18, 1973.

D. K. MC INTOSH, 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.

PER CURIAM.

(No. 73-CC-447 — Claimant awarded $7,449.40.)

LIBERTY ASPHALT PRODUCTS, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, RESPONDENT.

OPINION FILED OCTOBER 18, 1973

LIBERTY ASPHALT PRODUCTS, 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,

PER CURIAM.

(No. 6590 — Claimant awarded $76.91.)

BLACK AND COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed October 18, *1973.*

BLACK AND 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.

PER CURIAM.

(No. 7043 — Claimant awarded $155.31.)

KLAUS RADIO, INC., Claimant, *vs.* STATE OF ILLINOIS, BUREAU OF INVESTIGATION, Respondent.

Opinion filed October *18, 1973.*

KLAUS RADIO, 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.

PER CURIAM.

(No. 5334—Motion of Respondent to dismiss allowed.)

JACKLYN CUMBER, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed October 26, 1973.

POLLACK AND ENNIS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General, for Respondent.

LIMITATION—*neglect of claimant to proceed.* Claimant must pursue claim in accordance with Rule 7.

HOLDERMAN, J.

Granting Respondent's Motion to Dismiss

This is a cause of action brought against the State of Illinois, Respondent, for damages suffered by the claimant's car.

It appears that on or about August 13, 1965, claimant parked her car on the grounds of the Illinois State Fair and that the State Police of the Illinois State Fair Ground called the Ernie Schmidt Standard Service to tow said car from the parking place. The car in question was a 1964 Pontiac Grand Prix model.

The Complaint alleges that under the direction of the State Police, in the process of towing said car, the brake bands and a part of the brake mechanism was broken, and when claimant attempted to start said car and drive it, the car being parked on an incline, it

crashed into another vehicle, causing damages in the amount of $162.58.

Claimant stated she pumped her brakes and attempted to use the same but that they had little or no effect.

A hearing was held on July 13, 1967, before Commissioner Robert Godfrey. A Motion to Continue Generally was filed on July 25, 1967, by the Attorney General of the State of Illinois and the next action appearing in the records is an Order filed on September 8, 1967, that this cause be continued generally, which Order was signed by Judge Perlin, Chief Justice of the Court of Claims, and states that it was continued generally until a case pending in the Circuit Court of Sangamon County, Cause No. 2136-67, entitled ***Jacklyn Cumber*** vs. ***Ernie Schmidt Standard Service*** was disposed of.

On July 11, 1973, a Motion was filed on behalf of the Respondent, which Motion stated:

"1. By order of this Court, this case has previously been continued generally.

2. The Clerk of the Court of Claims has, by written notice, notified the claimant of the passage and requirements of Rule 7 of this Court.

3. Claimant, either personally or through his attorney, has failed to inform this Court as required by Rule 7 between the dates of April 1 and May 31, (a) giving the status of the action giving rise to continuance, (b) whether said action has been disposed of, and if so, the date and results of said disposition (c) whether the claim in the Court of Claims shall be further continued, placed back on the active calendar, or dismissed.

4. Nothing having been received from the claimant or his attorney, it is moved as above stated that this case be dismissed."

On August 1, 1973, Claimant, by her attorneys, filed an Answer to Respondent's Motion to Dismiss, which stated as follows:

"1. At the close of the original proceedings in this matter held on July 13, 1967, this court granted leave to have the case continued generally pending the outcome of a civil action involving the claimant and the operator of a certain tow truck.

2. Although claimant was successful in the ahove-mentioned action, the defendant's liability was limited and full restitution for the injuries claimed was not obtained.

3. Evidence adduced as a result of the above-mentioned litigation indicated that the named defendant in that action, Ernie Schmidt's Garage, was directed by the Illinois State Police to hook onto and tow away the claimant's car.

4. Testimony received by this court in the above-mentioned matter in its proceedings on July **13, 1967,** as indicated that the claimant's automobile was in fact properly parked and that claimant had any and all parking privileges and credentials issued by the State of Illinois allowing her to park the car.

5. In the period of time between the initial filing of the above captioned claim and the present, your claimant has retained new counsels for purposes of this action."

It appearing to this Court that Rule 7 was not complied with, and that since July 25, 1967, no action taken by the Plaintiff or any attempt made to comply with Rule 7, the Motion to Dismiss by the Respondent is hereby granted.

(No. 5600 — Claimant awarded $42,500.00.)

THE MERCHANTS NATIONAL BANK OF AURORA, ILLINOIS, as Administrator, etc., Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed October** 26, **1973.

REID, OCHSENSCHLAGER, MURPHY AND HUPP, Attorney for Claimant.

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

NEGLIGENCE—*wrongful* ***death.*** State has duty to place guard at intersection of broken stop sign until adequately repaired.

SAME—*set off.* State allowed to set off against claim amount recovered from uninsured motorist provision of claimants policy.

BURKS, J.

In our opinion filed January 9, 1973, this court held that the State was liable in this multi-count complaint for the wrongful death of 4 decedents whose separate estates are represented by the claimant as administrator. In said opinion we awarded damages to the claimant on its 4 separate causes of action as follows:

1. For the wrongful death of LARRY HAMPTON5, age 19 years. $25,000
2. For the wrongful death of SANDRA FRANKLIN, age 22 years. 25,000
3. For the wrongful death of JAMES D. FRANKLIN, age 4 months. 2,500
4. For the wrongful death of THERESA FRANKLIN, age 18 months. 2,500

On October 11, 1973, a rehearing was held by the full court, pursuant to respondent's petition. Said petition was based upon the following points, which respondent believes were overlooked or misapprehended by the court in its opinion of January 9, 1973:

1. Respondent was not negligent since it only had actual notice of the downed stop-sign for two hours prior to the fatal collision.

2. Negligence of the drivers of the vehicles involved in the collision was the proximate cause of the accident.

3. Damages awarded were contrary to the limits of the Court of Claims Act, and respondent received no credit for setoff.

We will discuss the above points raised by the respondent in their numerical order.

[1.] One comment in our prior opinion might indeed be read, out of context, as indicating that we based the State's liability on the length of time the stop sign was down after the State had constructive or actual notice of this dangerous condition, i.e., 25.5 hours of constructive notice and 2 hours of actual notice. Such was not the holding of this court in our prior opinion and we take this opportunity to correct any such inference that might be drawn from a comment which was not

necessary to our holding and cannot be regarded as controlling on the question of liability.

We have based liability in this case primarily on the negligence of State Trooper Winstead as clearly stated in our prior opinion as follows:

"We are impressed with claimant's unanswered argument that certain acts and omissions of State Trooper Winstead constitute negligence by the respondent. We restate a portion of claimant's argument on this point which we believe is particularly applicable in similar situations at intersections where traffic is traveling at a high rate of speed and where any collision is likely to be disastrous.

"Trooper Winstead discovered the sign down at 10:40 o'clock a.m. on the day in question, at least two hours before the accident, then phoned the State Police Headquarters who in turn phoned the Highway Maintenance Department. However, Trooper Winstead then left the scene and did not return until later when notified of the tragic collision. Trooper Winstead could have done two or three things which could have prevented the collision and the resulting deaths of the claimant's decedents. He could have remained at the scene and directed traffic until help came. He could have put up a flare and then gone to a nearby farmhouse for a shovel, or help, and re-erected the stop sign temporarily. He could have even made some attempt to re-erect the stop sign in a temporary manner before he left the scene. There is no testimony in the records whatsoever that Trooper Winstead did, or attempted to do, any of these things. All that Trooper Winstead said was that he did not believe he could have re-erected the stop sign. The claimants submit that he could have made, and successfully completed, an attempt to prop up the sign until further help came. We agree. ***The Trooper's failure to do any of these things constitutes negligence.*** [Emphasis added.]

In a nutshell, the respondent, after receiving actual knowledge of said dangerous condition, literally walked away from the dangerous condition and thus allowed the hazardous condition to remain, which eventually caused the death of claimants' decedents."

Our view in this matter is consistent with an opinion of the Illinois Appellate Court in a similar case decided December 7,1972. ***Novotny v. Mott and County of Cook, 9 Ill.App.3d 252.*** Here, Mott, a Cook County police officer, had arrived at the intersection of 31st Street and Wolf Road **45** minutes before an automobile collision occurred there. Officer Mott noticed that the stop and go lights were not functioning. He testified that, before leaving this intersection on another mission, he put up flares but

could not be sure whether the flares were designed to burn for 10 minutes or for 30 minutes. The court said at page 254:

> "Defendants make no serious argument that Officer Mott's action in leaving the intersection unprotected while aware that the traffic lights were not operating was not *prima facie* negligent, or that such negligence was not a proximate cause of plaintiffs injuries."

Similarly, in the case at bar, we think it is significant that respondent had not, prior to its petition for rehearing, made any serious argument denying the prima facie negligence of State Trooper Winstead. The new argument now presented by the respondent is neither timely nor, in view of *Nouotny,* persuasive. More importantly, the new argument could not have been overlooked or misapprehended in our prior opinion since it had not been submitted.

In the *Nouotny* case, it appears that the county may have had no more than 45 minutes of actual notice that the stop light was not working. Yet the Appellate Court inferentially held that it was prima facia negligence for Officer Mott to leave the intersection unprotected even though he did put up flares. In the case at bar, Trooper Winstead left the intersection totally unprotected after reporting the condition to police headquarters by phone.

In light of *Nouotny,* the length of time during which the State had notice of the downed stop sign, actual or constructive, was apparently immaterial under the circumstances in this case. So, too, was the following unnecessary comment in our prior opinion: "twenty-four hours was too long a period for the stop sign to be down at such an intersection, and this fact supports our finding of negligence on the part of the respondent." Our finding of negligence on the actions of Trooper Winstead needed no further support, and the above quoted dicta does not represent the prevailing view of this court.

[2.] Respondent's petition for rehearing presents new arguments on the question of proximate cause which were not contained in its briefs. For the first time it raises the question of the possible contributory negligence of Hugh Spears, driver of claimant's vehicle, and suggests that this may have been an efficient intervening proximate cause. We believe that claimant effectively answered this contention by citing evidence previously considered by Bruce Finne, former Assistant Attorney General who handled this case at the hearing. Suffice to say, Mr. Finne declined to argue that there was any negligence on the part of Hugh Spears.

Prior to the rehearing, respondent had argued only that the proximate cause of the accident was the negligent operation of the car driven by Natalie Biodeau which struck the Spears Car.

Accepting as we did the probability of negligence on the part of the driver of the Bilodeau car, our prior opinion proceeded to analyze the question of proximate cause at great length. Depending as it does on all of the circumstances in any given case, we concluded from a careful study of leading case law that the State's negligence was the proximate cause of the death of claimant's decedents. Respondent reargues the key cases on which the court relied, pointing out some distinguishing features, but fails to cite any case as closely in point on the question of proximate cause as the case of ***Johnson*** v. ***City of East Moline, 338 Ill.App. 220.*** Tha principal distinction, pointed out by respondent, between the ***Johnston*** case and the case at bar was the length of time the stop sign had been down and the actual or constructive notice to the responsible governmental unit. The same distinction was made in all of the new cases respondent cites from foreign jurisdictions. No case cited by the respondent involved the negligence of a traffic

officer in leaving a dangerous intersection unprotected after he had discovered it. This is the fact on which we found the State negligent, as explained in [1] above, and not in the length of notice in the State.

We then relied on the rule in *Johnston* in finding that the State's negligence was the proximate cause, notwithstanding the intervening act of a third party, the driver of the Bilodeau car. Respondent does not dispute the fact that the *Johnston* case clearly and accurately states the rule in Illinois as to what constitutes proximate cause after the first acts of negligence, which contributed to the injuries, have been determined. Our prior opinion correctly stated our conclusion that the State's negligence was the proximate cause in this action.

[3.] The court concedes that, in arriving at the amount of the awards in our prior opinion, we overlooked a letter from counsel for the claimant advising the court that each of the estates of claimant's decedents had "previously received monies under the uninsured motorist provisions of the policy which Hugh Spears, driver **of** their car, had on the day in question. The amounts for the respective estates are as follows:

1.	**Larry Hampton**	$7,000.00
2.	**Sandra Franklin**	500.00
3.	**James D. Franklin.**	**3,000.00**
4.	**Theresa Franklin.**	*3,500.00* "

The above letter dated September 1, 1971, was submitted after all briefs were filed, and the information was not contained in the briefs. After respondent properly called it to our attention, we discovered that the letter had inadvertently been placed at the back of our very voluminous file on this claim. It was, therefore, overlooked in our prior opinion. Hence, the

amounts previously awarded for the wrongful death of the two infants in this case, James and Theresa Franklin, represented the court's considered judgment as to the total mount of pecuniary damages sustained by their only heir at law, an infant sister, Penny Jean Hampton. The amount previously awarded for the death of each of the two adults was the statutory limit which this court could award for wrongful death.

The question of set-off has been timely raised by the respondent, and the amounts previously awarded to the estate of each of claimant's decedents must be reduced by the above stated amounts previously received from other sources. This is mandatory under *926 of the Court of Claims* ***Act*** which reads as follows:

> "The granting of an award under this Act shall constitute full accord and satisfaction. There shall be but one satisfaction of any claim or cause of action and any recovery awarded by the court shall he subject to the right of set-off **of** an amount equal to the monies received from any other source, whether received in consideration of release or covenant."

The above rule had been followed by this court for many years prior to the enactment of §26, under our interpretation of the intent and meaning of the Court of Claims Act. *Flisk* v. *State, 21 C.C.R. 363 (1952); Anzalone* v. *State, 24 C.C.R. 172 (1961); Williams* v. *State, 25 C.C.R. 249 (1965).*

Accordingly, the amount of the awards previously granted will be corrected by deducting the amounts received under the uninsured motorist provision of insurance carried by Hugh Spears, driver of the car in which the decedents were killed, as follows:

The maximum award of $25,000 for the death of Larry Hampton will be reduced by $7,000, leaving a net award of $18,000.

The maximum award of $25,000 for the death of

Sandra Franklin will be reduced by $500, leaving a net award of **$24,500.**

Since the estates of James D. Franklin and Theresa Franklin each received an amount from the aforesaid source in excess of ths $2,500 previously awarded by this court in our prior opinion, our prior award for these deaths will be expunged and rescinded by this amended opinion.

In view of the above stated adjustments we are making in the awards, it becomes a moot question as to whether Penny Jean Hampton, as sole heir and beneficiary of 3 of the decedents, had a separate cause of action for the death of each and, therefore, could have received more than $25,000 under the following language of §8(d) of the Court of Claims Act:

> ". . . **provided that an award for damages in a case sounding in** tort **shall not exceed the sum of $25,000 to or for the benefit of any claimant."**

Under this amended opinion, Penny Jean Hampton could receive no more than the amount awarded **for** the death of her mother, $24,500.

It is hereby ordered that our prior opinion in this cause, filed January **9, 1973,** be and the same is hereby modified and revised as stated in this amended opinion which clarifies the basis of liability and changes the amount **of** the awards.

The prior awards made under counts III and IV of the complaint are hereby rescinded and no award is to be allowed for the deaths of the infants, James and Theresa Franklin.

In lieu of the awards made in our prior opinion, we hereby make the following awards based on counts I and II of the complaint:

(1) To the Merchants National Bank of Aurora, Illinois, as Administrator of the Estate of Larry Hampton, deceased, for said decedent's wrongful death, the sum of. $18,000
(2) To the Merchants National Bank of Aurora, Illinois, as Administrator of the Estate of Sandra Franklin, deceased, for said decedent's wrongful death, the sum of. 24,500

(No. 5633—Claimant awarded $13,333.63.)

LESLIE LEE STEEN, Claimant, *us.* **STATE OF ILLINOIS,** Respondent.

Opinion filed October 26, 1973.

BEERMANN, WWERDLOVE & WOLOSHIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **EDWARD** L. S. **ARKEMA, JR.,** Assistant Attorney General, for Respondent.

DAMAGES—court will not grant a rehearing in a negligence matter based upon mere speculation that a circuit court would have granted a higher verdict.

BURKS, J.

In an opinion filed October 10, **1972,** this court found that the State was liable for certain personal injuries sustained by the claimant and granted an award for claimant's damages in the amount of **$13,333.63.** [Oral argument had been heard by the full court on September **22, 1972.1**

On October **11, 1973,** pursuant to claimant's petition for a rehearing on the question of damages only, further oral argument was heard by the full court. Claimant was personally present and displayed the scars on his head and abdomen which the court had referred to in its prior opinion.

Claimant was represented by able counsel who ar-

gued that the award made in our prior opinion did not adequately compensate the claimant for his injuries. Claimant conceded that the court had correctly stated claimant's pecuniary loss for medical expenses and loss of earnings to be $2,418.63. It does not appear from the further evidence submitted that the court had overlooked or misapprehended the severity of claimant's injuries from which he has obviously made a good recovery.

The main thrust of new argument submitted by claimant at the rehearing was that, if this matter could have been tried before a jury in the Circuit Court, in all likelihood the jury would have awarded a higher sum than this court granted. Claimant cited examples of jury verdicts in similar cases which would tend to substantiate this hypothesis.

We do not believe that the legislature intended this court, in granting awards, to be guided by any speculation as to the amount a jury might award in a similar case, if the State were suable in the Circuit Court.

The State of Illinois has been one of the leaders in abandoning its sovereign immunity and assuming liability for wrongs suffered by its citizens at the hands of the State, its agents or employees.

In creating this specialized court in which the State consents to be sued, the legislature has sought to do everything reasonably possible in establishing fair and equitable procedures in the settlement of claims against the State and, at the same time, protecting the public interest against inflated or exhorbitant judgments. This apparently is one of the reasons that trial by jury has never been authorized in the Court of Claims, and why it is not required by the Illinois Constitution of 1970:

"The right of **trial by jury** ***as heretofore enjoyed*** **shall remain inviolate."** **[Art.** I, **§13]**

Juries have been known to give greater consideration to the ability of a defendant to pay than to the merits of the case. Damage cases resulting from automobile accidents, when the defendant carries indemnity insurance, often receive this kind of treatment at the hands of juries. Certainly the state government, with its substantial sources of revenue, might well be looked upon by a jury as being able to pay any judgments against it without difficulty.

Some scholars believe that one of the objections to placing the State under the jurisdiction of the Circuit Courts is that juries frequently return verdicts which are unreasonably high. The State, in assuming liability for its wrongs, ought not to be placed at a disadvantage in any resulting litigation.

Procedures in the Illinois Court of Claims closely follow the procedures of the United States Court of Claims including the fact that all cases are assigned to a Commissioner for hearing, and trial by jury is not authorized or permitted.

In carrying out what we perceive to be legislature's intent, this court conscientiously attempts to grant awards in all legitimate claims in an amount we consider to be fair and reasonable. There is no set rule of thumb. It is always a matter of judgment. Although our judgment is based on the combined experience of the members of the court, we acknowledge the fallibility of judges. Hence, we readily grant a rehearing on points we are alleged to have overlooked or misapprehended.

In the case at bar we do not feel that we were guilty of such errors. Nor, for reasons stated above, should we be influenced by the possibility that a jury might have granted the claimant a higher amount in damages.

In our opinion of October 10, 1972, claimant received full compensation for his total pecuniary loss plus approximately five times his special damages for medical services and loss of wages. Considering all the circumstances, the court feels that our prior award is fair and reasonable.

We, therefore, reaffirm our opinion filed October 10, 1972, awarding damages to the claimant in the sum of $13,333.63.

(No. **73-CC-98—Claimant awarded $665.00.)**

CHARLES W. HUVER, PH.D., Claimant, *us.* STATE OF ILLINOIS, ATTORNEY GENERAL'S OFFICE, Respondent.

Opinion filed November *1, 1973.*

CHARLES W. HUVER, 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.

PER CURIAM.

(No. 73-CC-259—Claimant awarded $703.69.)

FRONTIER FORD, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed November *1, 1973.*

FRONTIER FORD, 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.

PER CURIAM.

(No. 73-CC-328—Claimant awarded $341.00.)

BETTER HEARING CENTER, INC., Claimant, *us.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed November *1, 1973.*

BETTER HEARING CENTER, 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.

PER CURIAM.

(No. 74-CC-62—Claimant awarded $20.00.)

STEVE FARANTZOS, D.D.S., **Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.**

Opinion filed November *1, 1973.*

Dr. **STEVE FARANTZOS,** 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.

PER CURIAM.

(No. 6978 — Claimant awarded $306.20.)

TEXACO, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed November 1, 1973.

TEXACO, 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.

PER CURIAM.

(No. 73-CC-282 — Claimant awarded $448,065.26.)

COUNTY OF COOK, AND COOK COUNTY DEPARTMENT OF PUBLIC AID, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed November 9, 1973.

BERNARD CAREY, State's Attorney of Cook County, 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.

PER CURIAM.

(No. 73-CC-57 — Claimant awarded $139.94.)

UNIVAC, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF REVENUE, Respondent.

Opinion filed November 13, 1973.

UNIVAC, 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.

PER CURIAM.

(No. 73-CC-187—Claimant awarded $906.92.)

GENERAL TIRE SERVICE, DIVISION OF GENERAL TIRE & RUBBER COMPANY, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENTS OF TRANSPORTATION AND GENERAL SERVICES,** Respondent.

Opinion filed November ***13, 1973.***

GENERAL TIRE SERVICE, DIVISION OF GENERAL TIRE & RUBBER 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.

PER CURIAM.

(No. 73-CC-196—Claimant awarded $3,100.00.)

MAC NEAL MEMORIAL HOSPITAL, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES,** Respondent.

Opinion filed November ***13, 1973.***

ROY B. SCHNEIDER, 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.

PER CURIAM.

(No 73-CC-387—Claimant awarded $361 45)

HOME OF THE GOOD SHEPHERD OF OMAHA, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed November 13, 1973

HOME OF THE GOOD SHEPHERD OF OMAHA, 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

PER CURIAM.

(No. 74-CC-63—Claimant awarded $150.00.)

STEVE FARANTZOS, D.D.S., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed November 13, 1973.

DR. STEVE FARANTZOS, 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.

PER CURIAM.

(No. 74-CC-74—Claimant awarded $299.44.)

MOORE BUSINESS FORMS, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF FINANCE, Respondent.

Opinion filed November *13, 1973.*

MOORE BUSINESS FORMS, 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.

PER CURIAM.

(No. 74-CC-85—Claimant awarded $1,454.18.)

S & L MOTOR PARTS, INC. AND S & L CENTRAL AUTO SUPPLY, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed November *13, 1973.*

S & L MOTOR PARTS, INC., AND S & L CENTRAL AUTO 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.

PER CURIAM.

(No. 74-CC-89—Claimant awarded $119.00.)

J. F. CARNEY, M.D., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed Nouember *13, 1973.*

J. F. CARNEY, 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.

PER CURIAM.

(No. 74-CC-99—Claimant awarded $550.00.)

GERALD J. RABIN, M.D., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed November *13, 1973*

GERALD J. RABIN, 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.

PER CURIAM.

(No. 74-CC-102—Claimant awarded $35.00.)

KISHWAUKEE VALLEY MEDICAL GROUP (EDWARD J. CHERECK, M.D.), Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed November *13, 1973*

KISHWAUKEE VALLEY 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.

PER CURIAM.

(No. 74-CC-113—Claimant awarded *$372.00.)*

PROFEXRAY DIVISION, LITTON MEDICAL PRODUCTS, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed November 13, 1973.

PROFEXRAY DIVISION, LITTON MEDICAL PRODUCTS, 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.

PER CURIAM.

(No. 74-CC-116—Claimant awarded $50.00.)

TOWN HOUSE HOTEL, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed November 13, 1973.

TOWN HOUSE 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.

PER CURIAM.

(No. 74-CC-117—Claimant awarded $86.00.)

TOWN AND COUNTRY AMBULANCE SERVICE, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed November 13, 1973.

TOWN AND COUNTRY AMBULANCE 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.

PER CURIAM.

(No. 74-CC-122 — Claimant awarded $5,686.57.)

INTERNATIONAL BUSINESS MACHINES CORPORATION, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF FINANCE, Respondent.

Opinion ***filed*** November ***13, 1973.***

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.

PER CURIAM.

(No. 74-CC-125 — Claimant awarded $50.66.)

MIDLOTHIAN PHARMACY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed November ***13, 1973.***

MIDLOTHIAN 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.

PER CURIAM.

(No. 74-CC-128—Claimant awarded $22.00.)

BRUCE W. SMIT, D.P.M., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed *November 13, 1973.*

BRUCE W. SMIT, D.P.M., 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.

PER CURIAM.

(No. 74-CC-129—Claimant awarded $41.65.)

JOHN P. LEDLIE, Claimant, *vs.* **STATE OF ILLINOIS, OFFICE OF THE COMMISSIONER OF BANKS AND TRUST COMPANIES, Respondent.**

Opinion filed November *13, 1973.*

JOHN P. LEDLIE, 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.

PER CURIAM.

(No. 74-CC-135—Claimant awarded $140.00.)

LESTER J. BARANOV, M.D., S.C., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed November *13, 1973.*

LESTER J. BARANOV, M.D., 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.

PER CURIAM.

(No. 5566—Claimant awarded $12,500.00.)

WILLIAM PUGH, Claimant, *us.* **STATE OF ILLINOIS,** Respondent.

Opinion filed November *13, 1973.*

LEON R. COOKE, Attorney for Claimant.

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

DAMAGES—Court will always award damages based upon the general rule in Illinois Law and Practice, Damages § **140** "the measure of compensating damages is such sum as will compensate the person injured for the loss sustained, with the least burden on the wrongdoer consisted with the idea of fair compensation."

BURKS, J.

This action was brought to recover damages for personal injuries suffered by the claimant while he was an inmate in Stateville Penitentiary at Joliet. Claimant's injuries were allegedly caused by the negligent acts of a prison guard who forced claimant, under threat of punishment, to ride in an unsafe place on a tractor in violation of prison rules.

We will first state certain facts which are not in dispute. On April 22, 1967, claimant was a prisoner at Stateville Penitentiary, confined on the prison farm. On that date he was assigned by the officer in charge to work on the plumbing detail, digging ditches and pushing a wheelbarrow. The 7 men in this detail were taken by truck to the place where the work was to be done, in the vicinity of the dairy barn. At the end of the day's work, the claimant and approximately six other prisoners, in violation of penitentiary rules, rode on a tractor from the work area back to the dormitory. One prisoner stood on each side of the driver. Three or possibly four prisoners, including the claimant, sat on a pipe running the width of the front of the tractor with their feet dangling into a large scoop which was held to the tractor by the pipe. As the tractor, traveling approximately twenty miles per hour, approached the dormitory, it struck a hole in the road. Although claimant was trying to brace himself by holding onto the pipe with both hands, he was thrown onto the tire of the tractor and from there to the road. He broke both bones in his right arm, leaving some permanent loss of use.

Claimant's testimony at the hearing may be summarized in its pertinent part as follows: On the date of his injury, there was no truck to take the prisoners back to their dormitory when their day's work was finished. Therefore, an officer in charge ordered the men to ride on the tractor as stated above. Claimant thought that the officer's name was Byrd. Claimant protested to this officer that it would be dangerous to ride on the scoop of the tractor and particularly on the end where claimant was directed to sit. His remonstrations were ignored, and the officer threatened to call the Lieutenant if claimant did not obey. Claimant understood that the penalty for disobeying such an order would automatically be 7 days in

isolation. Hence, he rode on the scoop in a dangerous position as directed.

The only evidence presented by the respondent, by way of rebuttal, was the testimony of one Howard Burge. Burge was formerly employed, but since retired, as an officer at Stateville where he had been in charge of the dairy for some 16 years, and was so employed at the time of claimant's injury. Officer Burge testified that he had never been in charge of a ditch digging detail; did not know the claimant but was sure that the claimant had never been under his supervision.

The court is somewhat mystified that respondent would rely solely on the testimony of a witness who said he knew nothing about claimant's accident or any of the facts relating to it. Officer Burge said that he, personally, had never ordered an inmate to ride on a tractor; confirmed the fact that there is a prison rule against anyone riding on a tractor other than the driver; and that he did not know what officer was in charge of the ditch digging detail at the time of claimant's injury.

If so, the court is at a loss to understand why the officer who was in charge of the ditch digging detail was not called as a witness. Respondent's records would surely contain this information on a case in which a prisoner is seriously injured and taken to the prison hospital. It also seems odd to us that the prison's records of this accident were not offered in evidence by the respondent.

Respondent bases it defense on the fact that claimant was confused as to the name and the physical appearance of the officer who ordered him onto the tractor. Contending that there was no officer at Stateville by the name of "Byrd", and that neither Officer Burge nor any other officer is as large a man as claimant had previously

described "Byrd" to be, respondent concludes that no officer gave the order; that claimant must have voluntarily elected to ride as he did on the tractor; and that claimant was, therefore, contributorily negligent.

We do not believe that such conclusion is logically or legally justified. The fact that claimant admittedly had difficulty in spelling and pronouncing names does not necessarily impeach his credibility. We note, at one point in the record, he referred to Captain Cotter as Captain Kanter. It is reasonably understandable that he thought Officer Burge's name was "Byrd" and that, as he explained, this officer looked smaller to him at the hearing than he did when claimant last saw him in his uniform.

We must either accept the testimony of Officer Burge as being factual or as possibly being based on his faulty memory of an incident that had occurred some 3 years prior to his testimony.

If we accept Burge's statements at face value, then there is no evidence in the record to refute claimant's testimony as to the cause of his injury. Burge, being respondent's only witness, said that he knew nothing about claimant's accident or any of the facts relating to it.

This leaves circumstantial evidence as the only possible basis for a finding that claimant was guilty of contributory negligence. We can conceive of only three possible theories on which such a finding might be based, all sheer conjecture, and, in our opinion, all untenable:

1. Claimant could have waited for truck transportation back to the dormitory, but elected to ride on the tractor; or

2. Claimant could have walked back to the dormitory rather than risk the dangers of riding the tractor; or

3. Claimant and his crew arranged their own transportation back to the dormitory by riding the tractor without permission and in violation of prison rules.

There is not a shred of testimony that a truck was sent or would be sent to the dairy barn to take the detail back to the dormitory. The only testimony is that there was no truck. Therefore, claimant did not elect to ride on the tractor when he could have ridden on a truck.

As for walking back to the dormitory, the court takes judicial notice of the fact that individual prisoners cannot roam about prison grounds at will. Unless there was an officer or inmate designated to march the men back to the dormitory, there was no way for claimant to go from the barn to the dormitory by walking. There was no testimony that the men were to be marched to the dormitory.

The record shows that the prisoners, as well as the guards, knew that prison rules forbid anyone other than the driver to ride on a tractor. They also knew the punishment for violating rules. Several of the men, who rode with the claimant on the tractor, were coming up for parole and were keenly aware of the consequence of disobeying an order. The suggestion that claimant and his crew deliberately violated the rule against riding on a tractor, without permission or order, is incredible. In any event, we cannot substitute such conjecture for unrefuted testimony in the record.

Following is the only logical conclusion we can draw from the evidence in this case. A prison guard, whether it was Officer Burge, who said he was in the nearby dairy barn, or some other officer, apparently seeing that no other transportation was available, told the prisoners to get on the tractor and go back to the dormitory. In so doing, the officer violated a rule of the institution that was established for the protection and safety of the inmates. This act of respondent's officer was the direct and proximate cause of claimant's injuries. Claimant,

having no choice but to obey respondent's order, was free from contributory negligence.

We need not cite the numerous cases in which this court has held the State liable for injuries to a prisoner under similar circumstances. Many such cases are referred to in *I.L.P. Vol. 39 §4, "Liability for Injuries to Prisoners"* which summarizes the rules of law applicable to this claim.

We turn now to the question of damages. Claimant prays for an award in the sum of $25,000 for his injuries, his resultant disabilities, and his loss of earnings. The only evidence in the record on the question of damages was that submitted by the claimant. This evidence was not challenged nor refuted by the respondent, and the question of damages is not mentioned in respondent's brief.

It is established from the record that claimant suffered a severe fracture of the radius and ulna bones in his right arm. He was taken to the penitentiary hospital where x-rays were taken, a cast placed on his arm, and where he remained hospitalized for 3 weeks. He was then discharged from the penitentiary and entered Illinois Research Hospital. There surgery was performed on claimant's arm; a plate and a rod were inserted in the arm which was then placed in a cast. Claimant was confined at this hospital for 6 weeks and wore the cast on his arm for 12 weeks. The doctors told him to exercise his arm as there would be some continuing limitation of use.

Dr. Samuel R. Rubert, who subsequently examined the claimant and took further x-rays of his arm, testified as a witness for the claimant, and his x-ray films were made a part of the record at the hearing. Dr. Rubert offices in Chicago and specializes in orthopedics and traumatics.

Dr. Rubert testified as follows: The x-rays showed a fracture through the mid portion of the radius bone and ulna bone of the forearm. There has been an open reduction with a metallic fixation device of both sites of fracture. The fracture in the ulna had been fixed with a pin extending 10 inches in length, and the area of fracture shows either delayed healing or a non-healing process taking place. The area of fracture in the radius is crossed by a plate 3½ to 4 inches long, which is attached with five 1-inch screws. Upon examining claimant's arm during the hearing, Dr. Rubert testified that there is an area of operative scarring of about 6 to 9 inches long on the arm. He found at least ten degrees less flexion in the injured arm, as compared with the other arm. He found a difference of about 10 to 20 degrees in extension of the right wrist, and about 15 degrees difference in flexion of the small finger. The said condition of the claimant is permanent. The pins in the arm have been and will continue to be a source of irritation and pain, and will limit claimant's activities to some extent.

Claimant's former occupation was that of a tailor. Because of his injury and the resultant limitation on the use of his fingers, he has been unable to work as a tailor. He earned modest sums at odd jobs at South Water Market but was unable to find regular work until some 2 years after his injury when he was employed by National Lead as a rood man. This job lasted only 4 weeks, claimant said, because he could not maintain the production pace required. He apparently has subsequently relied on odd jobs. While the court is not convinced that claimant's failure to find gainful employment on a permanent basis is entirely due to his injuries, which were not that severe, we are satisfied that claimant has suffered some unavoidable loss of earnings as a result of his injuries. His out of pocket expenses for medical care were apparently

less than $200 since most of his hospital and medical care were provided without cost to claimant.

This court has frequently stated that there is no fixed rule of compensation in damages for personal injuries, and that compensation is incapable of exact mathematical calculation. Hence, we follow the general rule stated in *I.L.P. Damages §140.* "The measure of compensatory damages is such sum as will compensate the person injured for the loss sustained, with the least burden on the wrongdoer consistent with the idea of fair compensation."

Our Appellate Court has said that the test of propriety of the amount of damages awarded is not the amount of out of pocket expense, but whether the award is within the limits of fair and reasonable compensation. *Congiardo* v. *Bordenaro,* (1969) 105 Ill.App.2d **374.**

In exercising the discretion which the above rules place upon this court, it is our judgment that an award of $12,500 to the claimant in this case would be fair and reasonable in the light of all the circumstance and the evidence adduced.

The claimant, William Pugh, is hereby granted an award, for the damages he has sustained, in the amount of $12,500.

(No. 6284 — Claimants awarded $430.00.)

WALTER R. PETERSON, M.D., AND DONALD ROSS, M.D., Claimant, us. STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed November 13, 1973

DR. WALTER R. PETERSON AND DR. DONALD ROSS, Claimants, 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.

PER CURIAM.

(No. 6965 — Claimant awarded $36.80.)

THE ROSCOE COMPANY, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF LABOR,** Respondent.

Opinion filed November *13, 1973.*

THE ROSCOE COMPANY, 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.

PER CURIAM.

(No. 7055 — Claimant awarded $1303.86.)

H. **O. TRERICE** Co., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed November *13, 1973.*

H. O. TRERICE 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.

PER CURIAM.

(No. 5343—Claim denied.)

MILDRED M. PYLE AND BILLY PYLE, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed November 19, 1973

HARRIS, HOLBROOK AND LAMBERT, Attorneys for Claimants.

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

CONTRIBUTORY NEGLIGENCE—Claims court follows the rule that contributory negligence on the part of claimant is a bar to recovery of damages.

BURKS, **J.**

This action arises out of an intersectional collision allegedly caused by the state's negligence in failing to replace a downed stop sign within a reasonable time after having actual or constructive notice of the defect. In the two-count complaint, claimant Mildred M. Pyle seeks damages for personal injuries she suffered in the collision. Her husband, Billy Pyle, claims damages for the loss of his wife's services and consortium as a result of her injuries. [Hereafter the word "claimant" in the singular refers to Mildred M. Pyle unless otherwise indicated.]

The accident occurred at approximately 11:30 a.m. on February 12, 1966, at the intersection of Route 148 and old Route 13 in a sparcely populated area in Williamson County west of Marion. It was a clear day, the road surface was dry, and cars approaching from any direction had an unobstructed view of the intersection.

Route 148 is a north-south, preferential highway, protected by stop signs facing traffic approaching it on old Route 13. At this intersection Route 148 widens to 4 lanes with a 6 foot center curb dividing the two northbound and the two southbound lanes. Being a through

highway, traffic on Route 148 does not stop at this intersection. It merely has warning signs some 750 feet back, indicating a crossroad, old Route 13.

Old Route 13 is a 2-lane, east-west highway on which traffic must stop before entering or crossing Route 148, and on which there is a warning sign, 737 feet in advance of the intersection, announcing "STOP AHEAD". For traffic approaching from the west, as claimant was, there are normally 2 stop signs at the intersection. One of the signs stands on a channel island, dividing the westbound lane from the right turn, commanding through traffic to stop. [This sign was down at the time of claimant's accident. It was knocked down by another accident which had occurred some 29 hours earlier.] The other stop sign stood on the curve of the right turn lane. It sits at an angle so that it is visible to east bound traffic for a distance of 125 feet. Photographic exhibits in the record also show that the back of the large octagonal stop sign across the intersection facing west, was clearly visible from cars approaching from the east.

As claimant, Mildred Pyle, was driving east on old Route 13 and approaching the intersection moments before the accident, she failed to see the "STOP AHEAD" sign but did see a red pick-up truck coming south on Route 148. She estimated that she was then about 120 feet from the intersection; that the truck was about 450 feet north of the intersection; that she had slowed her speed to about 20 miles an hour; and that the truck was traveling about 50. While aware of the oncoming truck, claimant did not stop at the intersection, nor did she see the truck again until the instant prior to the collision. Since she did not see a stop sign in her lane, claimant attempted to cross the intersection without stopping. Claimant said, "I thought he had to stop because I didn't."

A witness, Tom Stubblefield, who had been following Mrs. Pyle "for quite a ways" after she had passed him at a speed between 45 and 50 miles per hour, saw the two vehicles approach the intersection. Stubblefield estimated the truck's speed to be 50 to 60 miles per hour, and told his boy, "If somebody doesn't stop, there will be a collision".

Claimant drove her stationwagon into the intersection and had crossed the first of the 2 southbound lanes of Route 148 when the truck, owned and driven by Cecil Milo Erwin, hit claimant's car broadside, directly at the doors. Claimant was knocked completely out of her car, landed on an island in the northbound side of the road, and sustained serious and permanent injuries.

Claimant, alleging that respondent was negligent in failing to replace a downed stop sign or warning motorists of said dangerous condition at this intersection within 29 hours after a State trooper had discovered the downed sign, contends that said negligence was the direct and proximate cause of her injuries.

Claimant concedes that the driver of the truck was also negligent and did, in fact, recover the sum of $4,000 in damages from him in a separate action in the Circuit Court of Williamson County, No. 66-L-379, a case that was disposed of under a covenant not to sue. [As a result of claimant's said separate suit pending, her claim in this court was continued generally for a period of 2 years.] Claimant takes the position that the negligence of the truck driver, Milo Erwin, and the negligence of the State are concurrent; and the respondent cannot avoid responsibility for claimant's injuries by reason of the fact that a third party was also negligent as an intervening cause.

Claimant seeks to negate any possibility that she was contributorily negligent on the theory that the

downed stop sign converted this crossing into an "open" intersection and hence, she had the right to assume that she had the right of way.

Both parties, at the outset of their briefs, call our attention to ***Gray v. State,*** 21 C.C.R. 521, a case in which the claim was denied on an entirely different set of facts, but in which we stated the following general rule which is applicable to the case at bar:

> "The State is not an insurer against all accidents, which may occur by reason of the condition of its highways. However, the State is negligent, if, having knowledge of dangerous conditions on its highways, it fails to warn users of the highways of such dangerous conditions."

In analyzing the cases cited both for the claimant and respondent, we find that the factual situations in most of them are at variance with the instant case, and some present only abstract propositions of law which are not applicable to the facts as they exist in this claim.

To apply the above rule to the case at bar, we must determine whether and at what time the State had "knowledge of a dangerous condition on its highway" and whether it failed to take appropriate remedial action within a reasonable length of time. The answer, of course, depends upon the facts and circumstances which we will now consider.

It is admitted that the down stop sign was first discovered by State Trooper Jack Anderson 29 hours before claimant's accident. Trooper Anderson reported the downed sign by phone to State Police Headquarters in DuQuoin. The Division of Highways, which has the responsibility for maintaining and repairing highways, including the stop sign in question, denies that it had any notice of the sign being down prior to the accident. Although the accident occurred on a holiday week end, an engineer was on duty at the Division of Highways

traffic office to accept emergency calls. Apparently there was a temporary breakdown in communication between the State Police and the Division of Highways in this instance. The Division of Highways' report states that it repaired this stop sign immediately after receiving notice that it was down, viz., at 9:30 a.m. on Monday, February 14.

Claimant contends that Trooper Anderson was under a duty to report the downed sign to the appropriate state authorities and that, therefore, the State had notice, either actual or constructive, that the sign was down **29** hours prior to this accident. We agree with claimant's contention on this point.

Whether this particular downed sign created the type of "dangerous" condition, contemplated by the rule in ***Gray,*** is another question. Apparently Trooper Anderson did not consider that the downed sign created such a hazardous condition, based on his **14** years experience as a state trooper, that he should remain at the site or take any other emergency measures after reporting to police headquarters. He may have concluded that the other existing warning signs, information signs, and improvements in the intersection would clearly indicate to an east bound driver that a major intersection existed, and that an ordinarily prudent driver would see the danger and take proper precautions for his or her own safety. We believe there is sufficient evidence in the record to support such **a** conclusion by Trooper Anderson, although he did not so testify.

We turn next to the question as to what length of time constitutes a "failure" on the part of the State to take appropriate remedial measures after receiving notice of a downed stop sign. Again we believe the answer depends on the facts and circumstances in each particu-

lar case. In the case at bar, we cannot hold that respondent's failure to repair this particular sign or erect warning signs within 29 hours after notice is negligence per se. To do so would establish a new rule for which we find no support in existing case law nor justification by facts in the case at bar.

Because of the numerous tort actions coming before this court that are based on downed stop signs, this court has reviewed a large body of case law, from our own and other jurisdictions, concerning liability for failure to repair or properly maintain a traffic control device at an intersection. We have fnund no case holding a responsible governmental body liable when it had no more than 29 hours of notice, actual or constructive. Our survey included many cases involving busy intersections, much more hazardous than the one in the case at bar. Indeed, the shortest length of notice we found in any case in which liability was imposed, was the case cited by the claimant, ***Caudle v. State,*** 19 **C.C.R.** 35 (1949). There the State had ***4 or 5*** *days* ***notice*** that a dangerous hole existed in the center of its highway.

We will cite a few typical cases in which liability was found, and emphasize the length of notice to the governmental unit. In ***Johnson v. City of Moline,*** 338 Ill. App. 220 (19491, the city was held liable where a traffic light was knocked down, promptly removed by the city, but not replaced for a period of 6 *days.* During that 6 day period, several accidents had occurred at this busy city intersection. In ***Buckley v. City of Chicago,*** 3 Ill. App. 2d 39 (19541, the court found liability where a stop sign had been removed and missing for ***several months*** in violation of an ordinance requiring said sign.

This court was also impressed by the following cases from other jurisdictions. In ***Wagshall v. District of Co-***

lumbia, 216 A.2d 192 (Dist. Col.App.1966), the court imposed liability where the defendant had *six days* actual notice of a downed stop sign at a busy intersection. In *Fanning v. Laramie,* 402 P.2d 460 (Wyo. 19651, liability was found for allowing vegetation to grow and obscure a stop sign since the testimony revealed that this condition developed over *several months* and because of a mandatory duty imposed by statute to erect and maintain the sign in question. In *Firkus u. Rombalski,* 130 N.W.2d 835 (Wis. 19641, there was liability where the government had *19 days* actual notice that a sign had been removed by vandals and the intersection **had** obstrubed visibility due to its being heavily wooded. In *Cangiamilla v. Brindell-Bruno Inc.*, 210 So.2d 534 (La.App. 19681, liability was imposed where a stop sign was knocked down and reported *47 days* before the accident resulting in suit, and where police contacted highway supervisor a second time because of inaction on part of highway department. In *Richardson v. State,* 218 NYS 2d. 922 (19611, liability was imposed where state highway crew knocked sign down 5 *days* before the accident. In *Lyle v. Fiorito,* 60 P.2d. 709 (Wash. 19361, a county was held liabile where its contractor removed a stop sign and advance warning signs and then replaced stop sign, but not advance warning sign, in a negligent manner so that it fell down and remained down for *several weeks,* causing a nighttime collision. In *Phinney u. Seattle,* 208 P.2d 879, Wash. 19491, actual notice of ***13*** *days* of a downed stop sign imposed liability where the State removed a stop sign at an intersection with obstructed visibility, and failed to replace said sign. Also see *Robinson u. State,* 237 NYS 2d 601 (1962).

It should be observed that in all the above cases, as in the *Caudle* case, cited by the claimant, the length of notice was longer than the 29 hours of notice in the case

at bar. We found numerous cases involving longer periods of notice in which liability was denied. We will cite one in which the facts are similar in many respects to the instant cause. In *Applebee v. State of New York*, 127 N.E. 2d 289 (1955), the New York Court of Appeals upheld a finding by the New York Court of Claims that there was no liability against the State where a stop sign had been permitted to remain bent almost to the ground for a period of 7 *weeks.* That intersection in question was heavily traveled, but, as in the case at bar, had unobscured views for 600 feet. The court found that the proximate cause was the driver's failure to look, even though the evidence showed that the driver did, in fact, slow to a stop at the intersection before proceeding to enter.

In the case at bar, it is not necessary for us to conclude that the respondent was in no degree negligent, since we find that the facts in this case clearly establishes claimant's own negligence as the main contributory cause of her injuries.

This court has always followed the rule that contributory negligence on the part of a claimant is a bar to recovery of damages. The contributory negligence rule was carefully reconsidered and reaffirmed by the Illinois Supreme Court in *Maki v. Frelk,* 40 Ill.2d 193 (1968).

This rule makes it incumbent upon the claimant to prove that she did nothing to contribute to the accident. *Emm and Vanda* v. *State,* 25 C.C.R. 219 (1965).

Although claimant saw the Erwin truck coming from the north, claimant's left, on a 4-lane highway and approaching the intersection at a speed of 50 to 60 m.p.h., she did not stop before entering the intersection. Claimant contends that since she did not see a stop sign, she assumed that the Erwin vehicle had to stop. More-

over, claimant maintains that she had the right of way by reason of her being on the right of the Erwin vehicle, and cites *Ch. 95½, Sec. 165a, Ill.Rev.Stat., 1965.*

Claimant further contends that the intersection was an "open" intersection because the "stop" sign was down. To support this contention, claimant relies on ***Spiotta*** v. ***Hamilton,*** 120 Ill.App.2d 387 (1970).

Counsel for both sides have argued the ***Spiotta*** case at length, and properly distinguished it from ***Vierke*** v. ***Sunset Valley Creamery Company,*** 58 Ill.App.2d *323.* We find that the distinctions make ***Vierke*** the rule more applicable to the case at bar.

The ***Spiotta*** case held that a "right-of-way instruction is properly given to the intersection of two nonpreferential roads, both when signals are nonexistent or temporarily out of operation". ***(Spiotta*** at page **394)** That case involved an intersection of two nonpreferential two-laned roads, unlike the intersection here where Route 148 was a four-lane divided highway, and Old Route 13 was two lane. Further, the plaintiff in ***Spiotta*** stopped at the intersection and observed other vehicles, southbound and westbound, come up to the intersection and take turns proceeding from a dead stop. ***(Spiotta*** at page 391) In the instant case, claimant did not stop but rather sped through the intersection at 20 miles per hour on the assumption that if she didn't have to stop, the Erwin vehicle had to. The ***Spiotta*** case, and the ***Vierke*** case distinguished therein, are dependent on the respective knowledge and expectations of the parties approaching the intersection. If there is nothing to indicate that one of the roads is preferred, then the intersection is "open" as in ***Spiotta.*** **If** a driver knows or should have known that one of the roads is a preferential road, as in ***Vierke,*** then the intersection is not open.

In the instant case we believe that, in the proper exercise of due care and caution for her personal safety, claimant should have seen and known that she was approaching an intersection with a preferential highway. The facts clearly indicate that this was so even in the absence of the downed stop sign. Her view **of** the intersection was unobstructed. There was an advance warning sign, STOP AHEAD, which she admits she did not see. There was a stop sign for the right turn lane which was visible for a distance **of** 125 feet back in her lane. There was also an information sign approximately 50 feet west of the intersection detailing directions to Herrin, Williamson County Airport, Field Trial Club and Marion. All of these warnings clearly indicate that she was approaching an important intersection. She also saw the Erwin truck coming towards the intersection at high speed.

Even if a vehicle has the right of way, as claimant erroneously assumed that she did, this does not relieve a driver from the duty to exercise ordinary care in approaching, entering and driving through the intersection. (***Waldren*** v. ***Hardwick,*** 99 Ill.App.2d 36-1968) Rather, as the court stated in ***Conner*** v. ***McGrew***, 32 Ill.App.2d 214, 217 (1961),

". . .a driver [even] on a preferential highway does not have an absolute or unqualified right of way that can be asserted regardless of circumstances, distances or speed. ***Such a driver may not plunge blindly ahead in reliance upon an assumption that the other motorist will obey the law and yield the right of way, nor may he heedlesslyproceed into obvious danger.*** Rather, there is a duty upon such driver **to** observe due care in approaching and crossing the intersection and to drive as a prudent person would to avoid a collision when the danger is discovered, or by the exercise of reasonable care, should have been discovered." (Emphasis added)

The above rule is restated in the well known booklet, ***"Illinois Rules of the Road"***, as follows:

"It must be understood that, in ***euery*** situation, the right-of-way is some-

thing which is to be given, not taken. If the other driver is not following the rules, let him have the right-of-way even if it really belongs to you. Otherwise, you will be gambling with the lives of yourself and your passengers." [Such gambling is negligence.]

It is well settled that a driver approaching an intersection, who fails to look as he approaches, to ascertain whether there are other cars in proximity, especially those which might have the right of way over him, is guilty of want of ordinary care and contributory negligence. *(Touhey* v. ***Yellow*** *Cab Company,* **33** Ill.App.2d 180, 185 **(1962)** It would be a gross anomaly to hold that claimant fulfilled the above duty when, after observing the oncoming vehicle, she plunged heedlessly ahead without again looking or making any effort to avoid the ensuing collision. The duty of the drivers approaching an intersection to avoid a collision is reciprocal. It is not discharged by a single look and an assumption of right of way.

The claimant, a teacher with high academic achievements, actively engaged in sports and a wide range of civic and social activities, more than qualifies as a prudent person. Yet her own testimony clearly establishes the fact that she was negligent on this particular occasion.

We need not comment on whether or not Milo Erwin was also negligent, as claimant contends. It would make no difference in our conclusion **of** this action. We find that claimant's contributory negligence was the proximate cause of her injuries. Therefore, her claim against the respondent must be denied.

Count II of the complaint contains a claim of Billy Pyle, husband of claimant, Mildred Pyle, for the husband's loss of consortium resulting from the injuries his wife sustained in this unfortunate accident. He seeks damages for the loss of his wife's society, companionship,

and related conjugal benefits, as well as loss of her services.

"Generally, a cause of action for loss of consortium of the wife does not exist in the husband unless the defendant [respondent] would have been liable directly to the wife for her injury occasioning the loss of consortium." *(41 Am.Jur.2d, Husband and Wife,* §451-452, p. **379-380,** 1968)

While the Illinois Supreme Court has not ruled on this issue, the Appellate Court on several occasions has denied recovery for loss of consortium on the grounds that the cause of action is based on the principal cause of action. See ***Lyons*** v. ***Midwest Transfer Company,*** **46** Ill.App.2d *275* **(1964);** ***Clark*** v. ***Carson Pirie Scott and Co.,*** **340** Ill.App. **260 (1950);** ***Tjaden*** v. ***Moses,*** **94** Ill.App.2d **361, 365** (1968).

We hold that claim for loss of consortium is derivative in nature and is dependent upon the right of the injured spouse to recover.

Since the claim of Mildred Pyle has been denied, it, therefore, follows that the dependent claim of her husband for loss of consortium must also be denied.

This claim is hereby denied.

(No. **6412—Claim denied.)**

THOMAS MOONEYHAM, Administrator of the Estate of RONALD SCOTT MOONEYHAM, Deceased, Claimant, ***us.*** **STATE OF ILLINOIS, Respondent.**

Opinion filed November 19, 1973.

DREYER, FOOTE & STREET ASSOCIATES, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; MARTIN A. SOLL, Assistant Attorney General, for Respondent.

NEGLIGENCE—The State of Illinois is maintaining a nature park, is not obligated to warn of every dangerous place in it.

SAME—The State of Illinois is not an insurer against accidents occurring *to* patrons while using the park facilities.

SAME—The negligence of the state does not extend beyond any implied invitation.

HOLDERMAN, J

This is an action brought by Thomas Mooneyham, Administrator for the death of his son, Ronald Scott Mooneyham.

On October 25, 1972, Thomas Mooneyham, his wife, and their son, Ronald Scott Mooneyham, age 12, and several others visited Starved Rock State Park. This was the first occasion that the Mooneyhams and their children had ever been in the park. They arrived in the park about 1:00 p.m., and shortly thereafter, they prepared lunch. Lunch was concluded approximately one hour later and at that time, Ronald, age 12, Allen Tidwell, age 8, Ronald's sister, Lucretia, age **6,** and another child in the party, Boyd Potts, asked Mr. and Mrs. Mooneyham if they might walk up to the airplane ride located between the picnic area and Starved Rock.

The airplane ride was in an area visible from the picnic area where the Mooneyhams ate lunch. The children were given permission and, after being warned to be careful, left the picnic area.

After cleaning up the area and loading the car, which was some time later, the Mooneyhams and the other adults in the party started out in the direction in which the children had gone.

They were met along the way by Allen Tidwell, who

came running up to them and told them that Ronald Scott Mooneyham had fallen into the Illinois River, which borders Starved Rock State Park.

It appears from the evidence that instead of going to the airplane ride, the four youngsters had visited the area between Starved Rock and Lover's Leap.

Starved Rock is a State Park consisting of, at the time of this tragedy, approximately 1,500 acres. It is an extremely rugged area in which there are sandstone cliffs, canyons and other natural phenomena, which is the reason for the park's existence. The sandstone bluffs have been eroded by wind and water for centuries, creating a very interesting, but also a very rugged and dangerous, area. It is bordered on the north and west side by the Illinois River. Across the Illinois River, a short distance above the sandstone formation known as Starved Rock, is a dam operated by the United States Corps of Engineers. This dam controls the Starved **Rock** pool which is of considerable size as it backs the water up several miles to the northeast of the dam. This pool is of considerable width, quite deep, and extends for a distance beyond the northern and eastern limits of the park. The operation of the locks can either retard or accellerate the flow of water which affects both the volume and the speed of the river below the dam.

Below the dam, the current is much swifter than it is above the dam, depending somewhat upon the position of the locks regulating the flow of water from the pool to the river.

This dam was constructed for the purpose of supplying water for the Illinois Waterway which maintains a channel of approximately **9** feet in depth.

Most of the park area is overgrown with trees,

bushes, and various kinds of shrubbery, all interlaced with nature trails throughout the entire area.

Upon entering the park, you find a relatively flat area where the parking lots are located, together with the public toilets and concession stand, as well as a picnic area. East of the picnic area, bordering the south side of the Illinois River, is the formation known as Starved Rock.

A relatively short distance away from Starved Rock, which is a high sandstone bluff with three sides that are very sheer, is a similar formation **known** as Lover's Leap. Between them is a small beach. All of this area borders the Illinois River, the current of which is very swift in this particular area and particularly swift if there has been a release of a large volume of water from the Starved Rock dam.

To travel from Starved Rock to Lover's Leap, there is a main trail which curves around the bases of the two above named rock formations. Between these two formations is the small beach which is the area in which the accident occurred. It is possible to reach the beach area in question **by** leaving the main trail and travelling a comparatively short distance through a trail that, though unauthorized, nevertheless was used by numerous visitors.

The park does not maintain a trail to the beach area and, as a matter of fact, there is a fence, as shown by the exhibits, which at least partially blocks the area from the main trail.

Visitors, with their usual disregard for signs which have been put up in an effort to direct their travel in the park, have avoided the fence and have made it easy to go to the Beach area.

It also appears from the record that the main trails are marked with yellow dots for going and with white dots for returning.

The park is interlaced with many trails and there is evidence that there are numerous signs that read "Danger — Stay on Main Trail."

On the beach itself, there are two signs — one saying "No Swimming or Wading" and the other "Dangerous Undertow."

Despite this fact, according to the Park Rangers who testified, people still frequent the beach area and other areas of the park to which there are no authorized trails.

The record indicates that approximately 500,000 to 600,000 people visit the park annually for the purpose of viewing the works of nature. The entire area, due to the ruggedness, has proved very attractive to the visitors despite the apparent dangers that, of necessity, exist in an area as wild and rugged as a natural park.

It appears from the record that all four children had left the marked trails and gone to a small cove on which there was a beach. This area is located between Starved Rock itself and a similar rock formation known as Lover's Leap and is directly on the Illinois River, a relatively short distance below the dam. Lover's Leap is a rock formation that borders directly on the river and is of considerable height with a sheer cliff on the river's side.

After playing around in the sand for some time, Ronald Scott Mooneyham and Allen Tidwell climbed up on the Lover's Leap formation. After they climbed partway around the rock, Ronald fell in. Allen Tidwell ran back to his uncle and informed him of what had happened.

Exhibits, by pictures, show the area in which the climbing was done.

Michael Butler, a young man, was informed by Allen Tidwell of what had happened and this individual went to the scene where the young boy had fallen in.

He stated he could hear the boy but could not see him at that time because of the fact that the river had eroded the bottom of Lover's Leap formation. Mr. Butler finally saw the boy and reached down to him with a long stick but the boy in the water was unable to grasp it. Butler then jumped in and was swiftly swept downstream because of the undertow. He surfaced approximately **30** feet from the point where he went in. By that time, the boy had gone under and was out of sight of Mr. Butler. Mr. Butler then got into a boat that people who were on the river had brought over after having seen the difficulty.

Mr. Butler stated that he was a good swimmer and that he had taken off some of his clothing, including his shoes, before he went into the river, but the river at that point was flowing very swiftly and it was a very difficult place in which to swim.

Claimant, in his Brief, advanced the theory that the death of Ronald Scott Mooneyham was caused by the failure of the State of Illinois to exercise reasonable care and maintenance to keep Starved Rock State Park in a safe condition. In support of this theory, his contention is that the State of Illinois had actual notice that a dangerous area existed in Starved Rock State Park.

Claimant offered some **14** exhibits dealing with accidents in the park area. These exhibits dated from 1965 to 1971.

Three of these exhibits dealt with the Starved Rock formation and the rest dealt with either the Lover's Leap formation or the river and cove area. Some of these exhibits were admitted by the Commissioner and some were not. Several of them dealt with situations greatly similar to the present case where individuals, in complete disregard of the warning signs, attempted to climb Lover's Leap formation and suffered various sources of injuries, some of them falling into the river and others merely falling onto the beach and sustaining injuries in that fashion. Some were caused by individuals ignoring the "No Swimming" signs and going into the water.

It is rather interesting to note that these accidents involving Lover's Leap and the cove area, 11 in all, covered a period of 6 years, in which period of time there would have been approximately 3 million visitors to the park.

It is the contention of the claimant that these accidents were sufficient notice to the State that a dangerous area existed and that the State failed to exercise reasonable care in maintaining the park in a safe condition and that insufficient warning was given that dangerous conditions existed in the park.

It is also the contention of the claimant that this area should have been completely fenced off to prevent entrance, that decedent exercised due care for his own safety, and further that the parents were not guilty of contributory negligence, and that the law presumes that the wrongful death of a minor child results in pecuniary loss.

Numerous cases were cited in support of each position taken by the claimant.

The respondent, in its Brief, takes the position that

(1) Respondent is free from negligence because the State, not being an insurer of safety, has completely discharged its duty to the public in exercising reasonable care in the maintenance and supervision of Starved Rock State Park;

(2) Respondent is free from negligence, because the State of Illinois, not being an insurer of safety, has no duty to warn the public of an obvious danger existing off the trial of a State Park;

(3) The proximate cause of this accident was decedent's intentional departure from the trail;

(4) Claimant has failed to sustain his burden of establishing by a preponderance of the evidence that decedent was in the exercise of due care for his own safety;

(5) Claimant's decedent assumed the risk of injury by voluntarily exposing himself to a place of obvious danger; and

(6) Claimant is not entitled to damages.

The question then resolves itself as to whether or not an award can be made when a young child loses his life under the circumstances above described.

The State has argued that the decedent was not in the exercise of due care for his own safety. The record discloses that the unfortunate victim was a lad of better than ordinary intelligence and ability, his school record was good, and that he was normal or above normal in every respect intellectually.

This Court has previously held that the State of Illinois, in maintaining a nature park, is not obligated to warn of every dangerous place in it.

In the **HANDBOOK OF ILLINOIS EVIDENCE,** Page 90, a statement is made as follows: "However, on the question whether the evidence is admissible to prove the dangerous nature of the situation itself, considerable uncertainty is found." There are cases cited both for and against the admission of such evidence and Wigmore takes the position that the evidence of previous accidents to prove the notice of a dangerous condition should be admitted.

In the case of *Hansen* vs. *State of Illinois,* 24 CCR, Page 102, the accident was caused when the individual injured stepped off the beaten path for a very short distance. The dirt path crumbled and the individual fell. There was not any notice or warning sign. The Court, in passing upon this situation, made the following statement: "Obviously the State, in maintaining a nature park, is not obligated to warn of every dangerous place within it. It is, however, obligated to warn of a danger that exists along a trail, which it knows is being used by the public, who would have no knowledge of the existing danger."

In the case of ***Murray*** vs. *State of Illinois,* **24** CCR, Page **399,** claimant fell into a hole approximately three feet from the path. There was no warning sign and the danger was hidden. There was knowledge by the State that such conditions existed and there was no way that the general public would have knowledge of the area in question.

In the case of *Stedman* vs. *State,* **22** CCR, Page **446,** the accident happened at Starved Rock. In this case, the claimant left the path, moved to the edge of the canyon and fell. Negligence was charged by the failure to erect signs and guard rails and in failing to provide lighting. The path was fifteen feet from the place of the fall. On Page **449** in said case, the Court made the following observation: "To require the maintenance of signs, rails and lights along the many miles of pathways would place a burden upon respondent, which no reasonable man would require." Also, in the same case, same page, "Adult patrons of Starved Rock Park certainly know the character of the park's terrain, and respondent is entitled to take that into consideration in determining when,

where and how safeguards and warning should be installed."

In this case, the Court held that it was not the lack of guard rails, signs, etc. that was the cause of the accident but the intentional departure from the path by the claimant in the night time.

The Court further stated that to hold otherwise would place an unwarranted burden approaching that of an insurer upon the State of Illinois, and would, in effect, ignore the requirement that a claimant must, in order to recover, be in the exercise of due care and caution for his own safety.

In the case of *Finn* vs. *State of Illinois*, **24** CCR, Page 177, in passing upon a claim where an individual claimed to have injured himself by stepping into a depressed area, the Court made the following statement: "It is our opinion that the State cannot be held responsible for every depressed area or hole into which someone might step and turn their ankle, or otherwise injure themselves throughout the State Parks. To require constant inspection in a park of some size, where the State maintains several thousand acres for the benefit of the public, would place an undue hardship and extraordinary burden on the State, by and through its agents and servants."

While it is true that respondent is under the duty to exercise reasonable care in maintaining its parks, it is likewise the law that respondent is not an insurer against accidents occurring to patrons while using the park facilities. *Kamin* vs. *State of Illinois,* 21 CCR, Page **467.**

The Court, in its many cases involving similar situations in the park systems of the State of Illinois, has

made a distinction of the dangers that are obvious and those that are hidden or man-made. The Court has uniformly held that where the dangers are manmade or hidden and are not obvious to the public, the State is usually liable.

The Court has also held that where the danger is not one created by man or the park system but one created by nature and is obvious, the State is not responsible.

Volume 33A of Illinois Law & Practice — Section 114 — Injury in State Parks — makes the following statement.

"With respect *to* liability in tort under the Court **of** Claims Act the State owes a duty to the public to exercise reasonable care in establishing, maintaining and supervising its parks, and it has a duty to warn of a danger that exists along a nature trail which could not be discovered by the **public."** Citing **24** Ill.Ct.Cl. **1** *Martin* vs. *State.*

On the other hand, I.L. & P. states that the State is not obligated to warn of every dangerous place in a park as, it points out, the invitation to use the parks is not absolute but an invitation to use particular facilities in the manner in which, and for the purpose for which, they were designed and intended. Citing *Pulizzano* vs. *State,* 22 Ill. Ct. Cl. 234.

In the instant case, the State had knowledge of the short cut path used by Ronald to the cove and had knowledge of the use of this path by others for quite some time. It also had knowledge that numerous people visited the beach between Starved Rock and Lover's Leap.

It can thus be convincingly reasoned that, having taken no precautions against visitors using the short cut to the cove, nor against visitors making use of the cove, that there was an implied invitation extended to make use of this unauthorized path and cove area.

However, the question remains, notwithstanding the negligence of the State, whether such negligence was the proximate cause of the accident which followed.

Proximate cause is defined as that cause which, in natural or probable sequence, produced the injury complained of. See IPI Sec. **15.01** at page **93.**

Implied permission to use the beach and to make use of the short cut path does not carry with it implied permission to climb the rock formation which this young lad did. See *DuMond* vs. *City of Mattoon*, 60 Ill.App.2d, **83, 207** N.E. 2d **320.**

In climbing the rock formation Ronald did so without the express or implied knowledge or permission of the State.

Negligence, if any, of the State in permitting persons to visit the cove cannot be extended to cover injuries received by someone who goes beyond this implied invitation. There was no proximate cause between what the State failed to do and the injuries sustained in the present case. Had the drowning occurred in a manner attributable solely to the use of the beach, the result could have very easily been different.

It is this Court's opinion that all unauthorized trails to the cove, including the one used by this lad, should have been restricted in a reasonable manner, but the State's failure to do so was not the proximate cause of the accident.

It is the opinion of this Court that the natural dangers existing in said park that caused the unfortunate tragedy, and particularly the steepness of the cliff and the swiftness of the Illinois River, are certainly obvious dangers and, with the exception of the dam, were

not man-made. Clearly a river such as the Illinois River is an obvious danger and one that is not under the control of the State. The cliff upon which the victim was climbing was one created by nature and is one of the reasons that the park exists, and while it is undoubtedly true that cliffs of this nature are a challenge to young people and adults, that does not create a liability on the part of the State since it is an obvious danger and one that is assumed by visitors to the park. To make the park completely safe for every visitor, regardless of age, would result in the absolute closing of the park or confine visitors to a fenced-in area which would undoubtedly cause the park to lose its present attraction.

It is the opinion of the Court that the tragedy that occurred was not the proximate result of any negligence on the part of the State in maintaining its park.

The Court holds, therefore, that this claim is hereby denied.

(No. 73-CC-182—Claimant awarded $219.10.)

CHICAGO TRIBUNE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed December 3, 1973.

CHICAGO TRIBUNE COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; MARTIN A. SOLL, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-100—Claimant awarded $680.13.)

J. S. LATTA & SON, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed December *3, 1973.*

J. S. LATTA & SON, 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.

PER CURIAM.

(No. 74-CC-101—Claimant awarded $917.68.)

CONSOLIDATED OIL COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed December *3, 1973.*

CONSOLIDATED 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.

PER CURIAM.

(No. 74-CC-109—Claimant awarded $61.80.)

INTERROYAL CORPORATION, Claimant, *us.* STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY, Respondent.

Opinion filed December *3, 1973.*

INTERROYAL 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.

PER CURIAM.

(No. 74-CC-137—Claimant awarded $289.50.)

DALLAS ACADEMY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed December *3, 1973.*

DALLAS ACADEMY, 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.

PER CURIAM.

(No. 74-CC-138—Claimant awarded $93.48.)

GLOBE GLASS & TRIM COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed December *3, 1973.*

GLOBE GLASS & TRIM COMPANY, 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.

PER CURIAM.

(No. 74-CC-139—Claimant awarded $24.68.)

GLOBE GLASS & TRIM COMPANY, Claimant *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed December *3, 1973.*

GLOBE GLASS & TRIM COMPANY, 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.

PER CURIAM.

(No. 74-CC-143—Claimant awarded $4,571.03.)

ARNIE YUSIM CHEVROLET, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed December *3, 1973.*

ARNIE YUSIM CHEVROLET, 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.

PER CURIAM.

(No. 74-CC-163—Claimant awarded $346.00.)

KENNETH MOY, Claimant, *us.* STATE OF ILLINOIS, FAIR EMPLOYMENT PRACTICES COMMISSION, Respondent.

Opinion filed December *3, 1973.*

KENNETH MOY, 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.

PER CURIAM.

(No. 74-CC-182 — Claimant awarded $48.00.)

ROBERT J. RAKERS, Claimant, *us.* **STATE OF ILLINOIS, OFFICE OF THE COMMISSION OF BANKS AND TRUST COMPANIES, Respondent.**

Opinion filed December ***3, 1973.***

ROBERT J. RAKERS, 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.

PER CURIAM.

(No. 5751 — Claim denied.)

VICTORIA SEVERE, Claimant, *us.* **STATE OF ILLINOIS, Respondent.**

Opinion filed December ***3, 1973.***

STEINBERG AND BURTKER, Attorneys for Claim nt.

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

CONTRIBUTORY NEGLIGENCE—Though claimant could assume a sidewalk was in a reasonably safe condition, prior knowledge of it was not indicated, therefore contributory negligence.

BURKS, J.

In this action, claimant seeks damages for personal injuries she allegedly sustained when she tripped in a hole in the pavement located approximately three feet south of the curb at the northeast corner of the intersection of North Avenue and Wolf Road in the Village of Northlake. Claimant's accidental fall occurred at approximately 4:00 p.m. on Saturday, July 12, 1969.

Claimant testified that she and a companion, Agnes Davis, arrived at this location by a bus a few minutes before 4:00 p.m. on the day of her accident. They disembarked from the bus in the immediate vicinity of the hole in question. Claimant said that neither she nor Mrs. Davis had ever been in this area prior to the date of her accident. Mrs. Davis saw the hole in question as she got off of the bus. Claimant testified that, prior to her fall, she saw a hole next to the hole in which she tripped. Claimant started to cross North Avenue, she said, from a broken curb which she saw two steps from the hole.

Claimant testified that, as she began to cross the road, the stop light suddenly changed from green to red. Claimant then backed towards the curb rather than turning to retrace her steps, even though she knew that a hole and broken curb were behind her. As claimant backed to the curb her foot went into a hole causing her to fall. According to the claimant, the hole was less than a foot long and "not very wide". It was a sunny day. Claimant's vision was clear and unobstructed at all times. It also appears from the record that claimant did not attempt to cross North Avenue in a crosswalk.

Claimant was unemployed at the time of the accident. Her total medical expenses and damages were $493.10 of which $376.60 was paid by insurance. Her verified complaint asks for damages against the respondent in the amount of $25,000.

The court feels that this claim must be denied for two reasons: [1] claimant failed to prove negligence on the part of the respondent; and [2] failed to prove that she was free from contributory negligence.

[1] The legal principle that the state is not an insurer of those traveling on its highways is well settled. *Weygandt* v. *State of Illinois,* **22 C.C.R.478;** *Kavalauskas* v. *State of Illinois,* **24 C.C.R.361;** *LaBoda, et al* v. *State of Illinois,* **24 C.C.R.172;** *Arnett* v. *City of Roodhouse,* **330** Ill.App. **524;** *Davis* v. *City of Chicago,* **8** Ill.App.3d **94 (1972).**

The record in the case at bar does not support a finding that the state was negligent in failing to repair this particular defect in its pavement within a reasonable time after having actual or constructive notice **of** its existence.

We find nothing in the record here to indicate just how long the hole in the pavement had existed prior to claimant's accident. Claimant refers to photographic exhibits which seem to indicate that the hole in the pavement had been there for some time before her accident, and cites *Visco* v. *State of Illinois,* **21 C.C.R.480,** in support of her contention that, if the duration of the defect exceeded one week, the State had constructive notice and was, therefore, negligent. This conclusion of fact and law is not substantiated by the evidence. In *Visco* we ruled that the state had constructive notice because **of** the enormous size of the hole involved in that case, ***plus*** the independent testimony of two disinterested witnesses who stated that the hole had existed for at least one week prior to the accident. The hole in the *Visco* case measured 18" wide, **30"** long and 10" deep. In the instant cause, claimant's own testimony revealed that the hole was less than a foot long and "not very wide".

Hence, we find that the authority of ***Visco*** does not substantiate claimant's contention that constructive notice can be proven by photographs or mere speculation, unsupported by factual evidence. Nor did we hold in ***Visco*** that the state's failure to repair any type of hole in the road within one week of constructive notice constitutes negligence per se. As to what constitutes reasonable notice of a serious highway defect, (there a downed stop sign) see our lengthy discussion in ***Pylev. State,*** C.C. No. **5343** 'filed November 18, **1973.**

[2] **A sufficient reason for denying recovery to** claimant is 'that she was not free of contributory negligence. Claimant testified that she knew of the existence of a hole and broken curb a few minutes prior to her fall. She further stated that, as she crossed the street, the stop light changed suddenly. She then backed toward the curb, a place of known danger, rather than turn around to see where she was walking. Claimant testified that her vision was at all times clear and unobstructed.

To approach a place of known danger without care commensurate with such danger is contributory negligence. ***Doolittle*** v. ***State of Illinois,*** 21 C.C.R. **113;** ***Mount*** v. ***State of Illinois,*** 20 C.C.R. 268. Claimant calls the court's attention to its decision in ***Courtney*** v. ***State of Illinois,*** **19** C.C.R. 210, as supporting the proposition that a pedestrian using a sidewalk or roadway need not keep his eyes on the pavement to search out defects and dangers. The ***Courtney*** decision is clearly distinguished from the instant cause in that it involved a child of the age of nine who fell as a result of a defect in a sidewalk. The opinion in that case strictly limited its application to sidewalk defects, and not roadways, as claimant contends. Further, in ***Hammer*** v. ***State of Illinois,*** 22 C.C.R.

221, the court discussed the *Courtney* decision at page 225:

"While it is true that claimant could assume that a sidewalk was in a reasonably safe condition, and was not required to search out hidden defects, the fact remains that, if claimant was actually aware of a dangerous condition, she could no longer indulge in a presumption, or assume that the walk was in a reasonably safe condition."

In *Hammer* this court denied recovery to the pedestrian who stepped into a large hole located in a crosswalk because the claimant knew of the hole prior to her fall. As we said at page 226: "Her indifference to a known danger negates her claim to freedom from contributory negligence". See also, *Graham* v. *City of Rockford*, 238 Ill. 214; *Callen* v. *State of Illinois*, 23 C.C.R. 11; *Thriege* v. *State of Illinois*, 24 C.C.R. 470. The court finds that the facts here reveal that claimant has not proved that she exercised due care and caution. Contributory negligence, which under Illinois law, bars any recovery for injuries sustained. *Maki* v. *Frelk* (1968) 40 Ill.2d 193.

This claim is hereby denied.

(No. 6599—Claimant awarded $2,350.00.)

ILLINOIS BELL TELEPHONE COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed December 3, 1973.

ILLINOIS BELL TELEPHONE 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.

PER CURIAM.

(No. 5809—Claimant awarded $4,175.00.)

FRANK M. WARD, Claimant, ***us.*** **STATE OF ILLINOIS,** Respondent.

Opinion ***filed December 4, 1973.***

GRAHAM, MEYER, YOUNG, WELSCH AND MATON, Attorney for Claimant.

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

FINES—Fines involuntarily paid may in a proper case be recovered back but fines voluntarily paid cannot be recovered.

BURKS, J.

Claimant here seeks to recover the sum of $4,177.00, alleged to be the amount of an involuntary overpayment of fines and costs imposed upon him for two violations of "The Illinois Vehicle Code", i.e., being overweight on gross and violating a permit. The overpayment resulted from the court having set a bond which was some $4,177.00 in excess of claimant's fines and costs as finally determined by the Circuit Court in Vermilion County. Said bond was forfeited in an ***ex-parte*** proceeding, held without notice to claimant.

When claimant made demand upon the Circuit Clerk for a refund of the difference, he learned that the full amount of his $5,200.00 bond, less $25.00 costs, had been forwarded to the State Treasurer through the Illinois Department of Public Safety.

The amount of $5,175.00 was duly acknowledged as having been received by the Illinois State Police and also by the Office of the Treasurer of the State of Illinois, Adlai E. Stevenson 111. Demand for the return of $4,177.00 was made upon Adlai Stevenson III in his capacity as Treasurer of the State of Illinois. This de-

mand was refused because no statute authorized the refund.

Except for a difference of $20.00 in the amount allegedly due the claimant, the facts are not in dispute. The facts are stated in a stipulation, filed April 3, 1973, in which the parties hereto ***agree and stipulate*** as follows:

1. That on or about October 15, 1968, claimant, Frank M. Ward, was operating a motor vehicle along and upon Interstate Route **74** near Danville, Illinois, and within Vermilion County, Illinois, and that said claimant was arrested by Trooper John Matulis of the Illinois State Police and that the claimant was charged with violation of Chapter 95½, Paragraph 228 (b) of the Illinois Revised Statutes: Overweight on Gross, Case No. W 10-01103, and with violation of Section 230 of Chapter 95½ of the Illinois Revised Statutes, Case No. 10-091326.

2. That the claimant, Frank M. Ward, in order to secure his release from the custody of the Sheriff of Vermilion County, Illinois, deposited the sum of FIVE THOUSAND TWO HUNDRED AND No/100 DOLLARS, ($5,200.00) as bail bond in the above-named case with the Circuit Clerk of Vermilion County, Illinois, a copy of the receipt of said FIVE THOUSAND TWO HUNDRED AND No/100 DOLLARS ($5,200.00), being attached hereto as Exhibil "A".

3. That said Frank **M.** Ward was, at the time of the said arrest, an employee of Krug Excavating Company, 1185 Central Park Avenue, Chicago, Illinois.

4. That the said FIVE THOUSAND TWO HUNDRED AND No/100 DOLLARS ($5,200.00) was furnished to Frank M. Ward by said Krug Excavating Company for the purpose of paying bail bond for said Frank **M.** Ward and

that the named claimant, Frank M. Ward, has no interest in. the proceeds from the said FIVE THOUSAND Two HUNDRED AND No/100 DOLLARS ($5,200.00) paid over to the Illinois State Treasurer, and that the sole person having interest therein is the said Krug Excavating Company.

5. On December 12, 1968, a hearing was held in regard to Case No. W10-01103 and Case No. 10-091326 in the Magistrate Division of the Circuit Court for the Fifth Judicial Circuit of Illinois, Vermilion County Danville, Illinois; claimant, Frank M. Ward, not being present in person or by counsel, on the motion of the State's Attorney, claimant's bond in the amount of FIVE THOUSAND Two HUNDRED AND No/100 DOLLARS, ($5,200.00), was forfeited.

6. On March 13, 1969, a hearing was held in the Magistrate Division for the Fifth Judicial Circuit, Vermilion County, Illinois Magistrate Lawrence T. Allen presided at said hearing and Frank M. Ward was represented by his attorneys, Graham, Meyer, Young, Welsch & Maton, and the said Lawrence T. Allen, Magistrate for the Fifth Judicial Circuit, entered the order attached hereto and marked as Exhibit "B" and incorporated herein as if further set forth.

7. On June 11, 1969, a hearing was had in the Magistrate Division of the Fifth Judicial Circuit, Vermilion County, Illinois. Magistrate Lawrence T. Allen presided at that hearing. Claimant, Frank M. Ward, appeared in his proper person and by his attorneys, Graham, Meyer, Young, Welsch & Maton, and the people of the State of Illinois being represented by Larry P. Cramer, Assistant State's Attorney, and sworn evidence being heard, Magistrate Lawrence T. Allen entered the

orders attached hereto as Exhibits "C" and "D" and made a part hereof.

8. Frank M. Ward, through his attorneys, Graham, Meyer, Young, Welsch & Maton, has demanded the return of FOUR THOUSAND ONE HUNDRED SEVENTY-SEVEN AND NO/100 DOLLARS, ($4,177.00), from Gerald R. Block, the Circuit Clerk of Vermilion County, Illinois.

9. That Gerald R. Block, as Circuit Clerk for Vermilion County, Illinois has transferred the aforesaid FIVE THOUSAND AND TWO HUNDRED DOLLARS ($5,200.00) less costs of TWENTY-FIVE DOLLARS ($25.00) to the Illinois State Highway Police, as set forth in Exhibits "E" and "F" attached hereto and made a part hereof.

10. That said Illinois State Police, Division of the Department of Public Safety (now Department of Law Enforcement) endorsed said payment to the order of Adlai E. Stevenson 111. State Treasurer of Illinois, as set forth in Exhibit "G" attached hereto and made a part hereof.

11. That the State Treasurer of the State of Illinois still retains said funds and refuses to turn said funds over to the claimant, Frank M. Ward.

12. That the claimant, Frank M. Ward, through his attorneys, Graham, Meyer, Young, Welsch & Maton, has demanded the above-mentioned FOUR THOUSAND ONE HUNDRED SEVENTY-SEVEN DOLLARS ($4,177.00) of Adlai Stevenson III in his capacity as Treasurer of the State of Illinois, and that said Adlai Stevenson III, in his capacity as Treasurer of the State of Illinois, refused to refund the said FOUR THOUSAND ONE HUNDRED SEVENTY-SEVEN AND NO/100 DOLLARS ($4,177.00), to the claimant.

13. That no assignment or transfer of the above-

mentioned claim for FOUR THOUSAND ONE HUNDRED SEVENTY-SEVEN AND No/100 DOLLARS, ($4,177.00), or any part thereof or interest therein, has been made by the claimant, Frank M. Ward, who has filed this claim on behalf of said Krug Excavating Company, the true party in interest.

14. That this stipulation and the documents attached hereto will constitute the entire record in this matter.

15. That both parties waive right to a hearing and agree that the legal questions involved will be submitted to the Court by briefs from each of the parties. (End of the stipulation)

The above undisputed facts are almost identical, and in all significant respects are identical, to the facts in ***Bongi Cartage Inc., et al.,*** *v.* ***State,*** **24** C.C.R. **354.** Respondent concedes that ***Bongi Cartage*** is the most recent and authoritative case on the points involved here and agrees with the result in ***Bongi*** granting an award to the claimant notwithstanding the fact that there was no statute specifically authorizing recovery.

Both ***Bongi*** and the case at bar involved alleged violations of the Uniform Motor Vehicle Code for gross overweight, as well as other violations having standard bonds. In both cases, an ***ex parte*** judgment was entered; the claimant's bond was forfeited and the money transferred to the State Treasurer, less that portion retained as costs. Subsequently counsel in each case successfully prosecuted a Motion to Vacate the bond forfeiture; the causes were reinstated; and the trial court ordered that the amount remaining in the bond be returned to the claimant.

This court did award a full recovery to the claimants

in ***Bongi*** on the equitable grounds that: **(1)** because the payment to the court was involuntary; and (2) because the transfer of funds was illegal; and **(3)** because claimants had acted to protect their rights promptly after learning of the wrongful transfer.

Applying the ***3*** tests in ***Bongi*** to the case at bar, we find as follows:

[1] Claimant here did in fact pay the cash bond, in lieu of the fine, in order to avoid imprisonment. It should, therefore, be perfectly clear that the bond was posted involuntarily. The general rule in Illinois, which we followed in ***Bongi,*** is restated as follows in *I.L.P.* ***Fines, Forfeitures and Penalties,*** *§11:*

> **"It is a general principle that fines involuntarily paid may in a proper case be recovered back, but that fines voluntarily paid cannot be recovered."**

This court also followed the above rule to deny a claim in ***Smith*** v. *State,* 21 C.C.R. **459** because there, unlike the case at bar, the fine was paid voluntarily.

[2] Was the transfer of the bond funds illegal as contemplated by the second test applied in *Bongi*? We observe from the record that the court in Vermilion County in fact found that the ***ex parte*** proceeding, in which the bond was forfeited, was held in violation of ***Ch.*** *110A, Sec.* ***556,*** *Ill.Rev.Stat.,* ***1967;*** that the forfeiture was void *ab* ***initio;*** and, therefore, the payment of the balance of the bond money to the State was an illegal transfer of funds.

[3] As to the third element in the ***Bongi*** decision, respondent concedes in its brief that the claimant acted promptly in attempting to protect his rights. Thus, the defense of ***laches*** would not lie.

In cases of this kind we must always consider the

question of this court's jurisdiction in view gf the type of action involved. We believe that this court properly accepted and exercised jurisdiction in both the ***Smith*** and the ***Bongi*** cases cited above. Again we refer to ***I.L.P. Fines, Forfeiture and Penalties,*** §11 in which it is stated:

"The General Assembly has power to authorize the Courts to relieve against forfeitures even after judgment." ***People*** v. ***Evanuk***, **1926, 150 N.E., 634, 320** Ill., **336, 43** ALR **1230.**

Since the General Assembly has the power to authorize the courts to relieve against forfeitures, it follows that this court, having been given exclusive jurisdiction to hear claims against the State based upon statutes and laws, claimant would have no other remedy, in law or equity, except to file claim in this court.

As to the type of action involved here, we find in ***Vol. 36A of Corpus Juris Secundum, P.458,*** the following:

"Actions.Indebitatus Assumpsit. For money had and received, it has been held, is a proper form of action against the government or a county for the recovery back of a fine illegally collected. So, also, it has been held that an action for money had and received is the proper form of action to recover from a Justice of the Peace a fine illegally imposed upon him."

Among the cases cited in the footnotes to support these statements is ***Devlin*** v. ***U.S.***., **12** U.S. Court of Claims, **266.**

Respondent concedes in its brief that the the order of the Circuit Court forfeiting claimant's bond, being void ***ab initio,*** gives the State no legal right to retain the money of which it thus became possessed; that claimant's action was appropriately brought in this court; and that claimant is equitably and legally entitled to an award.

Respondent merely finds a slight discrepancy in the amount to which claimant is entitled, and we accept respondent's calculations as accurate on this point.

As set out earlier, the claimant was fined in the sum of $903.00 for the operation of an overloaded vehicle on a public highway and was also assessed $10.00 costs for this violation. He was also fined $100.00 plus $5.00 costs, for operating in violation of permits issued by the Department of Public Works and Buildings. These fines and costs total $1,018.00. Claimant admits that this amount should properly be deducted from his original bond of $5,200. However, there was a further cost of $25 deducted by the Circuit Court Clerk which was never received by the State. Therefore, it appears to the court that the sum of $1,018 in fines and costs should be deducted from the $5,175.00 actually received by the State, leaving a balance of $4,157.00 due the claimant.

Claimant is hereby awarded the sum of $4,175.00 as a refund of his overpayment of penalties.

(No. 5436 — Claimant awarded $1,610.00.)

CENTRAL CEMETERY COMPANY OF ILLINOIS, An Illinois Corporation, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed December 11, 1973.

McDONALD, SCHMIDT AND BAKER, Attorney for Claimant.

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

DAMAGES—Amounts proved as reasonable shall be included as part of claimants award.

BURKS, J.

This claim, sounding in tort, is for the cost of repairs to claimant's steel cyclone fence, allegedly damaged by agents of the respondent during the course of snow removal.

Claimant is the owner and operator of Memorial Park Cemetery located in the Village of Skokie and fronting, in part, on the public highway known as Golf Road.

During the emergency created by the great blizzard which occurred on January 27,1967, in the Chicago area, it was necessary for the Illinois Division of Highways to employ labor and equipment from the State of Wisconsin's Highway Commission. Respondent stipulated that it employed agents of Wisconsin Highway Commission to remove snow from the highway that is adjacent to claimant's premises on the north side of Golf Road in Skokie.

Claimant maintains a steel cyclone fence around its cemetery property, including the fence along the north side of Golf Road. In attempting to clear snow from the Golf Road highway shortly after the great blizzard, respondent's agents using endloaders, lifted the snow over claimant's fence onto claimant's property. In so doing, they seriously damaged claimant's fence along the north side of Golf Road east of Skokie Boulevard.

Claimant was obliged to replace its damaged fence and did cause said damaged fence to be replaced by the United States Steel Corporation Cyclone Fence Division at a cost of $1,310. The replaced fence was also painted by an employee of the claimant at a labor cost of **$250** plus $50 for painting materials. Claimant asks for damages in the sum of $1,610.

The only testimony in the record bearing on respondent's negligence is contained in the deposition of Louis Plowmin, claimant's vice-president and general manager. The pertinent portions of Mr. Plowmin's testimony is abstracted as follows:

"Well, we had the big snowstorm, and they came in to move the snow from Golf Road; they had these end-loaders and they tried to put the snow over into the cemetery, which they had no right to do. They had no permission from us to do it. Well, they bent the fence down and tore it up. I saw them trying to put the snow over the fence. They covered the fence up; they didn't know where the fence was at, and they just destroyed it. I told them that they were tearing the fence down. I could see what they were doing. They wouldn't even talk to me. They just kept on going. I called the State Highway Department and talked to Mr. Mierzychie. He told me that he did have charge of them and that they "were hired from the State of Wisconsin. I told him what had happened. He said, 'wait until the snow melts down now so we can see what the damage is and we'll take care of it'. Then he told me to go ahead and have it done. I said, 'No, we don't do it that way. You have it done'. And the next time I talked to him he said he wasn't interested; he gave me another phone number to call."

Claimant's 3 exhibits, attached to the deposition, clearly show the damage done to claimant's fence. We find that claimant has made a prima facie case of negligence against the respondent; that no rebuttal testimony or evidence was offered by the respondent; and that claimant has proved its case as to the negligence of the respondent by a preponderance of the evidence. Our conclusion is amply supported by the authority of ***Henderson*** v. ***State,*** 24 C.C.R. 35, cited in claimant's brief.

There is no issue of contributory negligence in this matter.

The only question remaining is the amount of claimant's damages. Respondent stipulated that the claimant paid **$1,310** for the United States Steel Corporation, Cyclone Division, for the replacement of the damaged fence and **$50** for the necessary materials for painting it. Mr Louis Plowmin testified that the fence was approximately two years old at the time of the damaging occurrence, and that "it was just like a new fence". He also testified that the replaced fence was painted by an employee, and that the cost of labor for painting the fence was **$250.** The evidence supports our finding that the amount claimed for this labor is reason-

able and should be included in claimant's award. This is supported by our ruling in ***Badger Petroleum*** Co. v. ***State, 24 C.C.R.117,*** cited in claimant's brief.

We find that the evidence of damages presented to the court justifies an award of $1,610 to the claimant.

Claimant is hereby awarded the sum of $1,610.00.

(No. 73-CC-208—Claimant awarded $460.30.)

HORACE D. THOMAS, Claimant, *us.* **STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION,** Respondent.

Opinion filed December *12, 1973.*

HORACE D. THOMAS, 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.

PER CURIAM.

(No. 74-CC-115—Claimant awarded $243.17.)

TRECK PHOTOGRAPHIC, INC., Claimant, *us.* **STATE OF ILLINOIS, SECRETARY OF STATE,** Respondent.

Opinion filed December *12, 1973.*

VICTOR A. WALLACE, 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.

PER CURIAM.

(No. 74-CC-121 — Claimant awarded $33.54.)

ALTER & SONS, INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed December 12, *1973.*

ALTER & SONS, 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.

PER CURIAM.

(No. 74-CC-141 — Claimant awarded $184.84.)

DECATUR AMBULANCE SERVICE, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed December *12, 1973.*

DECATUR AMBULANCE 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.

PER CURIAM.

(No. 74-CC-153 — Claimant awarded $28.20.)

KANKAKEE INDUSTRIAL SUPPLY Co., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT,** Respondent.

Opinion filed December *12, 1973.*

KANKAKEE INDUSTRIAL SUPPLY 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.

PER CURIAM.

(No. 74-CC-155—Claimant awarded $597.44.)

YOUNG METAL PRODUCTS, INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion ***filed*** December ***12, 1973***

YOUNG METAL 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.

PER CURIAM.

(No. 74-CC-159—Claimant awarded $68.00.)

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

Opinion filed December *12, 1973*

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.

PER CURIAM.

(No. 73-CC-415—Claimant awarded $989.99.)

HERBERT ARNOLD, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed December *17, 1963.*

HERBERT ARNOLD, 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.

PER CURIAM.

(No. 74-CC-13—Claimant awarded $458.00.)

RAYMOND G. HALVORSON, M.D., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed December *17, 1973.*

RAYMOND G. HALVORSON, M.D., 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.

PER CURIAM.

(No. 74-CC-86—Claimant awarded $43,890.07.)

FRANK B. HALL & Co., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed December *17, 1973.*

FRANK B. HALL & 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.

PER CURIAM.

(No. 74-CC-87 — Claimant awarded $9,953.00.)

FRANK B. **HALL & Co., Claimant,** *us.* **STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.**

Opinion filed December 17, 1973.

FRANK B. **HALL** & 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.

PER CURIAM.

(No. 74-CC-88 — Claimant awarded $9.00.)

RICHARD M. **TERRY,** M.D., **Claimant,** *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed December 17, 1973.

RICHARD M. TERRY, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS** G. **OLSON,** Assistant Attorney General, **for** Respondent.

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

PER CURIAM.

(No. 74-CC-112 — Claimant awarded $167.00.)

PFIZER INC., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed December 17, *1973.*

PFIZER 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.

PER CURIAM.

(No. 74-CC-126 — Claimant awarded $1,918.04.)

AERO MAYFLOWER TRANSIT CO., INC., Claimant, *us.* **STATE OF ILLINOIS, BUREAU OF THE BUDGET,** Respondent.

Opinion filed December *17, 1973.*

AERO MAYFLOWER TRANSIT CO., 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.

PER CURIAM.

(No. 74-CC-140 — Claimant awarded $582.00.)

DR. NIKOS PANACOS, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed December 17, *1973.*

DR. NIKOS PANACOS, 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.

PER CURIAM.

(No. 74-CC-147 -- Claimant awarded $52.45.)

TEXACO, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion ***filed*** December *17,* ***1973.***

TEXACO, 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.

PER CURIAM.

(No. 74-CC-148 — Claimant awarded $99.49.)

TEXACO, INC., Claimant, ***us.*** STATE OF ILLINOIS, DEPARTMENT OF Transportation, Respondent.

Opinion filed December 17, 1973.

TEXACO, 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.

PER CURIAM.

(No. 74-CC-154 — Claimant awarded $750.00.)

LAUREL HAVEN SCHOOL, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed December 17, 1973

LAUREL HAVEN SCHOOL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-180 — Claimant awarded $1,928.25.)

OFFICE EQUIPMENT *Co.* OF CHICAGO, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed December 17, 1973.

OFFICE EQUIPMENT Co. OF CHICAGO, 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.

PER CURIAM.

(No. 74-CC-187 — Claimant awarded $43,076.07.)

CENTURY MACHINE SHOP, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed December 17, 1973.

CENTURY MACHINE SHOP, 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.

PER CURIAM.

(No. 6988—Claimant awarder $252.00.)

KANKAKEE INDUSTRIAL SUPPLY COMPANY, INC., Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed December *17, 1973.*

KANKAKEE INDUSTRIAL SUPPLY COMPANY, INC., Claimant, pro se.

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

CONTRACT—payment allowed upon proof of claim.

PER CURIAM.

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 the purpose of this expenditure by the Department of Mental Health is the reimbursement to the vendor in accordance with the contract between the vendor and the Department of Mental Health for five gallon returnable bleach drums that were not returned. In accordance with the contract the department is to pay a price of $9.00 to the vendor for each drum not returned. The claim was filed for an amount of $927.00, but an audit conducted by the claimant and Mr. Gerald C. Anderson, Business Administrator for the Kankakee State Hospital, has concluded that as of No-

vember 6, 1972, the date of the filing of this complaint, there were only 28 drums outstanding and not returned which would amount to $252 due and owing for drums on the date of the filing of the claim. It would appear from the audit that the supplying and return of drums is a continuing purpose and that it would be virtually impossible at any time to determine if the claimant had supplied drums that would never be returned. However, the inventory of the Kanakee State Hospital indicated that there were drums missing and that the number missing would not be greater than 81. However, this report of the inventory was a current figure as of October 2, 1973, and can not be relied upon by the claimant in their claim for nonreturned drums as of the date of filing the complaint in question.

In view of the fact that there are apparently drums missing which can not be returned and the number of drums missing which can not be returned as of the date of the filing of the complaint appears from the inventory to be 28, it is hereby ordered by this Court that the claimant be awarded the amount of $252 which is payment for 28 drums at $9 apiece.

IT IS, HEREBY ORDERED that the sum of $252 (Two HUNDRED FIFTY TWO DOLLARS) be awarded claimant in full satisfaction of any and all claims presented to the State of Illinois under the above-captioned cause.

(No. 7035—Claimant awarded $412.30.)

BURROUGHS CORPORATION, Claimant, *vs.* **STATE OF ILLINOIS, SECRETARY OF STATE,** Respondent.

Opinion filed December 17, 1973.

BURROUGHS 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.

PER CURIAM.

(No. 6826—Claim denied.)

JAMES EICKMEYER, Claimant, *us.* **STATE OF ILLINOIS,** Respondent.

Opinion filed *March* 22, *1973.*

Petition **of** Respondent for rehearing allowed, award order stayed, case dismissed December **21, 1973** on Claimants motion.

JAMES EICKMEYER, Claimant, pro se.

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

CONTRACTS—*implied.* Claims for wages can be based on implied contract under proper circumstances.

BURKS, J.

Claimant, representing himself, presents this comparatively small claim for back pay in the amount of **$350** which he contends is owed to him by the Department of Labor's Division of Unemployment Compensation.

Claimant avers that, during certain periods stated in the stipulation below, he performed the duties of Office Manager II at the Quincy Office of the above named division, while being paid at the salary and in the title **of** Unemployment Claims Deputy I.

There was a paucity of evidence presented by the claimant and none offered by the respondent since it did

not elect to answer. Respondent filed a motion to dismiss on technical and legal grounds. The court requested the respondent to make an investigation in the Department of Labor and submit a statement of facts which might obviate the necessity and expense of a formal hearing and the employment of legal counsel for the claimant. We are in receipt of the following stipulation filed on March 1, 1973:

JOINT STIPULATION AS TO THE FACTS

Now comes the claimant, James Eickmeyer, and the respondent, State of Illinois, by William J. Scott, Illinois Attorney General, and jointly stipulate to the following facts for the purpose of presenting to the Court in a concise chronological order of the events as they occurred. The purpose of presenting it at this time is to aid the Court in its determination of the questions involved in respondent's Motion to Dismiss, and the claimant's Objections to Respondent's Molion to Dismiss. In furtherance of this purpose, the parties stipulate as follows:

1. On or about December 1, 1968, the manager of the Quincy office of the Department of Labor, Division of Unemployment Compensation, Mr. Leroy Cramer, was transferred to the Rockford Office.

2. On or about June 16, 1969, Mr. John Robinson was appointed as manager to the Quincy office.

3. Mr. Robinson did not assume the managerial duties at Quincy until July 1, 1969.

4. During the period from on or about December 1, 1968 through on or about June 30, 1969, the claimant performed duties of Unemployment Compensation Office Manager II at the Quincy office while being paid at the salary of and in the title of Unemployment Claims Deputy I.

5. During January of 1969, the salary for the higher position would have been $726.00 whereas the claimant was paid at the lower salary of $715.00

6. For the months of February, March, April, May and June of 1969, the payment for the higher title would have been $742.00 per month, whereas the claimant was paid at the salary of $720.00 per month.

7. That during the period of time in question the total salary for the higher title would have been $4,436, whereas the claimant was paid $4,315, or $121 less than he would have been paid at the higher salary.

8. That the complaint alleges salary due of $315, this being based on an additional period of time for the period August 1, 1970 to October 1, 1970, but that during this time, the claimant had only limited additional responsibilities, not the full responsibility of a managerial position

9. The Illinois Bureau of Employment Security, the office in question in this claim, is fully operated through federal grant-in-aid funds.

10. It has been agreed between the parties that should this court determine that the claimant is entitled to compensation, the amount of $121 would be the proper amount for an award.

11. This stipulation is not designed to supersede the motion or objections previously filed, but is supplemental **for** the Court's benefit in its determination of a proper course of action with regard to said motion and objection.

Based on the above stipulation, and without passing on the merits of respondent's technical legal arguments in its earlier motion to dismiss, we find that claimant is equitably entitled to back pay for services rendered in the amount of $121 under an implied contract with the respondent.

Claimant, James Eickmeyer, is hereby awarded back pay in the amount of $121.00.

(No. 73-CC-124—Claimant awarded $330.07.)

SUN OIL COMPANY OF PENNSYLVANIA, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed December 26, 1973.

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.

PER CURIAM.

(No. 74-CC-16—Claimant awarded $2,179.00.)

DEAN EVANS CO., Claimant, *us.* **STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY,** Respondent.

Opinion filed December 26, 1973.

DEAN EVANS 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,

PER CURIAM.

(No. 74-CC-191—Claimant awarded $7,833.00.)

GRACE CARPETING, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed December 26, 1973.

GRACE CARPETING, 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.

PER CURIAM.

(No. 74-CC-207—Claimant awarded $164.50.)

SUSAN G. PIERSON, Special Assistant Attorney General, Claimant, us. STATE OF ILLINOIS, ATTORNEY GENERAL'S OFFICE, Respondent.

Opinion filed December 26, 1973.

SUSAN G. PIERSON, Special Assistant Attorney General, 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.

PER CURIAM.

(No. 74-CC-146—Claimant awarded $219.81.)

J. C. PENNEY CO., INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion *filed* January 8, *1974.*

J. C. PENNEY CO., 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.

PER CURIAM.

(No. 74-CC-156—Claimant awarded $800.00.)

PARKVIEW ORTHOPAEDIC GROUP, S.C., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion *filed* January *8, 1974.*

PARKVIEW ORTHOPAEDIC GROUP, S.C., 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.

PER CURIAM.

(No. 74-CC-160—Claimant awarded $53.00.)

JERSEY COUNTY EDUCATIONAL SERVICE REGION, Claimant, us. STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed January 8, *1974*

JERSEY COUNTY EDUCATIONAL SERVICE REGION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-164—Claimant awarded $3,171.00.)

GRAND SPAULDING DODGE, INC. Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed January 8, *1974.*

GRAND SPAULDING DODGE, 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.

PER CURIAM.

(No. 74-CC-166—Claimant awarded $1,576.12.)

AID TO RETARDED CHILDREN, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed January 8, *1974.*

AID TO RETARDED CHILDREN, 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.

PER CURIAM.

(No. 74-CC-117—Claimant awarded $498.98.)

FRANK J. CORBETT RECRUITMENT ADVERTISING, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion *filed* January 8, *1974.*

FRANK J. CORBETT RECRUITMENT ADVERTISING, 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,

PER CURIAM.

(No. 74-CC-183—Claimant awarded $280.07.)

MYRNA FAYE MC QUADE, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed January 8, *1974.*

MYRNA FAYE MC QUADE, 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.

PER CURIAM.

(No. 74-CC-195—Claimant awarded $17.78.)

AMERICAN PETROFINA COMPANY OF TEXAS, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed January 8, 1974.

AMERICAN PETROFINA COMPANY OF TEXAS, 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.

PER CURIAM.

(No. 74-CC-196—Claimant awarded $27.47.)

AMERICAN PETROFINA COMPANY OF TEXAS, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion *filed* January 8, *1974*

AMERICAN PETROFINA COMPANY OF TEXAS, 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.

PER CURIAM.

(No. 74-CC-199—Claimant awarded $138.00.)

JOSHUA H. WEINER, M.D., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed January 8, 1974.

JOSHUA H. **WEINER,** 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.

PER CURIAM.

(No. 74-CC-201—Claimant awarded $18.60.)

MR. **MICHAEL** R. **CANNON, Claimant,** *us.* **STATE OF ILLINOIS, OFFICE OF THE LIEUTENANT GOVERNOR, Respondent.**

Opinion filed January 8, 1974.

MR. **MICHAEL** R. **CANNON,** 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.

PER CURIAM.

(No. 74-CC-205—Claimant awarded $168.00.)

ROBERT O. SLOAN, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.**

Opinion filed January 8, *1974.*

ROBERT O. SLOAN, 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.

PER CURIAM.

(No. 74-CC-206—Claimant awarded $8.27.)

TEXACO, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed January 8, 1974.

TEXACO, 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.

PER CURIAM.

(No. 74-CC-225—Claimant awarded $116.20.)

DARLENE HAROLD, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed January 8, 1974.

DARLENE HAROLD, 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.

PER CURIAM.

(No. 74-CC-227—Claimant awarded $94.20.)

CAROL A. MOSES, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF REVENUE, Respondent.

Opinion filed January 8, 1974.

CAROL A. MOSES, 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.

PER CURIAM.

(No. 74-CC-231—Claimant awarded $423.73.)

P. N. HIRSCH & Co., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed January 8, 1974.

P. N. HIRSCH & Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-188—Claimant awarded $4,254.28.)

WRIGHT BUILDING CENTER, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed January 18, 1974.

WRIGHT BUILDING CENTER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-190 — Claimant awarded $3,668.67.)

R. D. LAWRENCE CONSTRUCTION COMPANY, Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed January *18, 1974*

R. D. LAWRENCE CONSTRUCTION COMPANY, Claimant, **pro** se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-21P Claimant awarded $79.31.)

CRC PRESS, INC., Claimant, *us.* STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY, Respondent.

Opinion filed January 18, *1974*

CRC PRESS, 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.

PER CURIAM.

(No. 74-CC-385 — Claimant awarded $315.65.)

EMULSIFIED ASPHALTS, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed January *18, 1974*

EMULSIFIED ASPHALTS, 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.

PER CURIAM.

(No. 74-CC-133—Claimant awarded $298.75.)

HUBERT DUNLAP, Claimant, *us.* **STATE OF ILLINOIS,** Respondent.

Opinion filed January 22, 1974.

HUBERT DUNLAP, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN**, Assistant Attorney General, for Respondent.

FEDERAL TRUST FUNDS—Payment allowed from State Treasury where State Treasury to be reimbursed from existing Federal Funds.

PER CURIAM.

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 the purpose of this expenditure by the Division of Vocational Rehabilitation was for travel expenses for an employee for the months of March, April, May and June of **1973** for a total cost of **$298.75.** These services were properly authorized and properly performed. The charges are in compliance with existing travel regulations. Money was appropriated for this expenses in Fund No. **081-4415,** a federal trust fund which carried a balance of **$136,969.43** on June **30, 1973.** Since this appropriation is a federal trust fund, no amount was returned to the State Treasury; however by agreement of William T. Coleman, Deputy Director, Fiscal and Ad-

ministrative Services, Board of Vocational Education and Rehabilitation, upon the payment of this claim, the amount of $298.75 will be reimbursed to the State Treasury from existing federal funds.

It is, therefore, ordered that the sum of $298.75 (Two **HUNDRED NINETY-EIGHT DOLLARS AND SEVENTY-FIVE CENTS)** be awarded claimant in full satisfaction of any and all claims presented to the State of Illinois under the above-captioned cause.

(No. **74-CC-151—Claimant awarded $12.72.)**

CONTINENTAL OIL COMPANY, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion ***filed*** *January 22,* **1974.**

CONTINENTAL OIL COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. **74-CC-174—Claimant awarded $360.00.)**

MONTANARI CLINICAL SCHOOL, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed January 22, 1974.

MONTANARI RESIDENTIAL TREATMENT CENTER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-178—Claimant awarded **$39.64)**

FRANK J. CORBETT RECRUITMENT ADVERTISING, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed January 22, 1974.

FRANK J. CORBETT RECRUITMENT ADVERSTISING, 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.

PER CURIAM.

(No. 74-CC-181—Claimant awarded **$230.96.)**

ALBERT POWERS, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed January 22, 1974.

ALBERT POWERS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD** W. **FELDMAN,** Assistant Attorney General, for Respondent.

RETROACTIVE WAGE PAYMENTS—Wage payments made pursuant to the application of the prevailing note principle or based upon the effective date **of** the collective bargaining agreement between the state and an employee group shall not be construed as an additional payment for work already performed.

PER CURIAM.

This cause coming on to be heard on the Joint Stip-

ulation of the parties hereto and the Court being fully advised in the premises;

This court finds that the purpose of this expenditure by the Department of Mental Health was for the payment of a retroactive pay increase which was not paid along with the other employees so entitled, due to an error on the part of the department. According to the departmental report there was a retroactive pay increase from $5.09 to $5.535 per hour for employees classified as Trades Tenders under the Illinois Personnel Code. Claimant was so classified when he terminated his employment with the Department of Mental Health on March 15, 1973. On August 30, 1973, the Department of Mental Health was informed by the Department of Personnel, Labor Relations Division, that pursuant to a new collective bargaining agreement pay was to be paid retroactively to April 1, 1973. Therefore, it appeared to the department that the claimant was not entitled to the increase inasmuch as the claimant was not employed on April 1, 1973. However, there was an error in communication between the Department of Personnel and the Department of Mental Health as to the initial date of retroactivity. The pay increase was to have been retroactive to January 1, 1973, and not April 1, 1973. Therefore, the claimant has back pay due and owing for a period from January 1, 1973, to March 15, 1973. In addition, the departmental reports points out that the appropriation for Fiscal 1973 did not include this increase under appropriation No. 001-22-1969 and the appropriation was expended and no money was returned to the State Treasury.

The Illinois Supreme Court in ***Fergus*** v. *Brady*, 277 Ill. 273 (1917) in determining whether payment in excess of authorized appropriation would be valid, stated:

. . ."claims under any agreement or contact made by express authority of law are accepted, and if there is some particular and specific thing which an officer, board or agency of the State is required to do, the performance of the duty is expressly authorized by law. That authority is expressed which confers power to do a particular, identical thing set forth and declared exactly, plainly and directly with well defined limits, and the only exception under which a contract exceeding the amount appropriated far the purpose may be valid is where it is so expressly authorized by law." Id. at 279.

This Court has followed this rule where express authority is shown, ***City of Jacksonville*** v. ***State of Illinois*** (1946), 15 C.C.R. 62, ***Illinois-Iowa Power Company*** v. ***State of Illinois*** (1942), 12 C.C.R. 308.

Express authority to pay retroactive pay increases, pursuant to a collective bargaining agreement is found in Ch. 127, Sec. 145, Ill.Rev.Stat., 1971, where the legislature stated:

"Amounts paid from appropriations for personal service of any officer or employee of the State, either temporary or regular, shall be considered as full payment for all services rendered between the dates as specified in the payroll or other voucher and no additional sums shall be paid to such officer or employee from any lump sum appropriation, appropriation for extra help or other purpose or any accumulated balances in specific appropriations, which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement the state or state agency and an employee group shall not be construed as an additional payment for work already performed." (Emphasis added)

In light of this Court's decisions in ***City of Jacksonville*** v. ***State of Illinois,*** (supra) and ***Illinois-Iowa Power Co.*** v. ***State of Illinois,*** (supra) and the legislative intent embodied in the Ch. 127, Sec. 145, Ill.Rev.Stat., 1971, it is our opinion that the claimant should be paid.

The reason that this claim was not paid is due to the fact that claimant was no longer an employee of respondent at the time authorization was received for retroactive pay increases. Therefore, the claimant was not included in the short payroll at the end of fiscal 1973,

the same having been confirmed by the departmental report of the Department of Mental Health, a copy of said report being attached to the Joint Stipulation of the parties.

It is hereby ordered that the sum of Two HUNDRED THIRTY AND 96/100 DOLLARS ($230.96) be awarded claimant in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause.

(No. 74-CC-197—Claimant awarded $214.94.)

MALCOM E. ZENGE, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed January 22, 1974.

MALCOM E. ZENGE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

RETROACTIVE WAGE PAYMENTS—Wage payments made pursuant to the application of the prevailing note principle or based upon the effective date of the collective bargaining agreement between the state and an employee group shall not be construed as an additional payment for work already performed.

PER CURIAM.

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 the purpose of this expenditure by the Department of Mental Health was for the payment of a retroactive pay increase which was not paid along with the other employees so entitled, due to an error on the part of the department. According to the departmental report there was a retroactive pay increase from $5.09 to $5.33½ per hour for employees classified as

Trades Tenders under the Illinois Personnel Code. Claimant was so classified when he terminated his employment with the Department of Mental Health on March 15,1973. On August 30,1973, the Department of Mental Health was informed by the Department of Personnel, Labor Relations Division, that pursuant to a new collective bargaining agreement pay was to be paid retroactively to April 1,1973. Therefore, it appeared to the department that the claimant was not entitled to the increase inasmuch as the claimant was not employed on April 1,1973. However, there was an error in communication between the Department of Personnel and the Department of Mental Health as to the initial date of retroactivity. The pay increase was to have been retroactive to January 1, 1973, and not April 1, 1973. Therefore, the claimant has back pay due and owing for a period from January 1, 1973, to March 15, 1973. In addition, the departmental report points out that the appropriation for Fiscal 1973 did not include this increase under appropriation No. 001-22-1969 and the appropriation was expended and no money was returned to the State Treasury.

The Illinois Supreme Court in Fergus v. Brady, 277 Ill. 273 (1917) in determining whether payment in excess of authorized appropriation would be valid, stated:

> . . . "claims under any agreement or contract made by express authority of law are accepted, and if there is some particular and specific thing which an officer, board or agency of the State is required to do, the performance of the duty is expressly authorized by law. That authority is expressed which confers power to do a particular, identical thing set forth and declared exactly, plainly and directly with well defined limits, and the only exception under which a contract exceeding the amount appropriated for the purpose may be valid is where it is so expressly authorized by law." Id. at 279.

This Court has followed this rule where express authority is shown, City of Jacksonville v. State of Illinois

(1946), 15 C.C.R. 62, *Illinois-Iowa Power Company* v. *State of Illinois* (1942), 12 C.C.R. 308.

Express authority to pay retroactive pay increases, pursuant to a collective bargaining agreement is found in Ch. 127, Sec. 145, Ill.Rev.Stat., 1971, where the legislature stated:

"Amounts paid from appropriations for personal service of any officer or employee of the State, either temporary or regular, shall he considered as full payment for all services rendered between the dates as specified in the payroll or other voucher and no additional sums shall be paid to such officer or employee from any lump sum appropriation, appropriation for extra help or other purpose or any accumulated balances in specific appropriations, which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made, *except that wage payments made pursuant to the application of the preuailing rate principle or based upon the effective date of the collective bargaining agreement the state or state agency and an employee group shall not be construed as an additional payment for work already performed."* (Emphasis added)

In light of this Court's decision in *City of Jacksonville* v. *State of Illinois,* (supra) and *Illinois-Iowa Power Co.* v. *State of Illinois,* (supra) and the legislative intent embodied in the Ch. 127, Sec. 145, Ill.Rev.Stat., 1971, it is our opinion that the claimant should be paid.

The reason that this claim was not paid is due to the fact that claimant was no longer an employee of respondent at the time authorization was received for retroactive pay increases. Therefore, the claimant was not included in the short payroll at the end of fiscal 1973, the same having been confirmed by the departmental report of the Department of Mental Health, a copy of said report being attached to the Joint Stipulation of the parties.

It is hereby ordered that the sum of Two HUNDRED FOURTEEN AND 94/100 DOLLARS ($214.94) be awarded claimant in full satiisfaction of any and all claims pre-

sented to the State of Illinois under the above captioned cause.

(No. 74-CC-203 — Claimant awarded $37.45.)

MRS. YVONNE RICE, Claimant, *us.* STATE OF ILLINOIS, OFFICE OF THE LIEUTENANT GOVERNOR, Respondent.

Opinion filed January 22, ***1974.***

MRS. YVONNE RICE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-233 — Claimant awarded $1,315,00.)

JOHN W. CASTLE, Special Assistant Attorney General, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed January 22, ***1974***

JOHN W. CASTLE, Special Assistant Attorney General, 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.

PER CURIAM.

(No. 74-CC-234 — Claimant awarded $790.00.)

CESAR M. SECOQUIAN, M.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed January 22, ***1974.***

CESAR M. SECOQUIAN, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-242 — Claimant awarded $531.65.)

JAMES T. JONES, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed January 22, ***1974.***

JAMES T. JONES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-277 — Claimant awarded $1,844.00.)

COMMONWEALTH EDISON COMPANY, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed January 22, ***1974.***

GEORGE O. SHAFFNER AND JOSEPH C. SIBLEY, JR., 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.

PER CURIAM.

(No. 73-CC-279 — Claimant awarded $142.00.)

EDWIN L. ESSER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed January 22, *1974.*

EDWIN L. ESSER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; MARTIN A. SOLL, Assistant Attorney General, for Respondent.

NEGLIGENCE — Evidence showed that respondent was negligent in failure to take necessary precautions to prevent damage to the property of petitioner.

PER CURIAM.

A claim in this matter was filed in the Court of Claims on April 16, 1973, alleging that claimant's car, while parked at the Illinois Department of Mental Health, Chicago Reed Health Center, was damaged by a projectile thrown from a lawn mower operated by James R. Harris, an employee of the Department of Mental Health.

From the testimony of claimant, it appears that Edwin L. Esser, an electrician employed by the State of Illinois, for a period of over thirty years, parked his automobile in the parking lot of the Reed Zone Medical Center, 6500 West Irving Park Road, Chicago, Illinois, where he was employed. From the police report of the Chicago Police Department, a statement from Peter Bertuccio, the Building and Grounds Supervisor of the

Chicago Reed Mental Health Center, and from various other statements submitted at the hearing, it appears that an employee of respondent, James R. Harris, was driving a tractor with an attached law mower and while Harris was cutting the grass in the area north of the Power House with his rotary blade tractor, the blade threw an eighteen-inch length, two-by-four board, into the left fender of the claimant's 1971 Lincoln automobile, denting the fender. Claimant had the automobile repaired and submitted a paid bill in the amount of $142.00.

From the evidence introduced at this hearing, the Court finds respondent was negligent, which negligence caused property damage to the claimant in the amount of $142.00.

An award is, therefore, made to claimant in the sum of $142.00.

(No. 74-CC-279 — **Claimant awarded** $7,967.00.)

COMMONWEALTH EDISON COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC HEALTH, Respondent.

Opinion filed January 22, 1974.

GEORGE O. SHAFFNER and JOSEPH C. SIBLEY, JR., 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.**

PER CURIAM.

(No. 73-CC-404 — Claimant awarded $16.25.)

TRIBUNE PUBLICATIONS, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed *January 22, 1974.*

TRIBUNE PUBLICATIONS, 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.

PER CURIAM.

(No. 3025 — Claimant awarded $5,933.92.)

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

Opinion filed *January 22, 1974*

GOSNELL, BENECKI and QUINDRY, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, 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.

PER CURIAM.

Claimant filed her Petition for reimbursement for moneys expended for nursing care and help, medical services, and expenses from January 1, 1972, to December 31, 1972, praying for an award in the sum of $9,078.58.

Claimant was seriously injured in an accident on the second day of February, 1936, while employed as a Su-

pervisor at the Illinois Soldier's and Sailor's 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, 1971** to December **31, 1971.**

A joint motion of Claimant and Respondent was filed herein requesting leave to waive the filing of briefs and arguments. In addition, Claimant filed a corrected Exhibit "1". The corrected Exhibit "1" sets out those items upon **which** agreement **has** been **had with Claim**ant and Respondent in the above cause. This motion was granted, and no further pleadings have been filed herein.

The Attorney General does not contest the veracity nor the propriety of the items and amounts set forth in Claimant's corrected Exhibit "1".

The Court, therefore, enters an award in favor of the Claimant in the sum of FIVE THOUSAND NINE HUNDRED THIRTY-THREE AND 92/100 DOLLARS **($5,933.92.** The matter of Claimant's need for additional care is reserved by this Court for future determination.

(No. **74-CC-76—Claimant awarded $318.00.)**

JOSE A. GONZALEZ, M.D., Claimant, ***us.*** **STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.**

Opinion filed January 31, 1974.

JOSE **A.** GONZALEZ, **M.D.,** 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.

PER CURIAM.

(No. 74-CC-158—Claimant awarded $1,470.00.)

EDWARD F. CASEY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF AERONAUTICS, Respondent.

Opinion filed January ***31, 1974.***

CASEY AND CASEY, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-175—Claimant awarded $473.99.)

SCIENTIFIC PRODUCTS DIVISION OF AMERICAN HOSPITAL SUPPLY CORP., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC HEALTH, Respondent.

Opinion filed January ***31, 1974.***

SCIENTIFIC PRODUCTS DIVISION OF AMERICAN HOSPITAL SUPPLY CORP., 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.

PER CURIAM.

(No. 74-CC-255—Claimant awarded $3.45.)

AMERICAN PETROFINA Co. of TEXAS, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed January ***31, 1974.***

AMERICAN PETROFINA Co. OF TEXAS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-262—Claimant awarded $176.70.)

CHARLES KLINE, JAMES CHRISTISON, AND RUSSELL FLYNN, Claimants, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed January ***31, 1974.***

CHARLES KLINE, JAMES CHRISTISON, AND RUSSELL FLYNN, Claimants, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-271—Claimant awarded $170.50.)

SCIENCE KIT, INC., Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed January ***31, 1974.***

SCIENCE KIT, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-408—Claimant awarded $2,550.00.)

WILLIAM K. JENKINS, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed January ***31, 1974.***

WILLIAM K. JENKINS, 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.

PER CURIAM.

(No. 5930—Claimant awarded $6,500.00.)

WILLIAM KARP, Claimant, us. STATE OF ILLINOIS, COMMISSION ON TECHNOLOGICAL PROGRESS, Respondent.

Opinion filed January ***31, 1974.***

LEON M. DESPRES and ALBERT SCHWARTZ, 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.

PER CURIAM.

(No. 74-CC-120—Claimant awarded $307.50.)

SIEG PEORIA COMPANY, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.**

Opinion *filed* February 8, *1974*

SIEG PEORIA COMPANY, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-241—Claimant awarded $100.25.)

CITIES SERVICE OIL COMPANY, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.**

Opinion filed February 8, *1974*

CITIES SERVICE OIL COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-246—Claimant awarded $2,470.85.)

MARTIN BROTHERS IMPLEMENT COMPANY, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.**

Opinion filed February 8, *1974.*

MARTIN BROTHERS IMPLEMENT COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-249—Claimant awarded $1,632.23.)

AMBER RIDGE SCHOOL, INC., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed February 8, *1974.*

AMBER RIDGE SCHOOL, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-274—Claimant awarded $45.14.)

ENLOE'S LINCOLN SQUARE DRUG STORE, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed *February 8, 1974.*

ENLOE'S LINCOLN SQUARE DRUG STORE, Claimant, pro *se.*

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-281 — Claimant awarded $203.10.)

EDWARD DON & COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed February *8, 1974.*

EDWARD DON & COMPANY, 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.

PER CURIAM.

(No. 73-CC-430 — Claimant awarded **$6.66.)**

CATHOLIC CHARITIES OF THE ARCHDIOCESE OF CHICAGO, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed February 8, *1974.*

CATHOLIC CHARITIES OF THE ARCHDIOCESE OF CHICAGO, 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.

PER CURIAM.

(No. 73-CC-444 — Claimant awarded $57.50.)

AERO MAYFLOWER TRANSIT CO., INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC HEALTH, Respondent.

Opinion filed February 8, *1974*

AERO MAYFLOWER TRANSIT CO., INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 6475 — Claimant awarded $2,207.00.)

INGERSOLL-RAND COMPANY, Tool and Hoist Division, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed February 8, *1974.*

INGERSOLL-RAND COMPANY, Tool and Hoist Division, 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.

PER CURIAM.

(No. 6769 — Claimant awarded $295.33.)

SUN OIL COMPANY, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed February 8, *1974.*

SUN OIL COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-26 — Claimant awarded $990.00.)

KOEBER'S ARTIFICIAL LIMB COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed February *14, 1974.*

KOEBER'S ARTIFICIAL LIMB COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; MARTIN A. SOLL, Assistant Attorney General, for Respondent.

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

PERLIN, C. J.

(No. 73-CC-90 — Claimant awarded $11,988.45.)

BUECKER PLUMBING, HEATING AND AIR CONDITIONING Co., A Corporation, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February *14, 1974.*

DRACH, TERRELL AND DEFFENBAUGH, Attorney for Claimant.

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

COMPROMISE — Disputed claim compromised **by** agreement of the partners.

HOLDERMAN, J.

This matter comes before the Court on a Joint Stipulation as to Facts submitted by the claimant and respondent.

Pursuant to a public bid and letting, claimant entered into two certain contracts with respondent with respect to a project pertaining to work to be performed on a certain building owned or occupied by the respondent at 11th and Ash Streets, Springfield, Illinois. These contracts were entered into and approved by and through the Department of General Services on or about June 8, 1971, and June 30, 1971.

Phase I involved primarily work to be done below ground level, while Phase II involved primarily work to be done above ground level.

After the work called for in the contract referred to as Phase I had been commenced, the respondent revised the plans concerning the work to be performed under said Phase I, and requested the claimant to complete the work called for in Phase I in accordance with said revisions, which revisions were set forth in a series of change orders prepared by the claimant and approved by the Department.

Change Order No. 1, dated August 31, 1971, called for an additional expenditure of $7,458.08.

Respondent later determined it would be necessary to eliminate the above ground roof drainage system, as called for in the plans for Phase II, with a below ground drainage system not originally called for in the Phase I plans.

Plan changes were made by the claimant and claimant proceeded to construct the project in accordance with the revised plans.

This work was completed without the issuance of a proper Change Order.

When payment was requested for this particular work, it was denied on recommendation by the Consulting Architect on behalf of the Department of General Services on the grounds that the work for which payment was requested had been previously paid under Change Order No. 1 of Phase I, dated August 31, 1971.

As a result of this, claimant refused to sign a "Substantial Completion Form" and the Department of General Services therefore withheld the required retainage of $1,029.51.

A joint detailed study of the construction records and plans was then made by the claimant and representatives of the respondent, and as a result of this study, respondent has concluded that the claimant had performed work under the contract for which he had not been reimbursed in the amount of $10,972.45, and the claimant has concluded that the work for which he had not been reimbursed was $10,958.94.

The claimant has agreed to revise their claim from $13,011.94, plus retainage of $1,978.10, to the present claim of $10,958.94, plus retainage of $1,029.51, for a total claim of $11,988.45.

It is the opinion of the Court that the claimant is entitled to the sum of $11,988.45, and an award is hereby entered for the payment of said amount.

(No. 73-CC-146—Claimant awarded $56,241.72.)

THE VARIABLE ANNUITY LIFE INSURANCE CO., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 14, 1974.

THE VARIABLE ANNUITY LIFE INSURANCE CO., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

PRIVILEGE TAX—Overpayment of privilege tax allowed upon proper evidence and proof of payment.

PER CURIAM.

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 the claimant filed a Complaint against the State of Illinois alleging that they made an overpayment of privilege tax payments.

A Stipulation has been entered into by and between the claimant and the State of Illinois stating that, based upon Departmental Reports filed in said cause, there has been an overpayment of $56,241.72. The evidence indicates that said overpayment of privilege tax payments was deposited with the office of the Director, Department of Insurance, and was then transferred to the General Revenue Fund by the State of Illinois.

Evidence also discloses that claimant made a demand for said refund, which demand was refused.

It appears from the evidence and from the Stipulation that the claimant is entitled to said sum of $56,241.72 and it is hereby ordered that the sum of $56,241.72 be awarded to claimant in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause.

(No. 73-CC-213—Claimant awarded $3,979.45.)

ATLANTIC RICHFIELD, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed February 14, 1974.

ATLANTIC RICHFIELD, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-123—Claimant awarded $14.00.)

ABRAHAM LINCOLN MEDICAL GROUP, S.C., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed February 14, 1974.

ABRAHAM LINCOLN MEDICAL GROUP, 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.

PER CURIAM.

(No. 74-CC-131—Motion of Respondent to strike and dismiss allowed.)

JOHN F. TRUTY, Claimant, *us.* BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, Respondent.

Opinion filed February 14, 1974.

TUOHY AND MARTIN, Attorneys for Claimant.

JOHN W. **PURVEY,** Attorney for Respondent.

PROPERTY DAMAGE CLAIM—Claims for property damage not filed in accordance with the Ruler of the Court of Claims, are subject to be striken.

HOLDERMAN, J.

Claimant filed his Complaint on October 9, 1973, in which he alleges that on October 8, 1971, he was the owner of a certain Buick automobile, and that on said date, the University of Illinois was the owner and operator of a certain parking lot designated as Number 40, located at Harrison Street east of Racine, in Chicago, Illinois.

Claimant further alleges that while he was operating his vehicle on said parking lot, he collided with a certain cable belonging to respondent which was strung in a non-lighted area of the respondent's premises. It is from this action that he alleges the damage occurred from which he seeks to recover.

The suit names the University of Illinois as the respondent.

On November 29, 1973, the respondent filed a Motion to Dismiss and Strike the Complaint.

As the basis for said Motion, the respondent states that the Complaint was filed too late, setting forth the fact that the accident happened on October 8, 1971, and the Complaint was not filed until October 9, 1973, one day beyond the time allowed by law.

Respondent, as a second ground for dismissal, sets forth the fact that claimant named the University of Illinois as respondent while, in fact, the proper respondent should have been the Board of Trustees of the University of Illinois.

Respondent alleges that proper notice was not given

and calls attention to the fact that claimant's notice was directed to the Board of Governors of the State Colleges and Universities, which is an organization that does not have any connection with the Board of Trustees of the University of Illinois.

Respondent further alleges that this notice should have been given within six months from the time the claim accrued and that it was not filed within that time. The record indicates it was received by the Attorney General's office on May 3, 1973, which the respondent alleges is thirteen months beyond the last day that claimant could file his notice.

Respondent, as further grounds for dismissal, states that the Complaint failed to comply with Rule 5A1 of the Rules of the Court of Claims in that it failed to state the nature of the claim and the section of the Court of Claims Act under which recovery is sought and that it further failed to comply with Rules 5A3, 5A3(a), and 5A3(b) in that it failed to state whether the claim had been previously presented to any State Department or Office thereof, and the result of such presentment, if any.

Respondent further states that the Complaint failed to comply with Rule 5A6 of the Rules of the Court of Claims in that it failed to state whether claimant is justly entitled to the amount therein claimed from the University of Illinois.

Respondent further states that the Complaint failed to comply with Rule 5A7 of the Rules of the Court of Claims in that the claimant had failed to state whether said claimant believes that the facts stated in the Complaint are true.

The next objection was that the Complaint failed to comply with Rules 5A8 and 5A8(a) of the Rules of the

Court of Claims and that the claim did not skate whether it had previously been presented to any person, corporation or tribunal, other than the State of Illinois, or the University of Illinois, and the results of such action.

The next objection by the respondent was that the Complaint violated Rule **5A9** of the Rules of the Court of Claims because there was not any Bill of Particulars attached to the Complaint.

The last objection by the respondent was that the Complaint failed to comply with Rule 5B1 of the Rules of the Court of Claims because no copy of the Notice required to be sent by Chapter 37, Section **439.22-1,** Illinois Revised Statutes, was attached to the Complaint as a separate item.

The claimant filed a Reply to Motion to Dismiss and Strike the Complaint and attempted to meet all the objections set forth in the Motion to Dismiss and Strike the Complaint. It called attention to the fact that as to the first objection, which was that the Complaint was not filed in time, the date of October 8, 1973, which is two years from the time of the accident, was a legal holiday, and that the filing October 9,1973, was to be considered timely filed.

In this connection, it is interesting to note that Chapter 98, Section 20C is as follows:

> "The second Monday in October of each year shall be a holiday, to be known as "Christopher Columbus Day" and which shall be observed throughout the State as a day on which to hold appropriate ceremonies and exercises in commemoration of the discoveror of the New World and his discovery of October **12.** 1492."

The word "holiday" is used by the legislature in this particular section of the statute; whereas, in Section 20A, it refers to Lincoln's Birthday and in Section 20B it refers to Good Friday as a "legal holiday.'' Section 20C

which deals with Christopher Columbus Day, and also Section 19 dealing with Veterans Day, refers only to those days as "holidays." I believe, however, the fact that the notice was not filed at that time is not sufficiently supported by the authorities to warrant dismissal on that ground.

As to the objection that improper notice was served, we call attention to the case of *Munch* vs. ***State** of Illinois*, **25** Ill. Court of Claims, 313, which says, in effect, that there is no statutory notice requirement with regard to property damage cases such as the present one.

The Court believes that the Complaint was defective in that it did not comply with 3a under Rule **5,** 5a under **Rule 5** and Sections **6, 7,** 8 and 9 of Rule 5.

Respondent's Motion to Dismiss and Strike the Complaint is hereby granted and said cause is dismissed.

(No. 74-CC-150—Claimant awarded $273.00.)

WILMA J. THOMAS, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF LABOR,** Respondent.

Opinion filed February 14, 1974.

WILMA J. THOMAS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **MARTIN A. SOLL,** Assistant Attorney General, for Respondent.

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

PERLIN, C. J.05.

(No. 74-CC-189 — Claimant awarded $90.00.)

EMMY ANDRI, M.D. & ASSOCIATES, S.C., Claimants, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed February *14, 1974.*

EMMY ANDRI, M.D. & ASSOCIATES, S.C., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-210 — Claimant awarded $89.60.)

PAUL KARL RIEMER, JR., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed February *14, 1974.*

PAUL KARL RIEMER, JR., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-253 — Claimant awarded $173.51.)

ARTHUR DOZIER, JR., Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed February *14, 1974.*

ARTHUR DOZIER, JR., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-261—Claimant awarded $882.70.)

KANKAKEE INDUSTRIAL SUPPLY CO., INC., Claimant, *vs.* **STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY, Respondent.**

Opinion filed February *14, 1974.*

KANKAKEE INDUSTRIAL SUPPLY Co., **INC.**, Claimant, **pro *se*.**

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-264—Claimant awarded **$357.31.)**

KERR-MC GEE CORPORATION, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.**

Opinion filed February *14, 1974.*

KERR-MC GEE CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-266—Claimant awarded $2,014.86.)

ST. ELIZABETH HOSPITAL, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed February 14, 1974.

ST. ELIZABETH HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD** W. **FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-302—Claimant awarded $1,262.69.)

IBM CORPORATION, Claimant, ***us.*** **STATE OF ILLINOIS, DEPARTMENTS OF FINANCE AND PUBLIC AID,** Respondent.

Opinion filed February 14, 1974.

IBM 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,

PER CURIAM.

(No. 74-CC-305—Claimant awarded $41.38.)

CLOCK TOWER INN, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION,** Respondent.

Opinion filed February 14, 1974

CLOCK TOWER INN, 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.

PER CURIAM.

(No. 5170—Claim denied.)

RICHARD HENDRIX, a minor, by F. G. HENDRIX, his father and next friend, F. G. HENDRIX and BETTY SUE HENDRIX, Claimant, *us.* THE BOARD OF TRUSTEES OF SOUTHERN ILLINOIS UNIVERSITY and THE STATE OF ILLINOIS, Respondents.

Opinion filed February 14, 1974.

R. W. HARRIS, Attorney for Claimant.

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

NEGLIGENCE—*Contributory.* Claimant must be free from contributory negligence to recover for personal injury.

BURKS, J.

This action was brought on behalf of Richard Hendrix who was a minor, 14 years of age, at the time he sustained personal injuries, allegedly caused by respondents' negligence, giving rise to this claim for damages in the amount of $25,000.

Claimant's injuries occurred when he fell off a high cliff at the edge of a picnic area in Giant City State Park, a park known for its giant rock formations and numerous high bluffs and cliffs.

Claimant had gone to the park on an overnight camping trip as a member of a group of boys and girls between the ages of 11 and 14 who attended a summer

camp sponsored and operated by Southern Illinois University. The S.I.U. summer camp was located at Little Grassy Lake in the immediate vicinity of an in close proximity to Giant City State Park where claimant was injured.

The campers were divided into units of about 8 boys and 8 girls in each unit. Two senior counselors and two junior counselors were assigned to each unit. There were about 7 boy units and 7 girl units in the whole camp, and most of the units were taken on the overnight camping trip to the nearby state park on the date claimant was injured. All of the campers were under the direct supervision and guidance of the counselors assigned to each unit by Southern Illinois University. In claimant's unit the senior counselors were Robert Lee Miller and Charles Fredrick; the junior counselors were Dale Miller and Otis Callis.

The group, including claimant's unit, arrived at the park before noon; set up camp at a site by the baseball diamond; and then had lunch at the lodge. Shortly after lunch, the S.I.U. counselors told the group to move their camp across the road to a picnic area, because the site they originally selected was too crowded with other campers.

There was a shelter building in the picnic area where the group established their new camp site about 1:30 p.m., some 7 or 8 hours before claimant's accident which occurred at about 9:30 p.m. Tents were pitched in an open play area about 100 feet from the point where claimant fell off a bluff. Claimant remembers that one of the counselors had told the group that there were cliffs in the vicinity and to be careful. During some 5 or 6 hours of daylight, claimant played on the swings and ran around the area. He also played on the bluffs but not at the

location where he was injured. As claimant said, the bluffs make a curve like a horseshoe around the area. The cliffs run about a quarter of a mile to the lodge and about a mile in the other direction. Claimant had seen the cliffs on the opposite side of this circular formation, but had not seen the cliff where he fell.

About nightfall, Park Ranger William Yates came by and said that this was a picnic area and not a camping area. Yates then went to the park manager, Jack Porschbacker; told him that all of the normal camping areas were full, and the manager gave permission for the campers to stay in this picnic area all night.

After supper all of the counselors except two, one male and one female counselor, went up to the lodge to dance. The two remaining counselors stayed in the open shelter building studying.

After dark, claimant and some other boys, sitting in a group near the tents, decided to play hide-and-seek. One of the boys was sent up to one of the counselors to get permission to play the game and obtain a light. After getting permission and obtaining a kerosene light, the boys went into the woods nearby to play. After a while, the boy with the light who was "It" caught all the other boys, and they were standing in the woods together when the kerosene light went out. It was the only light they had. Claimant said it was completely dark in the woods; that they could not see the lights of the shelter from where they were; and that he, being the oldest boy in the group, was selected to go get another light from the shelter. Claimant started back "running as fast as he could" on what looked like flat ground or a footpath when he fell and tumbled over the edge of the bluff. Claimant sustained some serious injuries.

The above summary of the facts will be enlarged upon and supplemented from the record as we comment on the following allegations upon which claimant bases this action for damages:

[1] That the Board of Trustees of Southern Illinois University, failed to exercise reasonable care in supervising the campers, including the claimant, under its custody and control; in failing to warn the claimant of the perils of the cliff near the camp site; in failing to station a counselor at the cliff to warn the claimant and light the area of the cliff; and in permitting the campers to lodge for the night in a picnic area normally prohibited for camping.

[2] That the State of Illinois failed to exercise reasonable care in establishing, maintaining and supervising its parks; in failing to warn the campers of the perils of the cliffs near their camp site; in failing to maintain a guardrail at this particular cliff; in failing to light the area near the cliff; and in allowing claimant's group to camp overnight in a picnic area not designed for camping.

[3] That claimant was entirely free from any contributory negligence.

Able briefs and arguments have been presented on both sides of the above issues, obviously the result of commendable energy and research. We will deal with these three issues in their numerical order as listed above.

[1] We believe the evidence supports a finding that the counselors, employed by Southern Illinois University to supervise claimant and the other youths on the overnight camp out, neglected their duty to exercise ordinary

care for the safety of the claimant. We hold that the negligence of the counselors, as agents and servants of S.I.U., is imputed to the Board of Trustees of Southern Illinois University under the doctrine of ***respondeat superior,*** since the University, like the State itself, can only act through its officers, employees and agents. We would have no difficulty in holding that the negligence of S.I.U., through the acts of its counselors, was the proximate cause of claimant's injuries, were it not for claimant's contributory negligence discussed in [3] below.

In any event, the legal liability of the Trustees of S.I.U., if any, was extinguished by claimant's "covenant not to sue" which he gave the Trustees in return for the payment of $8,900.00 to the claimant from the University through its insurer. After claimant executed the covenant not to sue the Board of Trustees of S.I.U., a separate suit then pending in the Circuit Court of Jackson County [No. 64-L-941 was dismissed, and the Board of Trustees of S.I.U. was dismissed as a respondent in this cause now before us, leaving the State as the sole respondent in this claim.

Claimant argues in his brief that the State is equally liable for the negligence of the S.I.U. counselors and should pay damages to supplement the payment of $8,900.00 which claimant received from S.I.U. in return for his convenant not to sue. Claimant's theory is that the S.I.U. counselors were "agents" of the State.

While it is technically true that all employees of the University are employees of the State, since they are paid by state funds, their selection, employment, amount of salary, supervision, tenure and control are powers committed solely to the Board of Trustees of the University. ***Ch. 144,*** *Sec.* 658, *Ill.Rev.Stat.* These powers establish the Board of Trustees as the principal and the S.I.U.

counselors, employed by the Board, as its agents and not agents of the State. "The principal is the source of power in an agency." *Fredrich* v. *Wolf* 383 Ill. 638.

At the time of claimant's injuries, the S.I.U. counselors were acting solely under the authority and control of the Board of Trustees of the University, as the counselors testified at the hearing.

Both parties acknowledge that the Board of Trustees of S.I.U. is declared by statute [*Ch. 144, Ill.Rev.Stat.*] to be a "body politic and corporate" [§651] with power, inter alia, "to sue and be sued" [§657], including power to compromise and settle suits against the Board, the corporate body of the University, and even employ its own legal counsel in court actions involving the University. *People* v. *Barrett, 382* Ill. 344.

The *Court of Claims Act* in §8d specifically recognizes the Board of Trustees of Southern Illinois University as a separate state agency which is liable for the negligence of its officers, agents and employees in the course of their employment. This applies to the counselors in the case at bar.

It was in its capacity as "a body politic and corporate" that the Board of Trustees paid to the claimant the sum of $8,900.00 in return for a covenant not to sue and thereby releasing S.I.U. and its Board from any liability arising out of claimant's injuries and for the negligence of its agents, the counselors.

We therefore conclude that, even if there were no evidence of contributory negligence, any liability based on the negligence of the S.I.U. counselors in this cause was released and extinguished, to the State as well as the University, by claimant's covenant not to sue.

This conclusion is not altered by the provisions in

claimant's covenant purporting to reserve claimant's right to proceed against or sue the State. The only conceivable basis for any such further action against the State would be under the doctrine of ***respondeat superior*** and based on the proposition that the Board of Trustees of S.I.U. is an agency of the State. See *I.L.P. Schools* ***8332*** and ***People*** v. ***Barrett*** (Supra). If we accept that proposition, we must agree with respondent's contention that the rule in ***Holcomb*** v. ***Flavin,*** **34** Ill.2d 552 would apply.

The ***Holcomb*** case held that a "covenant not to sue" an agent, regardless of the language of the covenant, is indistinguishable from a "release" to the principal where the liability of the principal, if any, is solely derivative and arising only through the doctrine of ***respondeat superior.***

The ***Holcomb*** decision was reaffirmed, fortified, and extended in the more recent case of ***Gramm*** v. ***Armour &*** Co. (1971) 271 N.E.2d 52.

As claimant points out, the facts are different in the case at bar, but we find the rule in ***Holcomb*** and ***Gramm*** applicable in all cases where the liability of a principal is derivative under the doctrine of ***respondeat superior.***

In answering respondent's supplementary brief, claimant contends that there is no ***respondeat superior*** theory at all involved between the two respondents in this case; that they were each sued on a separate theory of negligence: [1] Board of Trustees of S.I.U. was sued for the negligence of their counselors at the camp. [2] The State of Illinois was sued for its negligence in the maintenance of its park. This argument contained in an amendment to claimant's brief, filed May **5,** 1972, was not answered by the respondent. However, as the court interprets claimant's position, claimant regards the

Board of Trustees and the State as joint tort feasors, or independent concurring tort feasors, whose tortious acts concurred in causing claimant's injuries. If so, since the Board of Trustees was released by the claimant, it would appear that the State was also released under the following rule in *Anderson* v. *Martzke* **(1970)** 266 N.E. 2d **137.** At page **140** the Court said:

> "There can be but one satisfaction for a single indivisible injury, and if the injured party makes a settlement with one tort feasor and releases him, that also operates as a release of the other tort feasors. whose tortious acts concurred in the same single, indivisible injury, whether all of the tort feasors engaged or did not engage in concerted action, when their acts produced the same single, indivisible injury, be they strictly joint tort feasors or independent concurring tort feasors. There cannot be a double recovery for a single injury, and one release is a bar to further claims for the same tort. ***Tidwell*** *v. Smity*, 27 Ill.App.2d 63,169 N.E. 2d 157 (1960); *Manthei v. Heimerdinger*, 332 Ill.App. **335,** 75 N.E. 2d 132 (1947)."

[2] Notwithstanding the above rule in *Anderson* which would appear to release the State completely, we will comment briefly on claimant's contention that his injuries were caused by the State's alleged negligence in its maintenance of Giant City State Park.

Both sides have submitted a comprehensive review of numerous cases decided by this court involving injuries sustained by visitors to Illinois' vast system of state parks. Many of the cases cited here were discussed in our recent decision in *Mooneyham v. State* (filed November **19, 1973)** denying liability for the death of a 12 year old boy who fell from a cliff in Starved Rock State Park and drowned in the Illinois River.

However, no case has come to our attention in which the claimant charged or conceded that the negligence of a separate state agency (here the S.I.U. counselors), in addition to the State's alleged negligence in maintaining its park, were both responsible for claimant's injuries.

Claimant here apparently takes the position that, in spite of the negligence of his counselors, he would not have fallen over the cliff if the State had erected a guard rail at that location which he says was at the end of a footpath; or had lighted this wooded area at night; or had posted danger signs or given claimant warning of the perils of the cliffs; or had refused to allow the group to camp overnight in a picnic area which was not intended to be used for camping.

Considering each of these points, in reverse order, we find that the evidence of negligence points primarily to the counselors. It was they who selected the camp site. After first pitching camp that morning in an authorized camping area, the counselors directed that the camp be moved after lunch to the picnic area which was designed and intended to be used only for daytime activities and not for overnight camping. It was nearly dark when the park ranger discovered that the group was camped in an unauthorized area. The ranger explained this to the counselors. But, since all regular camping areas were full by that time, the ranger obtained permission from the park manager to allow the group to stay for the night.

The record is silent as to whether the park ranger warned the counselors or the youth groups as to the proximity and perils of the cliffs. Such a warning would seem to be a statement of the obvious if given to this group which had spent more than 6 hours playing and exploring in and around their camp site. The record does indicate that the counselors had knowledge of the cliffs since one of them told the claimant there were cliffs in the area and that he should be careful. The ranger did know that the group was under the supervision and control of counselors employed by Southern Illinois Uni-

versity. The record shows that there were **4** counselors for each unit of 8 boys, a ratio of **1** counselor for every **2** boys. This would appear to be reasonable grounds for the park ranger and the manager to assume that the youth groups would be carefully supervised by their counselors, and that this would justify granting permission for the group to stay overnight in the picnic area.

The park manager could not reasonably be expected to anticipate the paucity of supervision that the campers would be given by the counselors; that most of them would leave the camp after dark and go off to dance at the lodge; that the counselors who remained at the camp would stay in the shelter building to study their lessons for summer school; or that any counselor would give permission for the boys to play hide-and-seek in a totally dark woods close to the cliffs.

These acts establish a pattern of negligence on the part of the counselors, but negligence for which the State has been exonerated as stated in [1] above.

We turn then to the remaining question as to whether the State exercised reasonable care in maintaining its park, a duty which this court has fully recognized. *Murray u. State of Illinois,* **24** C.C.R. **339;** *Hansen u. State of Illinois,* **24** C.C.R. **102;** *Stedman u. State of Illinois,* **22** C.C.R. **446;** *Kamin u. State of Illinois,* **21** C.C.R. **467;** *Finn u. State of Illinois,* **24** C.C.R. **177;** *Pulizzano v. State of Illinois,* **22** C.C.R. **234 (1946);** *Mooneyham v. State of Illinois* (Supra) No. **6412.**

All of the above cases involve claimants who were injured in a state park by falling from a cliff or into a hole or a canyon. Most of the cases, like the case at bar, charge the State with negligence in failing to maintain guard rails or warning signs along a trail or foot path at

points of potential danger. Our decisions recognize such a duty on paths and trials that have been established, controlled and maintained by the park and shown on its maps, as in the case of ***Murray*** and *Hunsen* (Supra). We have felt that it would be an unreasonable hardship to impose such a duty to so maintain every foot path created by public usage, like the path on which the claimant here was running when he fell. In the *Hansen* case, the trail was originally established by public usage but the park had assumed control of the path by showing it on a map furnished to hikers and by posting a sign on the trail warning, "Dangerous-loose rocks".

Although the park ranger knew of the existence of the path on which claimant was running, the park had never recognized it as an established trail on which public safety would require handrails, warning signs or artificial light. It must be remembered that the area was intended to be used in daytime and not at night.

Giant City State Park contains miles of cliffs and bluffs in its area of over 2,000 acres. The legislature intended that such nature preserve parks be maintained in their rugged natural state so that the public could view the natural beauty of the area, Ch. 105, Sec. **465** et.seq., *Ill.Rev.Stat.* To require the park to place guard rails or warning signs at the end of every foot path which the public may beat to the edge of a cliff would not only impose unreasonable burden on the Department of Conservation, but would be contrary to the legislature's intent.

As we said in the above cited cases of *Finn, Stedmun* and *Kumin,* the State is not an insurer of patrons using its park facilities. The invitation to use a state park is in no sense an absolute one. It is rather an invitation to use the particular facilities in the manner in which and for

the purposes of which they were designed and intended. The state is not required to maintain its parks in such condition that patrons may wander at will over each and every portion thereof.

In *Kamin* (Supra), we announced the rule that a determination of what constituted reasonable care in the maintenance of a trail or pathway in a state park depended upon the location, character and extent of the use to which the particular trail was put. We also held that the state was under no duty to maintain guardrails along the side of the trail at the point where the adjoining canyon was readily visible to users of the trail. In the instant case, although it was dark, claimant and all of his companions knew that a canyon was in the vicinity.

[3] Finally, this court is bound by the well established rule of law in Illinois that a claimant must be free from contributory negligence in order to recover damages. This rule was carefully re-examined and upheld by the Illinois Supreme Court in *Maki* v. *Frelk (1968)* 40 Ill.2d **193** reversing the Appellate Court which had attempted to change the *contributory negligence* rule and adopt the *comparative negligence* doctrine. *[85Ill.App.2d 4391* The law remains unchanged.

We are mindful of the fact that claimant was **14** years old at the time of his unforunate accident, and will apply the test of negligence correctly stated in claimant's brief as follows:

"Although a child of **14** may be held to the same standard **of** care for his own safety as an adult, still his age, intelligence and experience shall be considered. *Seaburg v. Williams 16 Ill.App.2d 295,300 (1958); Mascalinnas v. Chicago and W.I.R. Company, 318 Illinois at 142."*

The record indicates that the claimant was an alert young man of normal intelligence. Although he was not an experienced camper, he must have gained some

knowledge of the area during the 6 or 7 daylight hours he spent playing in the vicinity of the camp site and on the bluffs to the southeast of where he fell. He remembers being warned by a counselor that "there were bluffs in the vicinity" and admonished "to be careful". Under these circumstances claimant would be contributorily negligent if he failed to exercise ordinary care for his own safety. Ordinary care is stated to be that care and foresight to avoid danger which a person of ordinary prudence, caution and intelligence would usually exercise under the same or similar circumstances. *I.L.P. Negligence § 123.*

Claimant testified that he was standing on a footpath in the woods when the kerosene lantern went out. It was so dark that he could not see the lights from the shelter building. The boys had no light of any kind. Being the oldest boy, claimant was selected to go back to the shelter and get another lantern. Claimant thought that the path led back to the shelter. He could not see far ahead. Nevertheless, being in a hurry to get back, he started running as fast as he could, and suddenly he fell over the cliff. We believe a reasonably cautious person, even if oblivious to the cliffs, would foresee the danger of running through an unfamiliar woods in the darkness as claimant described it. He could have struck a tree limb or log or other unknown hazards.

We believe that by running in the dark of night through the woods, being unfamiliar with the area, but having been warned that there were cliffs in the vicinity, claimant displayed a reckless disregard for his own safety. At least he did not exercise the degree of care required by the above rule to establish freedom from any contributory negligence.

For the reasons stated above, we must deny this

claim. It is, therefore, unnecessary to comment on the seriousness or extent of the injuries claimant sustained in this unfortunate and regrettable accident. The claim is denied.

(No. 74-CC-38 — Claimant awarded **$176.00.)**

WRIGHT'S MOVING, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed February 20, 1974.

WRIGHT'S MOVING, 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.

PER CURIAM.

(No. 74-CC-40 — Claimant awarded $3,975.40.)

DESAULNIERS AND COMPANY, Claimant, *us.* STATE OF ILLINOIS, PUBLIC EMPLOYEES PENSION LAWS COMMISSION, Respondent.

Opinion filed February 20, *1974.*

DESAULNIERS AND COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-43 — Claimant awarded $15.50.)

DEAN BUSINESS EQUIPMENT CO., INC., Claimant, *vs.* **STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.**

Opinion filed February *20,* ***1974.***

DEAN BUSINESS EQUIPMENT CO., 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.

PER CURIAM.

(No. 74-CC-82 — Claimant awarded $1,180.00.)

HENRY HANSELMAN d/b/a CENTRAL CHEMICAL CO., DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed February *20,* ***1974.***

HOWARTH & HOWARTH, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-202 — Claimant awarded $7.40.)

MARSHALL BAUTZ, Claimant, *vs.* **STATE OF ILLINOIS, OFFICE OF THE LIEUTENANT GOVERNOR, Respondent.**

Opinion filed February 20, 1974.

MARSHALL BAUTZ, 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.

PER CURIAM.

(No. 74-CC-209—Claimant awarded $89.60.)

KENNETH EUGENE LAIRD, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed February 20, *1974.*

KENNETH LAIRD, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-218—Claimant awarded $22.00.)

DOROTHY P. BEARD, Claimant, *vs.* **STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION,** Respondent.

Opinion filed February 20, *1974.*

DOROTHY P. BEARD, 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.

PER CURIAM.

(No. 74-CC-248 — Claimant awarded $83.00.)

WEST PUBLISHING COMPANY, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF FINANCE, Respondent.**

Opinion filed February 20, *1974.*

WES 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.

PER CURIAM.

(No. **74-CC-250 — Claimant** awarded **$10.54.)**

R. HERSCHEL MANUFACTURING CORP., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.**

Opinion filed February 20, *1974.*

R. **HERSCHEL MFG. CORP.,** Claimant, **pro** *se.*

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, **for** Respondent.

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

PER CURIAM.

(No. 74-CC-294—Claimant awarded $233.28.)

NORTHWEST DODGE, INC., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.**

Opinion filed February 20, *1974.*

NORTHWEST DODGE, 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.

PER CURIAM.

(No. 74-CC-295—Claimant awarded $139.40.)

CINEMA PROCESSORS, INC., Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed February 20, ***1974.***

CINEMA PROCESSORS, **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.

PER CURIAM.

(No. 74-CC-304—Claimant awarded $13.65.)

CLOCK TOWER INN, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT, Respondent.

Opinion filed Feburuary 20, ***1974.***

CLOCK TOWER INN, 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.

PER CURIAM.

(No. 74-CC-306 — Claimant awarded $168.33.)

IBM CORPORATION, Claimant, *us.* STATE OF ILLINOIS, OFFICE OF THE LIEUTENANT GOVERNOR, Respondent.

Opinion filed February 20, ***1974.***

IBM 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.

PER CURIAM.

(No. 74-CC-325 — Claimant awarded $122.00.)

WEST PUBLISHING COMPANY, Claimant, *us.* STATE OF ILLINOIS, OFFICE OF THE COMPTROLLER, Respondent.

Opinion filed February ***20, 1974.***

WEST PUBLISHING COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-330 — Claimant awarded $315.50.)

ILLINOIS STATE UNIVERSITY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed February 20, ***1974.***

OFFICE OF THE BURSAR, for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W.

FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-338—Claimant awarded $106.00.)

IBM CORPORATION, Claimant, *us.* STATE OF ILLINOIS, OFFICE OF THE COMPTROLLER, Respondent.

Opinion filed February 20, *1974.*

IBM CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-358—Claimant awarded $1,782.49.)

IBM CORPORATION, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed February 20, *1974.*

IBM 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.

PER CURIAM.

(No. 74-CC-386 — Claimant awarded $783.00.)

JOHN W. ANDERSON, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed February 20, ***1974.***

JOHN W. ANDERSON, Claimant, pro se.

WILLIAM **J. SCOTT,** Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-402 — Claimant awarded $345.78.)

HUBERT S. COBB, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed February 20, ***1974.***

HUBERT S. COBB, Claimant, **pro** se.

WILLIAM **J. SCOTT,** Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-424 — Claimant awarded $3,073.00.)

WEBER, HILMER & JOHNSON, INC., Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed February 20, ***1974.***

WEBER, HILMER & JOHNSON, 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.

PER CURIAM.

(No. 6159—Claimant awarded $3,500.00.)

IDA ROSENTHAL, CLAIMANT, *vs.* THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, Respondent.

Opinion filed February 20, 1974

ROOT & ROOT, Attorneys for Claimant.

FRANK GLAZER AND JOHN PURNEY, Attorneys for Respondent.

NEGLIGENCE—*where State creates a dangerous condition causing injury.* The State can not deny knowledge of a dangerous condition where it created same.

SAME—Knowledge of condition by claimant. When it is shown that claimant could not have known of the condition causing her to become injured. She is not guilty of contributory negligence.

PERLIN, C. J.

Claimant Ida Rosenthal has filed suit against the Board of Trustees of the University of Illinois, claiming damages in the amount of $8,650 for injuries received on June 20,1970, on the premises of the assembly hall of the University of Illinois in Champaign, Illinois. On that date, Claimant was visiting the University to attend the graduation of her grandaughter. She entered the assembly hall building at approximately 9:30 a.m., accompanied by her husband, daughter, son-in-law and two grandchildren. She wore closed toe shoes with leather soles, and heels approximately one inch high. The lighting was good, the Claimant was wearing her glasses.

Claimant testified that she noticed that the corridor leading to the auditorium was highly waxed and polished. As she and her party approached a door leading from the corridor into the auditorium, her right foot slipped, and the toe of her left shoe caught in a depression in the floor. Claimant fell forward, striking her face, mouth and nose on the concrete floor.

After her fall, Claimant noticed that the area where she fell did not appear to have been polished as was the rest of the corridor. She described the floor as "splotchy", and said there were several grooves in the floor at the point where she fell. She described the indentation in which she caught her toe as being about two inches in diameter and from ¼ to ½ inches deep. She said that this indentation was filled with a spongy material that **ap**peared to be unbuffed wax, and that after her fall her clothes, hands and purse were marked with a dark, waxy-like material.

Claimant's son-in-law, who witnessed the incident, testified that there were depressions in the floor where Claimant fell, and that the depressions were filled with a yellowish, slippery substance. He said that the area was slippery as compared with the rest of the corridor, and appeared not to have been buffed.

Claimant's grandson, who also witnessed her fall, also stated that the area was marked by depressions filled with wax.

The superintendent in charge of the assembly hall building on the date of the incident said that no wax had been used on the corridor, but that the corridor floor was treated with a sealer sometime prior to the graduation exercise. **He** said that the sealer, a white, milky liquid, was applied to the floor with a mop, and then buffed with a machine to a dry, glossy finish.

As a result of her fall, Claimant's mouth, gums and lip were cut. Two of her natural teeth were fractured and had to be surgically removed. A three tooth bridge which she was wearing at the time of the accident was broken, and had to be replaced. In all, Claimant incurred dental expenses totalling $1150.00.

At the onset, the instant situation must be distinguished from those cases holding that there can be no recovery for falling on a waxed floor merely because it is polished to a slippery gloss. Claimant's theory is that the Respondent's agents negligently and improperly applied a sealing substance to the floor, which resulted in Claimant's fall. This Claimant has proven by a preponderance of the evidence.

The record establishes that at the point where Claimant fell, the corridor floor was marked by indentations which were filled with a spongy, slippery, yellowish substance. This record further establishes that this portion of the corridor was slippery, and that the floor apparently had not been buffed. **As** Claimant slipped on the floor her left toe caught in one of the indentations, causing her to fall forward and to sustain injuries.

In *Dixon* v. ***Hurt,*** 344 Ill. App. 132, 101 N.E. 2d 282, at 284, the Court said.

> "We have concluded for an examination of the law in Illinois as well as in other jurisdictions that as a general proposition the mere treating of a floor with a subtance that gives it a polished surface is not negligence per se . . . The cases establish that some positive act of negligence must be shown before recovery can be had, such as: that an excessive quantity of polish must be used, that it was applied unevenly, that the floor had been freshly polished, and no warning given, that one section of the floor was waxed or oiled while the remainder was untreated, or that a floor was polished were people would step on it unexpectedly, . . ."

Claimant has succeeded in proving affirmative acts of negligence on the part of the agents of Respondents,

namely their permitting an accumulation of sealer to collect in depresuions in the corridor floor, and their failure to properly buff the area.

Respondents urge that the substance upon which Mrs. Rosenthal slipped has not been identified, and that there is therefore no evidence that it was placed on the floor by an agent of the Respondent. Respondents assert that Claimant must prove actual or constructive knowledge of the existence of the substance on the part of Respondents before they may be held liable. This argument is unsupported by the record, however, as the material upon which Claimant slipped was identified as floor sealer which could only have been put there by Respondent's agents. The superintendent of the assembly hall building testified that the **corridor** was regularly treated with **a** liquid sealer, which if properly buffed left a dry, glossy shine. The spot where Claimant fell had allegedly not been buffed, and although Claimant and her witnesses erroneously identified the substance as wax, the conclusion is compelling that sealer was allowed to accumulate in depressions in the floor, causing Claimant's accident.

Respondents also contend that Claimant was not free from contributory negligence. There is no evidence however, that Claimant was walking with undue haste. She was walking in a normal fashion, looking ahead, and she had a right to assume that the floor was reasonably safe and that she would be given warning **of** any hazardous condition. ***Johnson*** v. ***Central Tile*** & ***Terrazzox*** Co., **59** Ill. App. 2d **262 (1965).**

The Court has fully considered the extent of damage alleged by Claimant and the testimony of the two dentists who treated Mrs. Rosenthal.

Claimant is hereby awarded the sum of **$3500.**

(No. 74-CC-47—Claimant awarded $163.05.)

DEAN BUSINESS EQUIPMENT COMPANY, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed February 28, *1974.*

DEAN BUSINESS EQUIPMENT Co., 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.

PER CURIAM.

(No. 74-CC-73—Claimant awarded $65.64.)

GELMAN INSTRUMENT Co., Claimant, *us.* STATE OF ILLINOIS, NATURAL HISTORY SURVEY, Respondent.

Opinion filed February 28, *1974.*

GELMAN INSTRUMENT COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(**No.** 74-CC-219—Claimant awarded $21.00.)

WILLIAM O. STEWART, Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed February 28, *1974.*

WILLIAM O. STEWART, 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.

PER CURIAM.

(No. 74-CC-220—Claimant awarded $23.00.)

MAREA C. RIVERS, Claimant, *us.* **STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION,** Respondent.

Opinion filed February 28, *1974.*

MAREA C. RIVERS, 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.

PER CURIAM.

(No. 74-CC-247—Claimant awarded $190.00.)

MOODY'S INVESTORS SERVICE, INC., Claimant, *us.* **STATE OF ILLINOIS, SECRETARY OF STATE,** Respondent.

Opinion filed February 28, *1974.*

MOODY'S INVESTORS SERVICE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-251 — Claimant awarded $284.00.)

ABLE AMBULANCE SERVICE, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed February 28, 1974.

ABLE AMBULANCE SERVICE, 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.

PER CURIAM.

(No. 74-CC-256 — Claimant awarded $258.12.)

CORINE PROCTOR, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed February 28, 1974.

CORINE PROCTOR, 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.

PER CURIAM.

(No. 74-CC-257 — Claimant awarded $7.10.)

AMERICAN PETROFINA *Co.* of TEXAS, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT o AGRICULTURE, Respondent.

Opinion filed February 28, 1974.

AMERICAN PETROFINA CO. OF TEXAS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-278—Claimant awarded $4,675.62.)

COMMONWEALTH EDISON COMPANY, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.**

Opinion filed February 28, 1974.

GEORGE O. SHAFFNER AND JOSEPH C. SIBLEY, JR., Attorneys 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.

PER CURIAM.

(No. 74-CC-297—Claimant awarded $1,324.90.)

MICRO DESIGN, INC., Claimant, *vs.* **STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY, Respondent.**

Opinion filed February 28, 1974.

MICRO DESIGN, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-387—Claimant awarded $783.00.)

EUGENE SHORT, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed February 28, *1974.*

EUGENE SHORT, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-391—Claimant awarded $606.50.)

CALVIN MINOR, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed February 28, *1974*

CALVIN MINOR, 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.

PER CURIAM.

(No. 74-CC-396 — Claimant awarded $3,696.00.)

A*A*A* SAW & TOOL SERV. & SUPPLY Co., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed February 28, 1974.

A*A*A* SAW & TOOL SERV. & SUPPLY Co., 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.

PER CURIAM.

(No. 74-CC-398 — Claimant awarded $129.00.)

MAX HIRSCHFELDER, M.D., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed February 28, 1974.

MAX HIRSCHFELDER, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-405 — Claimant awarded $505.48.)

CORD MOVING AND STORAGE, Claimant, *us.* **STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY,** Respondent.

Opinion filed February 28, 1974.

CORD MOVING AND STORAGE, 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.

PER CURIAM.

(No. 74-CC-410—Claimant awarded $215.96.)

ARTHUR THOMAS, Claimant, ***us.*** **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed February *28,* ***1974.***

ARTHUR THOMAS, 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.

PER CURIAM.

(No. 6973—Claimant awarded $9,392.86.)

INTERNATIONAL SALT COMPANY, Claimant, ***us.*** **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed February 28, ***1974.***

INTERNATIONAL SALT COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

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

PER CURIAM.

(No. 6889 — Claimant awarded $1,468.24.)

INTERNATIONAL SALT COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed February 28, ***1974.***

INTERNATIONAL SALT COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS** G. **OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 6890 — Claimant awarded $4,702.75.)

INTERNATIONAL SALT COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed February 28, ***1974.***

INTERNATIONAL SALT COMPANY, *Claimant, pro* se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS** G. **OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. **74-CC-37—Claimant awarded** $100.00.)

FINGER ENTERPRISES, Claimant, *us.* **STATE OF ILLINOIS,** Respondent.

Opinion filed March *4,* 1974.

AARON, AARON, SCHIMBERG & HESS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; MARTIN A. SOLL, Assistant Attorney General, for Respondent.

REFUND—when money mistakenly deposited with wrong agency. When money deposited in State Revenue Fund by reason of a mistake, the Court will allow an award for a refund.

BURKS, J.

This matter comes now before the Court on claimant's motion [filed September **21,** 19731 for judgment on the pleadings, since each and every allegation in claimant's complaint are admitted by the respondent. The court finds that claimant is entitled to the award prayed for under the following admitted facts stated in the complaint:

1. This claim is founded upon a law of the State pursuant to § 8(c) of the Court of Claims Act.

2. Claimant submitted **$100.00** to the Department of Public Health and the State of Illinois for a permit to construct a swimming pool under the provisions of the "Recreational Area Licensing Act", *Ch.* **111½,** *Sec.* ***764,*** *Ill.Rev.Stat.*

3. Subsequently, the Department of Public Health was informed by an opinion of the Attorney General of Illinois that the area on which said swimming pool was to be constructed was not subject to the aforementioned Act, but was instead subject to the provisions of the "Swimming Pool Act", *Ch.* **111½,** *Sec.* ***88-94,*** *Ill.Rev.Stat.,* which Act does not require a deposit.

4. On May 10, 1973, claimant requested a refund of the $100.00 from the Department of Public Health and in reply thereto received a letter from the Department, a copy of which is attached to the complaint, stating that the $100.00 had been deposited in the State General Revenue Fund, and that the Recreational Area Licensing Act did not provide for reimbursement. The said Department letter further suggested that claimant bring an appropriate action for a refund of the $100.00 in the Illinois Court of Claims. Respondent does not oppose claimant's motion.

The court finds that claimant's deposit of $100.00 should be refunded and the claimant, Finger Enterprises, is hereby awarded the sum of One Hundred ($100.00) Dollars.

(No. 74-CC-157—Claimant awarded $443.04.)

R. L. CUMMINS, d/b/a CUMMINS FOOD SPECIALTIES, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed March 8, 1974.

LOUIS G. HORMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-213—Claimant awarded $198.00.)

EDGEWOOD CHILDRENS CENTER, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed March 8, *1974.*

EDGEWOOD CHILDRENS CENTER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-238—Claimant awarded $28,261.85.)

STRUCTO DIVISION, KING-SEELEY THERMOS Co., Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed March 8, *1974.*

STRUCTO DIVISION, KING-SEELEY THERMOS Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; EDWARD L. S. ARKEMA, JR., Assistant Attorney General, for Respodent.

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

PER CURIAM.

(No. 74-CC-254—Claimant awarded $1,027.00.)

CARMEAN ELECTRIC, INC., Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed March 8, *1974.*

CARMEAN ELECTRIC INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-291 — Claimant awarded $3,127.00.)

CHARLES E. GLISSON d/b/a CAP GLISSON MOTORS, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed Varch 8, 1974.

CHARLES E. GLISSON d/b/a CAP GLISSON MOTORS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-296 — Claimant awarded $321.30.)

GULF OIL CO.—U.S., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed March 8, *1974.*

GULF OIL CO.—U.S., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-309 — Claimant awarded $36.20.)

STANDARD OIL DIVISION, Claimant, *us.* **STATE OF ILLINOIS, ILLINOIS STATE UNIVERSITY,** Respondent.

Opinion filed March 8, *1974.*

STANDARD OIL DIVISION, 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,

PER CURIAM.

(No. 74-CC-311 — Claimant awarded $230.00.)

STANDARD OIL DIVISION, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES,** Respondent.

Opinion filed March 8, *1974.*

STANDARD OIL DIVISION, 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,

PER CURIAM.

(No. 74-CC-324 — Claimant awarded $286.46.)

AMOS S. MOORE, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS,** Respondent.

Opinion filed Varch 8, *1974.*

AMOS S. MOORE, 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.

PER CURIAM.

(No. 74-CC-328—Claimant awarded $1,510.00.)

PLAINS CONSTRUCTION COMPANY, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed March 8, 1974.

PLAINS CONSTRUCTION COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-331—Claimant awarded $17.28.)

MANSION VIEW LODGE, INC., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT,** Respondent.

Opinion filed March 8, 1974.

MANSION VIEW LODGE, 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.

PER CURIAM.

(No. 74-CC-332—Claimant awarded $17.28.)

MANSION VIEW LODGE, INC., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.**

Opinion filed March 8, 1974

MANSION VIEW LODGE, 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.

PER CURIAM.

(No. 74-CC-334—Claimant awarded $32.40.)

MANSION VIEW LODGE, INC., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.**

Opinion filed March 8, 1974.

MANSION VIEW LODGE, INC., Claimant, **pro** se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-363—Claimant awarded $175.00.)

AETNA LETTER SERVICE, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF REGISTRATION AND EDUCATION, Respondent.**

Opinion filed March 8, 1974.

AETNA LETTER SERVICE, 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.

PER CURIAM.

(No. 74-CC-395 — Claimant awarded $34.50.)

MATTHEWS AMBULANCE SERVICE, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed March 8, *1974.*

Matthews AMBULANCE SERVICE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-427 — Claimant awarded $13,689.72.)

DESAULNIERS AND COMPANY, Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed March 8, *1974.*

DESAULNIERS AND COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-433—Claimant awarded $639.73.)

PHILLIPS BUSINESS SYSTEMS, INC., Claimant, *us.* **STATE** OF **ILLINOIS, APPELLATE COURT OF ILLINOIS,** Respondent.

Opinion filed March 8, *1974.*

PHILLIPS BUSINESS SYSTEMS, 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,

PER CURIAM.

(No. 74-CC-437—Claimant awarded $277.60.)

HARRY E. **GUNN**, Claimant, *us.* **STATE** OF **ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed March 8, *1974.*

DR. HARRY E. GUNN, 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.

PER CURIAM.

(No. 74-CC-448—Claimant awarded $162.00.)

SOUTH ELGIN MANOR, Claimant, *us.* **STATE** OF **ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed March 8, *1974.*

SOUTH ELGIN MANOR, 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.

PER CURIAM.

(No. 5593—Claim denied.)

SAMUEL FAULISI, Claimant, *vs.* **STATE OF ILLINOIS,** Respondent.

Opinion filed March *11,* 1974.

RINELLA & RINELLA, Attorney for Claimant.

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

PRISONERS AND INMATES—legislathe intent. The language found in Chapter **37,** Section 439.80, Ill. Rev. Stat., intended that claimant, prior to any recovery for wrongful incarceration, must establish his complete innocence of the "fact" of the crime **for** which he was imprisoned.

HOLDERMAN, J.

Claimant, Samuel Faulisi, seeks recovery from the State of Illinois in the amount of $30,000.00, plus an additional $7,500.00 for attorneys' fees, as a result of his illegal incarceration in the Illinois State Penitentiary.

Claimant's action is brought under Illinois Revised Statute, Chapter 37, Section 439.8(c). Claimant was indicted, tried and convicted of the crime of murder on December **2,** 1963, and shortly thereafter, he was sentenced to a term of 100 to 199 years in the Illinois State Penitentiary.

Claimant was charged and convicted of the murder

of one Chester Nowaczyk who was murdered on May 17, 1963 at the rear of his home located at 3606 South 55th Court, Chicago, Illinois. Also charged with this crime, along with claimant, were his brother, Robert Faulisi, Gerald Divits, and Gregory Leigot, who is the stepson of the deceased Chester Nowaczyk.

The Supreme Court reversed and remanded the conviction of the claimant on March 24,1966 on the grounds that the panel of jurors, from which the jury in the claimant's case was selected, contained jurors which had been selected in the trial of two of the co-defendants of the claimant.

Testifying on behalf of the claimant was Mrs. Caroline Long Gall who testified at both trials of the claimant.

Testifying, under subpoena, for respondent were Gregory Leigot, James Sullivan and Gerry Fujolek.

It is apparent from the record that there were no actual eye witnesses to the murder.

The record indicates that claimant had previously been sentenced to the Illinois State Penitentiary for a term of three to five years and to one to three years and was also sentenced to two to five years and three to seven years for burglary and armed robbery.

Claimant testified, at the second trial, on his own behalf and stated that on the night in question he was at a restaurant known as Dawn's Grill located at Crawford and Irving, Chicago, Illinois, that he arrived there about 9:45 p.m., and that he stayed there until a little bit after 1:00 a.m. He stated that when he left the restaurant he went to his father's home, where he was staying, and eventually went to bed.

Caroline Gall, a waitress at the restaurant, testified on behalf of the claimant, and said she remembered his being in the restaurant, drinking coffee and making telephone calls, until she left shortly after 12:00 midnight.

Gregory Leigot, stepson of the victim, called as a witness for the respondent, testified that he confessed to the police that there was a conspiracy to kill Chester Nowaczyk, and that Gerald Divits had hired claimant to murder his stepfather, Chester Nowaczyk. He further testified that claimant had inquired of the witness as to what time his stepfather got up and whether the garage was open, and, if it were closed, how he could open it. The witness further testified that he told the claimant how to open the garage without a key. Additional testimony from this witness was to the effect that the night before the murder, claimant told him that the next day would be the day and he was shown a slip of paper in Gerald Divits' handwriting with dates and amounts written thereon which indicated payments to claimant totaling $1,000.00 in payment for the murder of Chester Nowaczyk.

James Sullivan, another witness called on behalf of the respondent, testified that Gerald Divits told him on a number of occasions that he was going to have Chester Nowaczyk killed. He testified that Divits had asked the witness to get him a hit man, that he was unable to locate a hit man, which he later told Divits, and that Divits then told him that the claimant and he were working on a plan to murder Nowaczyk, and that he was later told that Divits was paying claimant to kill Nowaczyk. This witness further testified that claimant arrived at a lounge after the murder and was paid $300.00 by Divits, and that claimant then got sick. He further testified that

the claimant's brother later threatened him about testifying against claimant. This witness also testified that on the night of the murder Divits told the witness to establish an alibi; that he, Divits, was going to establish an alibi; and that if Sam Faulisi didn't get it done that night, then he. Divits, would kill Nowaczyk.

The evidence indicates that Gerald Divits was having an affair with the wife of the deceased and it was his desire to get rid of him so he could marry the decedent's widow.

Gerry Fijolek was called as a witness on behalf of the respondent. His testimony was to the effect that several months prior to the murder claimant brought a bowling bag, which contained a gun and knife, into the apartment of Gerald Divits. Gregory Leigot testified that he was present and saw the weapons in the bowling bag and also that he saw the gun in the back of claimant's car a week before the murder. The witness, Fijolek, also testified that a week after the murder claimant threatened him, since he did not want it known that he possessed a gun and knife in violation of claimant's parole.

The respondent raises the question as to whether or not claimant has failed to prove, by a preponderance of the evidence, that he was innocent of the "fact" of the crime.

It is interesting to note the testimony of the only other witness besides the claimant, that of Mrs. Caroline Long Gall, who stated that prior to the night in question she had met the claimant only once and that claimant had spent approximately two hours in the restaurant, where she was a waitress, drinking coffee and making telephone calls. She further testified she could not remember the day that claimant was in her restaurant. It

appears she drove to the hearing from Pontiac, Michigan without being compensated or subpoenaed because, in her words, she said, "Sam called me Saturday." Her testimony at the second trial was in contradiction to that which she gave at the original trial. At the original trial, she testified that she first saw claimant between 10:30 and 11:00 p.m.; that claimant was only in the restaurant for about one hour, and that she left the restaurant around 12:30 a.m. At the second trial, she testified that the claimant was at the restaurant for a period of approximately two hours.

The deceased met his death outside his garage at approximately 1:00 a.m. on May 17, 1963. There were no actual eye witnesses to the murder and no weapons were ever found.

It is the respondent's contention that the claimant has failed to sustain his burden of establishing, by a preponderance of the evidence, that he was innocent of the "fact" of the crime, citing the case of *Dirkans* v. *State*, 25 C.C.R. **343** (1965), which held that the statute under which the claimant seeks to recover intended that claimant must prove his innocence of the "fact" of the crime. The Court, in this case, also stated:

> "It was not, we believe, the intention of the General Assembly to open the Treasury of the State of Illinois to inmates of its penal institutions by the establishment of their technical or legal innocence of the crimes for which they were imprisoned. It is our opinion the legislators intended to provide a manner of recourse in the Court of Claims, with a specific amount of recovery provided, for a claimant who is able to establish his complete innocence of the "fact" of the crime for which he was imprisoned."

The Court further stated that the lawmakers of this State would not have intended to grant that recourse to the narcotic addicts, murderers, kidnappers, rapists, and other felons who obtain a reversal of their convictions upon a legal or technical basis.

We believe in the present case the claimant did not prove his innocence of the "fact" of the crime with which he was charged and, therefore, was not unjustly imprisoned.

Claim is denied.

(No. 5312—Claim denied.)

FRANK DOBBS, Individually and FRANK DOBBS, Father and Next Friend of DAVID DOBBS, A Minor, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 14, 1974.

JOSEPH P. SMITH, JR., Attorney for Claimant.

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

BURDEN OF PROOF—preponderance of the evidence. An affirmative statement by one witness catagorically denied by another of equal creditability is insufficient to establish plaintiff's case by a preponderance of the evidence.

NEGLIGENCE—*explosives.* Simulated grenades are not calculated to do injury and therefore not considered to be dangerous per se.

SAME—duty of care. Property owner owes no greater duty to children than adults.

SAME—*contributory* ***negligence.*** Claimant must be free from contributory negligence to recover damages.

SAME—contributory negligence. Child over age of 16 years must prove freedom from contributory negligence to recover damages.

BURKS, J.

This is an action for personal injuries sustained by the claimant, David Dobbs, when a hand grenade exploded in his hands. Claimant, who was just under 16 years of age at the time of his injury, alleges that members of the Illinois National Guard were, in effect, responsible for placing this dangerous explosive in claimant's hands. Hence he seeks damages for his inju-

ries which include the loss of his right hand and the fourth and fifth fingers of his left hand.

Claimant, who lived just 2 blocks from the National Guard Armory in Mattoon, was a frequent visitor to the 2 brick garage buildings north of the main armory which were used for the storage, service and maintenance of motor vehicles belonging to the National Guard.

Over a period of several years, prior to his injury, claimant went to these garages almost daily during summer vacations from school and on some school days. Frequently claimant would assist the military personnel at the garages in performing light jobs, such as sweeping, painting and washing vehicles. There is no evidence that claimant's assistance was solicited or other than voluntary, but apparently was appreciated. Claimant became well acquainted with members of the Guard employed in the maintenance shop, particularly Richard E. Highland, the shop chief, with whom claimant would occasionally go squirrel hunting; also George H. Schnapp, whom claimant once helped move his personal property from one residence to another; and Sgt. Junior Scott, another mechanic at the garage, all of whom testified at the hearing as witnesses for the respondent.

Raymond Wines, claimant's neighbor about the same age, would often accompany the claimant to the garage and both would loaf around or do about the same little chores for the guardsmen. These boys were sometimes allowed to ride on military vehicles, though never on maneuvers or on vehicles transporting ammunition. The boys were also given used items of military apparel, such as a pair of pants, a fatigue jacket, a pair of boots, and empty ammunition boxes, all items that were described as disposable and would otherwise be thrown in the trash barrel.

The above uncontroverted facts lead us directly to the first key issues of facts in dispute: How did claimant obtain possession of the hand grenade that caused his injury? How did claimant obtain the additional powder which he added to the "practice" hand grenade which transformed it from a harmless "simulated" grenade, that would do no damage, into the destructive weapon that exploded in his hands?

It seems obvious to the court that the practice grenade and the dangerous ingredients claimant added to it was property belonging to the Illinois National Guard. How these particular items came into claimant's possession remains a mystery after carefully weighing the conflicting testimony in the record. Except for the .22 caliber rifle shells, the same is true of the other items of ammunition which claimant had in his room for some time prior to his accident.

We agree with claimant's contention that the receipt from Lt. Col. Lang, which claimant submitted in evidence, establishes the fact that the ammunition in claimant's possession prior to his accident was property belonging to the National Guard. But, the receipt merely establishes ownership. It does not negate the possibility that the items mentioned were taken from the Guard's trucks or weapon carriers, after they came in from training maneuvers, without the knowledge or consent of any officer or member of the Guard.

The one exception, established by the record, was the .22 caliber rifle shells. Shop Chief Highland acknowledged that he had given the claimant such ammunition when Highland and his son, about claimant's age, would take claimant with them to hunt squirrels. Highland said that this .22 ammunition could be bought by the carton any place in town; that he always kept .22s in his

desk; and that he gave claimant a box of .22s to go squirrel hunting. However, there is no evidence that the .22 caliber shells were in any way used in, or in connection with, the hand grenade that caused claimant's injuries.

Highland emphatically denies that he ever gave the claimant, or ever knew that the claimant ever had in his possession any ammunition of any kind other than the .22 caliber shells. Highland specifically included the simulated hand grenade, smoke bombs, and other ingredients, in disclaiming any knowledge that such items were ever in claimant's possession. Equally firm and positive in their testimony to the same effect were all other witnesses connected with the National Guard who testified in this cause. This includes George H. Schnapp and Junior Scott, the only others mentioned by claimant as possible suppliers of the black powder he obtained and used to potentiate the hand grenade.

On the other hand, a careful examination of claimant's testimony indicates that he was never sure or positive as to where he obtained the simulated hand grenade. Whenever he expressed the belief that Dick Highland gave it to him, he added qualifying expression of uncertainty.

In one of claimant's first statements after his accident, he answered a question from Mattoon Police Chief, Ed Horn, as to where he got the hand grenade. Claimant replied, "Maintenance shop. Dick Highland, who is in charge of the maintenance shop, ***I believe*** gave it to me. *I am not* ***sure."*** (Emphasis supplied)

Later, at the hearing, claimant's counsel asked him a series of questions as to how, when and where he obtained the grenade without eliciting any positive or

unqualified answers. From the record, we quote the following questions asked by claimant's attorney and the answers given by the claimant:

"Q. Now did you ever receive a hand grenade out there? [National Guard Garage]

A. Yes.

Q. And do you remember when you received this? [The hand grenade.]

A. No, I couldn't tell you.

Q. Do you have any judgement as to when you received it?

"A. Oh, three or four months or so before the accident.

Q. Was this in any way connected with a training trip by the National Guard?

A. The way I got it was, it was some they'd brought back with them from field maneuvers or something.

Q. Had you seen other hand grenades, other than the one you got out there at the National Guard garages?

A. Yes, sir, just pieces of them.

Q. Was this [grenade] assembled at the time you first saw it?

A. No.

Q. Well, where did you find it, or where did you first see it, the first time you ever saw this hand grenade?

A. It was in the trunk of Dick Highland's car, *I believe."* [Emphasis supplied]

The court finds it strange that a boy almost 16 years old could not be more explicit as to where and how he obtained an item as unique as a practice hand gre-

nade. Several witnesses for the claimant said they knew claimant had and kept in his room a smoke bomb or two, and some items of ammunition that appeared to be from the Guard, but no witness corroborated claimant's uncertain belief that Highland, or anyone else from the Guard, gave him a hand grenade.

Raymond Wines, claimant's constant companion on their numerous visits to the armory maintenance shop, testified that he had never seen a hand grenade there.

In any event, the National Guard personnel are all steadfast and positive in their statements throughout that they did not give a grenade to the claimant or any other unauthorized person. Even if claimant had been equally positive and unequivocal as to how he obtained the grenade, his uncorroborated statement would hardly amount to a "preponderance of the evidence". The rule is stated in ***Brudy*** *v. Chaffee*, **163** Ill.App. 242 as follows:

> "An affirmative statement **by** one witness met by a flat categorical denial by another of equal credibility, does not meet the requirement of the law that the plaintiff must make out his or her case by a preponderance of the evidence."

The court cannot accept the argument, so ably presented in claimant's well prepared brief, that it is reasonable to assume that claimant was given the hand grenade, or authorized to take it, by some member of the National Guard in consideration of the chores claimant did for the guardsmen. Logical as this assumption might appear, it is conclusively refuted by the evidence. We do accept claimant's theory as to the items of clothing, the empty ammunition boxes, and the 22 caliber rifle shells. This conclusion is supported by the record. But these items had nothing to do with claimant's injuries. The overwhelming weight of the evidence supports a different assumption as to the hand grenade which became the instrument of claimant's injury.

We do not hold that there is no evidence of any negligence whatsoever on the part of the respondent. Perhaps, as claimant suggests, it was negligence per se if respondent failed to prevent any unauthorized person from obtaining access to any explosives on its premises, even smoke bombs and simulated grenades which, according to the record, are not dangerous if properly used. These items were not "calculated to do injury" and, therefore, not "considered to be dangerous per se" under the rule stated in *57 Am. Jur.2d, Negligence, §109.*

Perhaps it should have been foreseeable that the practice grenades, which are just designed to create a noise and puff of smoke, could be potentiated into a dangerous instrument as claimant did. This suggestion would be more persuasive if claimant had been a child of such tender years that he could not be guilty of contributory negligence as a matter of law. ***Cicero State Bank*** v. ***Dolese & Shepard,*** 298 Ill.App. 290.

We agree that claimant did not come upon premises of the National Guard maintenance garage as a trespasser. But whether his status on the premises was that of an invitee or a mere licensee is not significant here. There is no proof in the record that respondent breached its duty to use reasonable care for the safety of claimant on its premises even if he were an invitee. See *I.L.P. Negligence 851-52.* From the same volume and chapter in 962, we find the rule, applicable here, that respondent owned no greater duty to the claimant than it would to any adult:

> "Children have no greater right to go upon other people's property than adults have, and the mere fact that they are children does not, of itself, impose a duty on an owner or person in charge of property to expect them or prepare for their safety."

In any event, we need not comment further on the probability that there was some negligence on respond-

ent's part, since the record supports our finding the claimant was contributorily negligent.

This court is bound by the well established rule of law in Illinois that a claimant must be free from contributory negligence in order to recover damages. This rule was carefully re-examined and upheld by the Illinois Supreme Court in ***Maki*** v. ***Frelk*** (1968) 40 Ill.2d **193,** reversing the Appellate Court which had attempted to change the ***contributory negligence*** rule and adopt the ***comparative negligence*** doctrine. [85*Ill.App.2d* ***4391*** The law remains unchanged.

We are mindful of the fact that claimant was a minor, just under 16 years of age, at the time of his unfortunate accident. However, the law is equally well settled in this state that, a claimant **14** years of age or over is required to prove freedom from contributory negligence as in the case of an adult, except that his intelligence and experience is considered. *Callaghan's* ***Illinois Digest (3rd*** *Ed.)* ***Negligence*** *§58.5. I.L.P.* ***Negligence*** *§⅓*^^. ***Lester Simmons,*** *a* ***minor, et*** *al* v. ***State*** 26 C.C.R. 351.

Claimant does not plead any lack of experience with the explosive device which caused his injury. He knew exactly what he was doing when he overloaded the relatively harmless hand grenade "to make it a more destructive type of grenade", as he said at the hearing.

Claimants testimony reveals that he had a thorough knowledge of the hand grenade; how to assemble it; load it; put in a cork and firing pin; and that you could shoot it over and over if you did not overload it with powder. He said he had fired this grenade "once or twice" during the **3** or **4** months since he obtained it.

After admittedly packing and overloading the gre-

nade with powder, he knew and appreciated the danger of this explosive instrument. As stated in his brief, "he was proud of the fruits of his ingenuity and wanted all of his companions to view with awe an object probably never seen by any of them before".

So, on the date of his injury, claimant took the grenade into an automobile driven by his friend, Raymond Wines. Claimant exhibited the grenade to the 5 other passengers. Claimant handed the grenade to one of the passengers while claimant crawled over into the front seat. When claimant turned around to get the grenade, the other passenger had pulled the pin, putting the grenade in a "hot" condition. Claimant, realizing the imminent danger of explosion, snatched the grenade from his fellow passenger and attempted to toss it out of the automobile. Before succeeding, and while his hands were cupped over the grenade, it exploded. Claimant lost his right hand and 2 fingers of his left hand. No one else was seriously injured.

It is undoubtedly true that there would have been many more severe injuries to others in the car if claimant had not acted as he did, displaying a high sense of respect for lives of others. Claimant's heroic act also displayed his admitted knowledge of the dangerous explosive device he had created and which caused his unfortunate accident.

Knowing its potential danger, claimant negligently placed the live grenade in the hands of an inexperienced companion. Claimant obviously could not and did not prove that he was free from contributory negligence. Therefore, this claim must be denied.

(No. 74-CC-228—Claimant awarded $685.95.)

CHURCHILL CHEMICAL COMPANY, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed March 20, *1974.*

CHURCHILL CHEMICAL COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-318—Claimant awarded $2,800.00.)

FUNK SEEDS INTERNATIONAL, INC., Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed March 20, *1974*

FUNK SEEDS INTERNATIONAL, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-327—Claimant awarded $400.20.)

BURHAM CITY HOSPITAL, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed March 20, *1974.*

BURHAM CITY HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-341—Claimant awarded $924.00.)

BERKEY PHOTO SERVICE, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion *filed* March 20, *1974.*

REUBEN J. ZELLEMAYER, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; EDWARD L. S. ARKEMA, JR., Assistant Attorney General, for Respodent.

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

PER CURIAM.

(No. 74-CC-343—Claimant awarded $25,999.02.)

STEVE NOSSER FORD, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed March 20, *1974.*

STEVE NOSSER FORD, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-344 — Claimant awarded $109.62.)

BUNNY BREAD COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed March 20, 1974.

BUNNY BREAD COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-351 — Claimant awarded $78.00.)

COZETTE MC CUTCHEN, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed March *20,* ***1974.***

COZETTE MC CUTCHEN, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; EDWARD L. S. ARKEMA, JR., Assistant Attorney General, for Respodent.

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

PER CURIAM.

(No. 74-CC-370 — Claimant awarded $237.93.)

DR. RALPH H. BAAHLMANN, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF REGISTRATION AND EDUCATION, Respondent.

Opinion filed March 20, *1974.*

DR. RALPH H. BAAHLMANN, 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.

PER CURIAM.

(No. 74-CC-374—Claimant awarded $138.50.)

ALFRED W. PFLASTERER, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed March 20, *1974.*

ALFRED W. **PFLASTERER,** 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.

PER CURIAM.

(No. 74-CC-377—Claimant awarded $820.00.)

MILLER INDUSTRIAL SUPPLY *Co.*, **INC.,** Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed March 20, *1974.*

MILLER INDUSTRIAL SUPPLY Co., **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.

PER CURIAM.

(No. 74-CC-388—Claimant awarded $783.00.)

MAURICE METZGER, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed March 20, 1974.

MAURICE METZGER, 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.

SAME—*retroactive pay increase.* Chapter 127, Section 145 authorizes retroactive pay increase pursuant to a collective bargaining agreement.

PER CURIAM.

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 the purpose of this expenditure by the Department of Mental Health was for the payment of a retroactive pay increase which was not paid along with the other employees so entitled, due to the fact that the Department was not notified of such increase until after the funds for FY 1973 had lapsed. According to the departmental report there was a retroactive pay increase of $87 per month for employees classified as Painters under the Illinois Personnel Code. The claimant was so classified from October 1, 1972, to June 30, 1973. On December 12, 1973, the Department of Mental Health was informed by the Department of Personnel, Labor Relations Division, that pursuant to a new collective bargaining agreement pay was to be paid retroactively to October 1, 1972. Money was appropriated for this expense in Fund No. 129, Anna State Hospital, Personnel Services. Of this fund $8,919.53 was returned to the State Treasury upon the lapsing of said fund.

Express authority to pay retroactive pay increases, pursuant to a collective bargaining agreement is found in Ch. **127,** Sec. **145,** *Ill.Rev.Stat.*, **1971,** where the legislature stated:

"Amounts paid from appropriations for personal service of any officer or employee of the State, either temporary **or** regular, shall be considered as full payment for all services rendered between the dates as specified in the payroll or other voucher and no additional sums shall be paid **to** such officer **or** employee from any lump sum appropriation, appropriation for extra help **or** other purpose or any accumulated balances in specific appropriations, which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made, ***except that wage payments made pursuant to the application of the preuailing rate principle or based upon the effective date of the collective bargaining agreement the State or state agency and an employee group shall not be construed as an additional payment for work already performed."*** (Emphasis Added)

In light of this Court's decision in ***City of Jacksonville*** v. ***State of Illinois,*** **1946, 15** C.C.R. **62,** and ***Illinois-Iowa Power Company*** v. ***State of Illinois,*** **1942, 12** C.C.R. **308,** and the legislative intent embodied in the Ch. **127,** Sec. **145,** Ill.Rev.Stat., **1971,** it is our opinion that the claimant should be paid.

The sole reason that this claim was not previously paid is due to the fact that the Department of Mental Health was not notified of the pay increase until December **12, 1973,** after the lapse of the appropriation which would have covered the payment of this expenditure. This fact is indicated in the departmental report a copy of which is attached to the Joint Stipulation of the parties.

IT IS HEREBY ORDERED that the sum of **$783** (SEVEN HUNDRED EIGHTY-THREE DOLLARS) be awarded claimant in full satisfaction of any and all claims presented to the State of Illinois under the above-captioned cause.

(No. 74-CC-389—Claimant awarded $44.25.)

JAMES A. REINHART, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed *March 20, 1974.*

JAMES A. **REINHART,** 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.

PER CURIAM.

(No. 74-CC-394—Claimant awarded $152.07.)

BIO QUIP PRODUCTS Co., Claimant, *us.* **STATE OF ILLINOIS, NATURAL HISTORY SURVEY,** Respondent.

Opinion filed *March 20, 1974.*

Bro **METAL ASSOCIATES,** Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-403—Claimant awarded $152.79.)

REVELL DATA PLACEMENT, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed *March 20, 1974.*

REVELL DATA PLACEMENT, 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.

PER CURIAM.

(No. 74-CC-411—Claimant awarded $45.00.)

ST. ELIZABETH'S HOSPITAL, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed March 20, 1974.

ST. ELIZABETH'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.

PER CURIAM.

(No. 74-CC-435—Claimant awarded $91.57.)

VIC KOENIG CHEVROLET, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed March 20, 1974.

VIC KOENIG CHEVROLET, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-436—Claimant awarded $80.25.)

METROGAS, INC., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION,** Respondent.

Opinion filed ***March 20, 1974.***

METROGAS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-443—Claimant awarded $12.80.)

DANIEL STALLINGS, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed ***March 20, 1974.***

DANIEL STALLINGS, 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.

PER CURIAM.

(No. 73-CC-239—Claimant awarded $7,000.00.)

S. J. **REYNOLDS** Co., **INC.,** Claimant, *us.* **STATE OF ILLINOIS,** Respondent.

Opinion filed ***March 22, 1974.***

BISHOP, ERICSON & FLYNN, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **MARTIN A. SOLL,** Assistant Attorney General, for Respondent.

CONTRACTS—*bidding error.* Court must determine if there is a legal basis for refunding security bid deposit in absence of defense by respondent.

SAME—*bidding error.* Contractor is entitled to refund of security bid deposit where mistake in bid is due to inadvertent error; respondent is promptly notified of mistake; and respondent is able to reaward contract with no great loss.

BURKS, J.

Claimant in this action seeks recovery of $7,500.00 representing the amount of a security bid deposit held by the Illinois Department of General Services, pursuant to claimant's withdrawal of a bid on certain work to be done for the State of Illinois on the William W. Fox Childrens Center at Dwight, Illinois.

Claimant's original complaint sought a refund in the amount of $7,500.00. Thereafter the parties stipulated that if an award is granted, $7,000.00 would be due and owing to the claimant, and that $500.00 would be retained by the State as administrative costs incurred in reletting the contract for new bids.

On August 6, 1973, claimant filed a motion for summary judgment, supported by an affidavit of Robert F. Lawinger, claimant's President and Chief Executive Officer. The said affidavit recited the following statement of facts which are admitted by the respondent:

1. He [Robert F. Lawinger] is now and at all times material to this controversy has been the President and Chief Executive Officer of S. J. Reynolds Co., Inc. whose principal office is located at 6101 West 28th Street, Cicero, Illinois:

2. S. J. Reynolds Co., Inc. (Reynolds) is now and at all times material hereto has been engaged in the piping and air conditioning business.

3. Sometime prior to June 19, 1972, Reynolds obtained from The Department of General Services of the

State of Illinois, Construction Management Division, Office of Supervising Architect, the documents necessary to enable it to submit a bid on certain work to be done for the State of Illinois on William W. Fox Children's Center at Dwight, Illinois, said project bearing O.S.A. Project No. 72-2123-6.

4. Affiant delegated to Leo Davis, an estimator employed by Reynolds, the work of preparing a bid on the above described project which included heating and refrigeration work in Buildings Nos. 1, 2 and 8—Phase II at the above described school. The estimator visited the site of the work and then began assembling the necessary data to prepare the bid. Prior to the time that the bid was completed, he left on vacation and turned the completion of the estimate over to Louis Benedict. The latter estimator in completing his calculations failed to include in such calculations the cost of the omitted work, namely cutting, patching and removal work. The error therefore was a misconception on the part of the estimator completing the estimate and preparing the bid documents as *to* what was included in that part of the estimate completed by the original estimator, and also a misconception of the scope of the work to be performed; all of which contributed to errors in recording the bid that was submitted for the work.

5. Upon the opening of the bids and the discovery that Reynolds' bid was approximately $90,000 less than the lowest bid of any other contractor bidding on the job and upon Reynolds then learning how the error arose, it immediately dispatched to the State of Illinois, a telegram advising the State of Illinois of the error, copy of said telegram being attached to the Complaint. On June 26, 1972 Reynolds wrote the State of Illinois with reference to said matter, copy of said letter being attached to

the Complaint. Thereafter pursuant to the request of the State of Illinois, it submitted all of its records, including the original estimate, with reference to said project to the engineers, architects and other employees of the State of Illinois who were charged with the responsibility of designing and supervising the construction of the above described project; so that the State of Illinois was then fully advised that a mistake had been made.

6. Subsequent to the notification above referred to, Reynolds withdrew its bid and requested that its security deposit of Seven Thousand Five Hundred ($7,500.00) Dollars be returned to it. To this date, said security deposit has not been returned.

7. Thereafter the State of Illinois rejected all bids and readvertised the work. When the bids on the second readvertisement were opened, it was found that the price of the lowest bidder was $13,450 less than the lowest bid that was submitted under the first advertisement of the work, — assuming that Reynolds' bid be excluded because of the mistake hereinabove described.

8. This Affidavit is submitted in support of a Motion for Summary Judgment in the above entitled cause requiring the State of Illinois to return to Reynolds its security deposit of Seven Thousand Five Hundred ($7,500.00) Dollars.

All of the above allegations were admitted by the respondent in its reply to claimant's motion for summary judgment, and no defense to this claim was proffered by the respondent.

Nevertheless, it is incumbent upon the court to review the Illinois cases involving bidding errors to determine the legal basis, if any, for granting the relief sought by the claimant in this action as we did in the case of

Consolidated Engineering Division v. ***State,*** C.C. No. **5487,** filed April **27, 1971.** Under the facts in that case, which are quite similar to the case at bar, we awarded a refund in the amount of the claimant's bid deposit, relying on the Illinois Supreme Court's ruling in ***Bromagin*** v. ***City of Bloomington,*** **234** Ill. **114** (1908). This still appears to be the latest word from the Supreme Court that is closely in point. There a bidder in a municipal construction project erred in estimating his bid by inserting in the column set apart for the cost per foot of pipe the weight of the pipe per foot. The proposal was prepared in haste, the bidder having on the same day received financial backing for the job. The City accepted the bid knowing the mistake had been made. The Supreme **Court** held that the mistake did not show such negligence as would bar relief.

More recently our Appellate Court, speaking directly on the question involved here, reviewed ***Bromagin*** v. ***City of Bloomington*** (Supra) and cas'es from other jurisdictions in ***People Ex Rel,*** *Ill.Dept. of P.W. & B.* v. *South* ***East National Bank,*** 266 N.E.2d **778 (1971).** This case is summarized in its syllabus as follows:

"Action by the Illinois Department of Public Works and Buildings against a bank to recover the amount of a certified check drawn on the bank by an engineering company as security deposit for a public construction contract. The engineering company intervened and filed a counterclaim for rescission. The Circuit Court of Cook County, George N. Leighton, J., granted the engineering company's motion for summary judgment; ordered the check "returned, and that Department appealed. The Appellate Court, Dempsey, J., held that the engineering contractor which submitted the lowest bid on public construction contract was entitled to rescind the contract and recover the amount of the security deposit upon showing that the mistake in the bid was due to an inadvertently misplaced decimal point that resulted from hasty preparation because of late quotations from some subcontractors and suppliers; That Department of Public Works and Buildings was promptly notified of the bidder's intention to withdraw its bid before the award was made; and that the Department was able, with no great loss, to award the contract to the next lowest bidder."

In the case at bar the respondent did not award the contract to the next lowest bidder, which would have been a substantial loss to the State, nor did it accept claimant's bid after knowing the mistake had been made, as in the case of ***Bromagin*** (Supra). Instead, respondent rejected all bids and readvertised the work. This procedure actually resulted in a savings to the State of **$13,450.00** as explained in ¶7 of the facts previously stated. Moreover, claimant has agreed by stipulation that $500.00 of his claim is to be retained by the State to cover administrative costs incurred in reletting the contract for new bids.

As we said in ***Consolidated*** (Supra), "The Court is mindful of the fact that public officials must exercise extreme care and caution to avoid abuses of the competitive bidding process which have come to light in the past." However, we find no such abuse indicated in the case at bar.

Based on the uncontroverted facts in this case, the joint stipulation of the parties, and the law of this state as enuniciated in the cases cited above, we find that claimant's motion for summary judgment should be granted and an award made in the sum of $7,000.00.

The procedure for a summary judgment, is stated in §57 of the ***Civil Practice Act,*** pursuant to Rule 2 of this Court. Claimant has correctly followed such procedure and the respondent has declined to oppose claimant's motion.

An award is, therefore, entered in favor of claimant, S. J. Reynolds Co., Inc., in the sum of $7,000.00. This is a refund of a security deposit.

(No. 73-CC-402—Claimant awarded $235.40.)

ALLIED ELECTRONICS CORP., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed March 25, *1974.*

ALLIED ELECTRONICS CORP., 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. 74-CC-124—Claimant awarded $5,843.32.)

XEROX CORPORATION, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed March 25, *1974.*

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.

PER CURIAM.

(No. 74-CC-193—Claimant awarded $4,375.00.)

JOSEPH C. MOORE, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed March 25, *1974.*

DYER, RICHMOND, MOORE & NELSON, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDKEMA, 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,

PER CURIAM.

(No. 74-CC-222 — Claimant awarded $269.29.)

PARKWAY CHRYSLER-PLYMOUTH, INC., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS,** Respondent.

Opinion filed March *25, 1974.*

PARKWAY CHRYSLER-PLYMOUTH, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-229 — Claimant awarded $255.19.)

HUMMA'S DRUG STORE, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS,** Respondent.

Opinion filed March 25, *1974.*

HUMMA'S DRUG STORE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-258 — Claimant awarded $2,600.00.)

PUBLIC ELECTRIC CONSTRUCTION CO., INC., Claimant, *us.* **STATE OF ILLINOIS, CAPITAL DEVELOPMENT BOARD,** Respondent.

Opinion filed March 25, *1974.*

LANDESMAN & SCHWARTZ, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **MARTIN A. SOLL,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-269 — Claimant awarded **$35.95.)**

UNIVERSITY PHARMACY, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed March *25, 1974.*

UNIVERSITY PHARMACY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-272 — Claimant awarded $261.00.)

EVERETT L. VESTEL, Claimant, *us.* **STATE OF ILLINOIS,** Respondent.

Opinion *filed* March *25, 1974.*

EVERETT L. VESTEL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

SAME—retroactive pay increase. Chapter 127, Section **145** expressly authorizes retroactive pay increase pursuant to a collective bargaining agreement and Court will enter award to compensate retroactive pay increase where appropriation has lapsed.

PER CURIAM.

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 the purpose of this expenditure by the Department of Children & Family Services was for the payment of a retroactive pay increase which was not paid because the notification to the Department was not received until November 27, 1973. According to the departmental report there was a retroactive pay increase of $87 per month for employees classified as Plasterers under the Illinois Personnel Code. Claimant was so classified during the months of April, May and June of 1973. Money was appropriated for this expense in Section 2 of House Bill No. 4197, Approved July 7, 1972 in the amount of $2,623,700, Personal Services, Regular Positions for the Illinois School for the Deaf (001-2335-120). Of this appropriation, $29,509.01 was returned to the State Treasury upon the lapsing of said fund.

Express authority to pay retroactive pay increases, pursuant to a collective bargaining agreement is found in Ch. 127, Sec. 145, Ill.Rev.Stat., 1971, where the legislature stated:

"Amounts paid from appropriations for personal service of any officer or

employee of the State, either temporary or regular, shall be considered as full payment for all services rendered between the dates as specified in the payroll or other voucher and no additional sums shall be paid to such officer or employee from any lump sum appropriation, appropriation for extra help or other purpose or any accumulated balances in specific appropriations, which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made, ***except that wage payments made pursuant to the application of the prevailing rate principle or based upon an effective date of the collective bargaining agreement the state or state agency and an employee group shall not be construed as an additional payment for work already performed."*** (Emphasis Added)

In light of this Court's decisions in ***City of Jacksonville*** v. ***State of Illinois,*** (1946), ***15*** C.C.R. **62,** and ***Illinois-Iowa Power Company*** v. ***State of Illinois*** (1942), **12** C.C.R. **308,** and the legislative intent embodied in the Ch. **127,** Sec. **145,** Ill.Rev.Stat., **1971,** it is our opinion that the claimant should be paid.

The sole reason that this claim was not paid is due to the fact that the Department of Children & Family Services did not receive notification of the pay increase until November **27, 1973,** after the close of the appropriation period from which this debt would have been paid. This fact is stated in the departmental report of the Department of Children and Family Services, a copy of said report being attached to the Joint Stipulation of the parties.

IT IS HEREBY ORDERED that the sum of **$261** (Two HUNDRED SIXTY-ONE DOLLARS) be awarded claimant in full satisfaction of any and all claims presented to the State of Illinois under the above-captioned cause.

(No. 74-CC-289—Claimant awarded $52.80.)

BISMARCK HOTEL Co., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF PERSONNEL,** Respondent.

Opinion filed March 25, 1974.

BISMARK HOTEL Co., 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.

PER CURIAM.

(No. 74-CC-293—Claimant awarded $1,366.66.)

AMITY HOSPITAL SERVICE, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed March 25, *1974.*

AMITY HOSPITAL SERVICE, 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.

PER CURIAM.

(No. 74-CC-321—Claimant awarded $232.94.)

HELIX LIMITED, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion *filed* March 25, *1974.*

HELIX LIMITED, 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.

PER CURIAM.

(No. 74-CC-322—Claimant awarded $1,038.18.)

ENTREX, INC., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed March 25, *1974.*

ENTREX, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-352—Claimant awarded $978.00.)

ZION NURSING HOME INC., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed March *25, 1974.*

ZION NURSING 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.

PER CURIAM.

(No. 74-CC-355—Claimant awarded $569.80.)

TEXACO, INC., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed March *25, 1974.*

TEXACO, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, **for** Respondent.

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

PER CURIAM.

(No. 74-CC-361—Claimant awarded $24.17.)

TEXACO, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed March 25, *1974.*

TEXACO, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-364—Claimant awarded $135.02.)

NASCO, Claimant, *us.* STATE OF ILLINOIS, NATURAL HISTORY SURVEY, Respondent.

Opinion filed March 25, *1974.*

NASCO, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-376—Claimant awarded $17.50.)

SUSAN RENTLE, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed March *25, 1974.*

SUSAN E. RENTLE, 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.

PER CURIAM.

(No. 74-CC-379—Claimant awarded $5,790.00.)

CENTRAL ILLINOIS ELECTRIC Co., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed March 25, *1974.*

CENTRAL ILLINOIS ELECTRIC Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-382—Claimant awarded $261.00.)

HAROLD S. MARSHALL, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed March 25, *1974.*

HAROLD S. MARSHALL, 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.

PER CURIAM.

(No. 74-CC-390—Claimant awarded $805.00.)

AVALON BUILDING MAINTENANCE, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed March 25, *1974*

AVALON BUILDING MAINTENANCE, 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.

PER CURIAM.

(No. 74-CC-401—Claimant awarded $213.13.)

HAROLD L. DAVENPORT, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed March 25, *1974*

HAROLD L. DAVENPORT, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-429 — Claimant awarded $358.00.)

RICHARD SIMMONS, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed ***March 25, 1974.***

RICHARD SIMMONS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-430 — Claimant awarded $690.23.)

OGLE COUNTY SHERIFF'S DEPARTMENT, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed ***March 25, 1974.***

OGLE COUNTY SHERIFF'S DEPARTMENT, 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.

PER CURIAM.

(No. 74-CC-431 — Claimant awarded $283.35.)

SANGAMON COUNTY SHERIFF'S DEPARTMENT, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT **OF** LAW ENFORCEMENT, Respondent.

Opinion filed ***March 25, 1974.***

SANGAMON COUNTY SHERIFF'S DEPARTMENT, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-441 — Claimant awarded $4,958.50.)

HUB CLOTHIERS, Claimant, *us.* **STATE OF ILLINOIS, SECRETARY OF STATE,** Respondent.

Opinion filed March *25, 1974.*

HUB CLOTHIERS, 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.

PER CURIAM.

(No. 74-CC-449 — Claimant awarded $207.36.)

E. R. **SQUIBB & SONS, INC.,** Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed March *25, 1974.*

E. R. **SQUIBB & SONS, 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.

PER CURIAM.

(No. 74-CC-468—Claimant awarded $1,966.62.)

HUSTON-PATTERSON CORPORATION, Claimant, *us.* STATE OF ILLINOIS, ILLINOIS STATE MUSEUM, Respondent.

Opinion filed *March 25, 1974.*

HUSTON-PATTERSON CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 6953—Claimant awarded $30,044.90.1

FORD TRACTOR OPERATIONS, FORD MOTOR COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed *March 25, 1974.*

FORD TRACTOR OPERATIONS, FORD MOTOR 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.

PER CURIAM.

(No. 6893—Claimant awarded $2,500.00.)

ALICE N. SWEET, Claimant, *us.* THE BOARD OF REGENTS OF THE REGENCY UNIVERSITY SYSTEM, Respondent.

Opinion filed *March 28, 1974.*

FRED LAMBRUSCHI, Attorney **for** Claimant.

WILLIAM J. SCOTT, Attorney General, for Respondent.

NEGLIGENCE—*Claimant awarded $2,500.00.* for injuries sustained when claimant fell over foreign object respondent negligently permitted to accumulate on sidewalk.

PERLIN, C. J.

The parties hereto have submitted to this Court a joint stipulation establishing the following factual situation:

On October 15, 1971, the Claimant was walking upon a public sidewalk on the campus of the Illinois State University at Normal, Illinois. While in the exercise of due care for her safety, Claimant fell over a foreign object which the Respondent admittedly had carelessly and negligently permitted to accumulate and remain on the sidewalk.

As a result of the aforesaid incident Claimant sustained a fracture of her right leg, and incurred medical and hospital expenses in the sum of $1,103.05 for the treatment of her injury.

Claimant is hereby awarded the sum of $2,500.00.

(No. 5995—Claimant awarded $286.80.)

KEUFFEL AND ESSER COMPANY, A Corporation, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1974.

WOLFE, KLEIN, BONNER AND BERZARK, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; MARTIN A. SOLL, Assistant Attorney General, for Respondent.

WOLFE, KLEIN, BONNER AND BERZARK, Attorney for Claimant.

CONTRACTS—*proof* ***of delivery.*** Where company had history of supplying material in question to Respondent; Claimant identified copy of invoice; delivery receipts destroyed and no rebuttal offered by Respondent; Claimant established delivery of goods.

BURKS, J.

Claimant filed this action on December 10, 1970, seeking payment in the amount of $286.80 for materials allegedly furnished and delivered to the respondent on December 8, 1967, pursuant to respondent's order for said materials.

The complaint alleges that, on the aforesaid date, on request of the respondent's Department of Public Works and Buildings, Division of Highways, it delivered to the Division of Highways District No. 6 at 126 East Oak Street, Springfield, Illinois, 24M Band Chains. The unit price was $11.95, making a total price of $286.80.

Respondent's Departmental Report shows that, from its records and investigations, it is unable to verify whether or not the respondent received the goods in question. Respondent's letter recommended that the claim be set for a hearing in order that the claimant may submit proper proof. At the hearing Roger R. Doyle, supervisor of the order department of the claimant's company, identified a copy of the invoice for the material in question. He testified that the M bands were tapes used in surveying and that they were shipped in two packages; that a delivery receipt would be in the possession of United Parcel Service, the delivery company; that the receipt was requested from the delivery company about a year ago but that it was not available because their records are destroyed after three years.

Respondent offered no rebuttal evidence. Respondent's departmental report does not deny the probability

that the merchandise was received as claimant alleges. The record shows that claimant has been supplying materials to the respondent for many years.

The Court feels that claimant did deliver the material in question to the respondent pursuant to respondent's order, and that the claimant in this claim has sustained its burden of proof.

Claimant is hereby awarded the sum of $286.80, being the amount due the claimant under a valid contract.

(No. 74-CC-114—Claimant awarded $3,627.25.)

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

Opinion filed April 2, 1974

EVANSTON 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.

PER CURIAM.

(No. 74-CC-145—Claimant awarded $814.47.)

MULTIGRAPHICS DIVISION, Claimant, *vs.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed April 2, 1974.

MULTIGRAPHICS DIVISION, 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.

PER CURIAM.

(No. 74-CC-162—Claimant awarded $137.65.)

HAROLD L. WELLS, d/b/a **METROPOLIS BLOCK** Co., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS,** Respondent.

Opinion filed *April 2, 1974.*

LOUIS G. **HORMAN,** Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **HOWARD** W. **FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-290—Claimant awarded $710.62.)

BISMARCK HOTEL Co., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS,** Respondent.

Opinion ***filed*** *April 2, 1974*

BISMARCK HOTEL Co., 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.

PER CURIAM.

(No. 74-CC-308 — Claimant awarded **$21.83.)**

STANDARD OIL DIVISION, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 2, 1974.

STANDARD OIL DIVISION, 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.

PER CURIAM.

(No. 74-CC-312 — Claimant awarded $85.27.)

STANDARD OIL DIVISION, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed April 2, 1974.

STANDARD OIL DIVISION, 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.

PER CURIAM.

(No. 74-CC-342 — Claimant awarded $280.00.)

COMPUTER MACHINERY CORPORATION, Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed April 2, 1974.

COMPUTER MACHINERY CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-346—Claimant awarded **$16.32.**)

GULF OIL CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 2, *1974.*

GULF OIL CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-353—Claimant awarded $69.30.)

FRED PETERS WELDING SUPPLY Co., Claimant, *vs.* STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY, Respondent.

Opinion filed April 2, *1974.*

THOMAS F. O'CONNOR, 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.

PER CURIAM.

(No. 74-CC-366—Claimant awarded $110.72.)

CONSOLIDATED OIL Co., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed ***April 2, 1974.***

CONSOLIDATED OIL 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.

PER CURIAM.

(No. 74-CC-369—Claimant awarded $261.00.)

EDWARD J. MORTHOLE, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed ***April 2, 1974.***

EDWARD J. MORTHOLE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-397—Claimant awarded $760.30.)

MEMORIAL HOSPITAL, ETC., Claimant, ***us.*** **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed ***April 2, 1974.***

BROWN, HAY & STEPHENS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-399—Claimant awarded $254.64.)

WILLIAM J. BLAZIS, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 2, *1974.*

WILLIAM J. BLAZIS, 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.

PER CURIAM.

(No. 74-CC-432—Claimant awarded $10,896.00.)

GENERAL ELECTRIC COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 2, *1974.*

GENERAL Electric COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-438—Claimant awarded $220.40.)

FORREST N. JONES, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed April 2, *1974.*

FORREST N. JONES, 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.

PER CURIAM.

(No. 74-CC-442—Claimant awarded $211.35.)

MOSE FARRIS, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed April 2, *1974.*

MOSE FARRIS, 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.

PER CURIAM.

(No. 74-CC-453—Claimant awarded $2,890.00.)

KIMMEL-JENSEN AND ASSOCIATES, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed April 2, *1974.*

KIMMEL-JENSEN AND ASSOCIATES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-476—Claimant awarded $6,870.50.)

PREMIUM INSTRUMENTS COMPANY, Claimant, *vs.* STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY, Respondent.

Opinion filed April 2, *1974*

PREMIUM INSTRUMENTS COMPANY, 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.

PER CURIAM.

(No. 74-CC-477—Claimant awarded $169.12.)

EDWIN R. WALTERS, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 2, *1974.*

EDWIN R. WALTERS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-493 — Claimant awarded $105.00.)

THE JEFFERSON HOUSE, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed April 2, 1974.

THE JEFFERSON HOUSE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-495 — Claimant awarded $1,055.98.)

ALLIED HANDLING EQUIPMENT Co., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 2, 1974.

ALLIED HANDLING EQUIPMENT Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-502 — Claimant awarded $102.19.)

MOBIL OIL CORPORATION, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC HEALTH, Respondent.

Opinion filed April 2, 1974.

GIFFIN, WINNING, LINDNER, NEWKIRK, COHEN, BODEWES & NARMONT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-505—Claimant awarded $1,992.73.)

MOBIL **OIL CORPORATION,** Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT,** Respondent.

Opinion filed April *2, 1974.*

GIFFIN, WINNING, LINDNER, NEWKIRK, COHEN, BODEWES & **NARMONT,** 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.

PER CURIAM.

(No. 74-CC-511—Claimant awarded $48.50.)

HEDGES CLINIC, S. C., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed April 2, *1974.*

HEDGES CLINIC, S. C., 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.

PER CURIAM.

(No. 74-CC-536—Claimant awarded $13.00.)

COLUMBUS HOSPITAL, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 2, 1974.

COLUMBUS 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.

PER CURIAM.

(No. 74-CC-561—Claimant awarded $39,304.00.)

FLINK COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 2, 1974.

FLINK COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-470—Claimant awarded $4,840.00.)

SCHUSTER EQUIPMENT COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 2, 1974.

DONALD L. MROZEK AND HINSHAW, CULBERTSON, MOELMANN, HOBAN AND FULLER, Attorneys 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,

PER CURIAM.

(No. 74-CC-?&Claimant awarded $183.00.)

LLOYD E. DYER, JR., Claimant, ***us.*** **STATE OF ILLINOIS, POLLUTION CONTROL BOARD,** Respondent.

Opinion filed April 8, ***1974.***

LLOYD E. DYER, 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,

PER CURIAM.

(No. 74-CC-67—Claimant awarded $354.25.)

ST. MARY'S HOSPITAL, E. St. Louis, Illinois, Claimant, ***us.*** **STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION,** Respondent.

Opinion filed April 8, ***1974.***

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.

PER CURIAM.

(No. 74-CC-136—Claimant awarded $29.00.)

EVELYN PAULINE STECK, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF LABOR, Respondent.

Opinion filed April 8, *1974.*

EVELYN PAULINE STECA, 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.

PER CURIAM.

(No. 74-CC-176—Claimant awarded $378.20.)

LAMINEX, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 8, *1974.*

LAMINEX, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-198—Claimant awarded $877.66.)

MOLINE PUBLIC SCHOOLS, BOARD OF EDUCATION, DIST. No. 40 By DR. THEODORE F. ROCKAFELLOW, Supt., Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion *filed* April 8, *1974.*

DR. THEODORE F. ROCKAFELLOW, 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.

PER CURIAM.

(No. 74-CC-200—Claimant awarded $473.92.)

CENTRAL OFFICE EQUIPMENT COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed ***April*** 8, ***1974.***

CENTRAL OFFICE EQUIPMENT COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-228—Claimant awarded $343.09.)

ATLANTIC RICHFIELD COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed ***April*** 8, ***1974.***

ATLANTIC RICHFIELD COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-265—Claimant awarded $250.00.)

ILLINOIS NATIONAL BANK, Claimant, *vs.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed April 8, *1974.*

ILLINOIS NATIONAL BANK, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-365—Claimant awarded $342.30.)

CAHILL PRINTING COMPANY, Claimant, *vs.* STATE OF ILLINOIS, OFFICE OF THE LIEUTENANT GOVERNOR, Respondent.

Opinion filed April 8, *1974.*

CAHILL PRINTING 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.

PER CURIAM.

(No. 74-CC-392—Claimant awarded $442.50.)

LUCY L. REESE, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT of PUBLIC AID, Respondent.

Opinion filed April 8, *1974.*

LUCY L. REESE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-403—Claimant awarded $450.53.)

JAMES GORDON d/b/a SILVER'S FOODS, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 8, *1974.*

FRANK A. EDELMAN, 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.

PER CURIAM.

(No. 73-CC-419—Claimant awarded $1,119.00.)

LUTHERAN CHILD AND FAMILY SERVICES, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed April 8, *1974.*

HAFFNER, GROW, OVERGAARD AND BERGHOFF, 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.

PER CURIAM.

(No. 73-CC-424—Claimant awarded $1,350.00.)

THE WESTERN UNION TELEGRAPH COMPANY, Claimant, *us.* **STATE OF ILLINOIS, SOUTHERN ILLINOIS UNIVERSITY,** Respondent.

Opinion filed April 8, *1974.*

ECKHART, MCSWAIN, HASSELL & SILLIMAN, 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.

PER CURIAM.

(No. 74-CC-428—Claimant awarded $78.00.)

WEST PUBLISHING COMPANY, Claimant, *us.* **STATE OF ILLINOIS, SECRETARY OF STATE,** Respondent.

Opinion filed April 8, 1974.

WEST PUBLISHING COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD** W. **FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-456Claimant awarded $179.75.)

REED LEON FAITH, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed April 8, 1974.

REED LEON FAITH, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-469 — Claimant awarded $913.71.)

HUSTON-PATTERSON CORPORATION, Claimant, *us.* **STATE OF ILLINOIS, ATTORNEY GENERAL'S OFFICE,** Respondent.

Opinion filed April 8, 1974.

HUSTON-PATTERSON 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,

PER CURIAM.

(No. 74-CC-481 — Claimant awarded $197.40.)

ST. MARY HOSPITAL, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed April 8, 1974.

ST. MARY HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-482 — Claimant awarded $2,297.17.)

HAROLD E. MCMANN d/b/a ILLINI MOVING AND STORAGE, Claimant, *us.* STATE OF ILLINOIS, GOVERNORS OFFICE OF HUMAN RESOURCES, Respondent.

Opinion filed April 8, 1974.

HAROLD E. MCMANN d/b/a ILLINI MOVING AND STORAGE, 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.

PER CURIAM.

(No. 74-CC-488 — Claimant awarded $90.64.)

IVAN L. FORD, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed *April 8, 1974.*

IVAN L. FORD, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-489 — Claimant awarded $3,530.21.)

CENTRAL OFFICE EQUIPMENT COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed *April 8,* 1974.

CENTRAL OFFICE EQUIPMENT *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.

PER CURIAM.

(No. 74-CC-494—Claimant awarded $1,618.10.)

SOUTHWESTERN BELL TELEPHONE Co., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed ***April*** 8, 1974.

ROBERTS, GUNDLACH & LEE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No 74-CC-496—Claimant awarded $148 04)

KANKAKEE INDUSTRIAL SUPPLY Co., Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF LABOR, Respondent.

Opinion filed ***April*** *8, 1974*

KANKAKEE INDUSTRIAL SUPPLY Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-532—Claimant awarded $22.65.)

JOEL GLECKLER, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 8, *1974.*

JOEL GLECKLER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-534—Claimant awarded $660.00.)

SARGENT-WELCH SCIENTIFIC CO., Claimant, *us.* STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY, Respondent.

Opinion filed April 8, *1974.*

SARGENT-WELCH SCIENTIFIC 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.

PER CURIAM.

(No. 74-CC-542—Claimant awarded $175.00.)

EDUCATIONAL SERVICE REGION, Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed April 8, *1974.*

EDUCATIONAL SERVICE REGION, Claimant, pro se.

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

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

PER CURIAM.

(No. 74-CC-562—Claimant awarded $225.00)

GRIGGSVILLE COMMUNITY SCHOOL UNIT 4, Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed April 8, 1974.

GRIGGSVILLE COMMUNITY SCHOOL UNIT 4, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-165—Claimant awarded $980.00.)

GEORGE J. SKONTOS, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 11, 1974.

GEORGE J. SKONTOS, Claimant, pro se.

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

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

PER CURIAM.

(No. 74-CC-298 — Claimant awarded $531.00.)

IBM CORPORATION, Claimant, *us.* STATE OF ILLINOIS, OFFICE OF THE COMPTROLLER, Respondent.

Opinion filed April *11, 1974.*

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

PER CURIAM.

(No. 74-CC-299 — Claimant awarded $1,250.07.)

MEMORIAL HOSPITAL, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April *11, 1974*

BROWN, HAY & STEPHENS, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-329 — Claimant awarded $759.42.)

XEROX CORPORATION, Claimant, *us.* STATE OF ILLINOIS, OFFICE OF THE LIEUTENANT GOVERNOR, Respondent.

Opinion filed April *11, 1974.*

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,

PER CURIAM.

(No. 74-CC-337—Claimant awarded $203.25.)

INSTANT PRINTING CORPORATION, Claimant, *us.* STATE OF ILLINOIS, OFFICE OF THE LIEUTENANT GOVERNOR, Respondent.

Opinion filed April *11, 1974.*

INSTANT PRINTING 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,

PER CURIAM.

(No. 74-CC-407—Claimant awarded $62.70.)

HARRY BURGE, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April *11, 1974.*

HARRY BURGE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-408 — Claimant awarded $56.45.)

ROSEMONT BUILDING SUPPLY CO., INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April *11, 1974.*

ROSEMONT BUILDING SUPPLY 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.

PER CURIAM.

(No. 74-CC-422 — Claimant awarded $234.72.)

JOSEPH N. KILLEBREW, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April *11, 1974.*

JOSEPH N. KILLEBREW, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-426 — Claimant awarded $229.68.)

NYLE LEE DYER, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April *11, 1974.*

NYLE LEE DYER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-465—Claimant awarded $1,977.55.)

CHICAGO POLICE DEPARTMENT, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed April 11, 1974.

RICHARD L. CURRY, Corporation Counsel of the City of Chicago, Attorney for Claimant.

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

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

PER CURIAM.

(No. 74-CC-478—Claimant awarded $52.00.)

AIR ILLINOIS, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed April 11, 1974.

AIR ILLINOIS, INC., Claimant, pro se.

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

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

PER CURIAM.

(No. 74-CC-479—Claimant awarded $108.20.)

AIR ILLINOIS, INC., Claimant, *us.* STATE OF ILLINOIS, OFFICE OF THE LIEUTENANT GOVERNOR, Respondent.

Opinion filed ***April*** *11, 1974.*

AIR ILLINOIS, INC., Claimant, pro se.

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

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

PER CURIAM.

(No. 74-CC-509—Claimant awarded $622.43.)

PARK CHRYSLER PLYMOUTH, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed ***April*** *11, 1974.*

PARK CHRYSLER PLYMOUTH, 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.

PER CURIAM.

(No. 74-CC-524—Claimant awarded $861.07.)

BRADNER SMITH & COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed ***April*** *11, 1974.*

BRADNER SMITH & 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.

PER CURIAM.

(No. 74-CC-540—Claimant awarded $975.99.)

PARK CHRYSLER PLYMOUTH, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed ***April 11, 1974.***

PARK CHRYSLER PLYMOUTH, 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.

PER CURIAM.

(No. 74-CC-552—Claimant awarded $276.80.)

LARSON AND MC GINNIS, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed ***April 11, 1974.***

LARSON AND MC GINNIS, 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.

PER CURIAM.

(No. 5326—Claimant awarded $3,150.00.)

JAMES P. SHERLOCK CONSTRUCTION COMPANY, INC., Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed April *12, 1974.*

FISCHER, GUY, JACOBSON & PAUKER, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; ZEAMORE A. ADER, Special Assistant Attorney General, for Respondent.

CONTRACTS—oral authorization. Informal agreements open the door to serious abuses of public funds and are dangerous to the public good and are not to be condoned.

SAME—statutes. When statutes preclude a possibility of abuses by reason of informal agreements, a claimant may prove its claim to a valid oral contract.

SAME—awards. The smaller of the amounts shown to be budgeted for a renovation project shall be awarded when a claim has been proved by a preponderance of the evidence.

BURKS, J.

In this action, claimant seeks payment of $3,172 for services rendered under an alleged oral contract with the respondent.

It appears from the evidence that, on July 27, 1963, respondent requested claimant to prepare plans and specifications for alterations to be made on behalf of the respondent in the Museum of Science and Industry Building in Chicago. The space was to be occupied by the Chicago Division of the Illinois Civil Defense Agency, which was considering moving its office from the first floor of the Museum of Science and Industry to the basement of that building. The record shows that claimant did prepare certain plans and specifications for the said alterations and submitted them to the Illinois Civil Defense Agency. Claimant alleges that, under an oral contract with the respondent, claimant was to be paid as

a fee for these services an amount equivalent to 7% of the projects budgeted cost of $45,318.

Respondent contends that claimant's alleged oral contract did not conform to legal requirements; that this claim was not proved by a preponderance of the evidence; acd that the plans submitted by the claimant were, in effect,drawings which claimant was to have used on the proposed work. As it developed, bids were never asked on the job because the Civil Defense Agency, instead of moving into the basement of the Museum of Science and Industry, decided to move its facilities to Springfield.

Since the issue as to whether claimant had a valid oral contract is primarily a question of fact, we will summarize the testimony of the key witnesses who appear to be competent and knowledgeable as to the facts, and the exhibits which have the most probative value.

Lawrence Murphy, a witness for the claimant, was Staff Engineer for the State of Illinois and was, from 1961 to 1964, Chief Engineer for the Civil Defense Agency at its headquarters in the Museum of Science and Industry. He was on loan to this agency from the Department of Public Works and Buildings. Murphy testified that claimant had previously performed various repair jobs for the Civil Defense Agency on oral contracts, jobs in the neighborhood of $500 or $600. Murphy said he never had occasion to question claimant's reliability, the quality of claimant's work nor the reasonableness of the price claimant charged, which was always discussed in advance if over $100.

Murphy further stated that, at various meetings, he and Chauncey Carveth, Executive Director of the Civil Defense Agency, indicated affirmatively that claimant was to be paid for preparing and submitting the plans

and specifications. Murphy's statements to the claimant were always on direct order of Mr. Carveth, the Executive Director. He stated that the claimant's representative, Edson Lee Casper, altended approximately 15 meetings which mainly involved changes in the plans and specifications in order to cut down the cost of the project. Murphy further testified that it would be unusual for a bidder, in bidding on a job, to submit detailed plans and specifications to the party asking for bids, as respondent seems to contend in its theory of the case. Plans and specifications, of course, are customarily submitted to the bidder by the party asking for the bids.

Murphy further stated that, although claimant might bid on this job, claimant was hired only for the work of preparing the plans and specifications, and that the work which claimant did was necessary to determine costs.

Henry Zedd, subpoenaed as a witness for the claimant, was Chief of Field Operations for the Civil Defense Agency during the period of August, 1961 to November, 1964. His duties included the preparation of the budget for the Civil Defense Agency. Zedd testified that he prepared a memorandum on September 17, 1963, indicating that, as of the end of September, there was $45,456.64 available for the renovation job at the lower level of the Museum of Science and Industry Building. This memorandum was placed in evidence as claimant's Exhibit No. 5. Zedd was never present when there was a firm arrangement established with the claimant for drafting the plans and payment for this service.

Edson Lee Casper, President of claimant corporation, testified that claimant had done 8 or 10 jobs for the Civil Defense Agency, and that in only one case was there a written contract. He testified that he was con-

tacted by Lawrence Murphy of the Civil Defense Agency and was told of the proposed renovation of the lower level of the Museum of Science and Industry Building, and that he was being retained to prepare the specifications for the alterations. He stated that, in discussing his fee, he informed Mr. Murphy that the customary charge for engineering, architectural work and alterations was around 7%. Casper said he was told that he might be invited to bid on the job, but he may be disqualified from bidding if he prepared the plans and specifications. Nevertheless, he said, it was clearly understood that claimant's company was being engaged merely to prepare plans and specifications. The price to be paid his company was a percentage figure of 7% which Mr. Casper said was agreed to by both Lawrence Murphy and Chauncey Carveth for the respondent; that subsequently, in connection with this project, Casper met with Civil Defense Agency personnel 25 or 30 times; that three or four stages of the plans were presented to the Civil Defense Agency on which were made revisions, alterations and changes for various purposes; that subsequently, the final drawings were presented to the Agency. Casper stated the invoice of $3,172 submitted by claimant was arrived at by taking 7% of the budgeted cost of the alterations; that this was the customary and usual practice. Casper estimated that he spent 60 to 80 hours on the project.

Col. Donovan M. Vance, Director of Civil Defense for the State of Illinois, although called as a witness for respondent, identified many of claimant's exhibits which tend to support claimant's contentions. However, Col. Vance testified that he did not authorize Mr. Carveth or anyone else in his office to enter into any form of contract with anyone to draft plans and specifications for the basement area. He stated that he did authorize his personnel, including Mr. Murphy, to review the matter and

find out what it might cost to renovate and rebuild the basement for the Civil Defense Agency's use. He admitted that Murphy was expected to seek outside help and assistance from the claimant, Sherlock Construction Company, but just to get a "horseback estimate" of the cost from the plans he said Murphy and his assistant had prepared. He admitted that he participated in discussions with claimant's president, Mr. Casper, and claimant's staff regarding the remodeling and the suitability of the area to the Civil Defense Agency and the price of the remodeling. Col. Vance said he considered Sherlock Construction Company a remodeling firm; that claimant had previously done work for the Civil Defense Agency and the Museum of Science and Industry, and that claimant was held in high regard by the Museum of Science and Industry.

Edson Lee Casper, recalled as a witness for claimant, contradicted the most pertinent part of Col. Vance's testimony by stating that respondent's Lawrence Murphy never prepared any sort of detailed plans in connection with the renovation project at the Museum. He said that respondent's Exhibit No. 1 merely shows the then existing conditions in the space presently occupied and to be occupied; that it is called a line drawing, and a contractor could not possibly bid on a job based on these drawings. No alterations or new work are indicated on these drawings of the respondent. Casper said that respondent's drawings, referred to by Col. Vance, were of no value, and that they were never even submitted to the claimant.

Mr. Casper confirmed, as Henry Zedd had earlier testified, that Col. Vance became ill shortly after his appointment as Director of Civil Defense but said that Col. Vance was present at one of the early discussions on

the renovation project and again before the plans were finished. Casper said that Col. Vance personally ordered certain items taken out of claimant's plans.

Warren Rukgaber, an auditor with the Office of Civil Defense, the only other witness for the respondent, merely testified as to certain lapsed appropriations of the Civil Defense Agency budget for the 1961-1963 biennium and as to certain supplementary request for funds for the renovation project in question. His testimony had no significant bearing on the issue before us.

Examining claimant's exhibits in the light of the oral testimony, we find the following facts clearly established:

In **August** of **1963,** claimant finished the preparation of the plans and specifications and turned them over to the Civil Defense Agency. [Cl. Ex. 1 and 21

On September 3, 1963, claimant submitted its invoice, in the amount of $3,127 to the Agency for the services which had been performed. [Cl. Ex. 81.

On September **4,** 1963, Colonel Vance wrote to Francis S. Lorenz, Director of the Department of Public Works and Buildings at Springfield, requesting that "drawings and specifications for work to be completed in the Museum be reviewed". [Cl. Ex. 17]. We have noted that Col. Vance testified at the hearing, in June of 1968, that the plans he referred to in this letter were plans drawn by Mr. Murphy. However, both Mr. Murphy and Mr. Casper testified that Mr. Murphy had not prepared plans. Hence, we conclude that the only plans and specifications that had been prepared were done by the claimant.

On October **24,** 1963, the Agency wrote to the claimant [Cl. Ex. 9] enclosing a voucher in the invoiced

amount. In this letter the claimant was advised that "upon receipt of this signed Invoice-Voucher, it will be forwarded by us to Springfield for payment". [This letter was signed "For the Director — Letha T. Black, Administrative Assistant"].

Claimant completed respondent's voucher and returned it on October 28, 1963. After some time passed and no payment was received, claimant wrote to Col. Vance on January 31, 1964, and requested payment. Failing to receive a response, Mr. Casper wrote to Col. Vance on March 27, 1964 and again requested payment.

On April 7, 1964, Col. Vance replied by letter advising that payment had not been made because he had no evidence of authorization by the Agency for the work done by claimant. [Cl. Ex. 131.

Upon receipt of that letter from Col. Vance, claimant secured and submitted a letter from Mr. C. E. Carveth, Executive Director of the Agency.

The court takes notice that the said letter of Mr. Carveth, dated May 5, 1964, was attached as Exhibit A in claimant's Bill of Particulars. Mr. Carveth was traveling in the Far East at the time of the hearing and could not be personally present. His said letter, however, was admitted into evidence as claimant's Exhibit 14. The Assistant Attorney General, Mr. Morton Zaslavsky, representing the respondent, carefully examined the letter and stated that he had no objection to its admission [Tr. p. 1231. We find Mr. Carveth's letter to be of sufficient importance to recite its full text, which reads as follows:

"May 5, 1964.

James P. Sherlock Construction Co., Inc.
6253 South Kimbark
Chicago, Illinois

Attn: Mr. Lee Casper

Re: Plans and specifications for alterations in space in the Museum of Science and Industry to be occupied by Civil Defense Agency.

"Gentlemen:

This will confirm to you the following facts:

Prior to July 27, **1963,** Mr. L. E. Murphy and I, as authorized officers of the Illinois Civil Defense Agency, on behalf of the Agency, authorized and requested you to prepare plans and specifications for the intended alterations. We informed you on behalf of the Agency that you would be paid a fee for your services, consisting of 7% of the budgeted cost, or of any contract price, for doing the work, whichever would be lower.

Accordingly, you prepared a preliminary layout and a cost estimate, which you presented to a meeting of our executives on July **29, 1963,** at which meeting the following persons attended:

Col. D. M. Vance	State Director of Civil Defense
C. Carveth	Mr. Zedd
L.E. Murphy	Mr. Briton
Mr. Clark	

At this meeting your retainer on the basis above stated was approved, by Mr. Murphy and myself upon our receiving the approval of Col. Vance, State Director of Civil Defense. It was agreed by our committee that this arrangement was independent of the fact that you might later be a successful (or unsuccessful) bidder on the contract work.

At the meeting certain changes in the plans, speci-

fications, and budget figures were agreed upon and you were then requested to proceed accordingly to prepare the final plans and specifications, which you did.

There is no question but that you were authorized to do the work for which you submitted an invoice, and I know of no reason why the same should not be paid, since your services were satisfactorily performed in accordance with your retainer.

Very truly yours,

s/ C. E. Carveth
C. *Carveth* "

Respondent argues in its brief that this claim is in violation of the Statutes of the State of Illinois and, accordingly, there is no legal basis for recovery. Respondent cites an Illinois Statute in force at the time in question which reads as follows:

"Sec. 132.9. Renovations costing $2,500 or more — Supervision **of** Architect or Engineer. Sec. 9. Any contract entered into or expenditure of funds by a State Agency for remodeling, renovation or construction, involving an expenditure in excess of $2,500.00, shall be subject to the supervision of a licensed architect or engineer and ***no payment shall be paid*** for such remodeling, renovation or construction ***unless*** the ***vouchers*** or ***invoice*** for such work ***is accompanied by a written certificate*** of ***such licensed "architector engineer that the payment represents work satisfactorily completed:*** . . ." (*Ch. 127, Ill.Rev.Stat.,* ***1961).***

Respondent states that this is a claim in excess of said $2,500 and claimant has not proved that the voucher referred to in claimant's Exhibit 9 was "accompanied by a written certificate of a licensed architect or engineer'' that the work was satisfactorily completed.

We note from the records that, although Mr. Casper of James P. Sherlock Construction Company was neither

an architect or licensed engineer, claimant had the services of a licensed engineer who worked for the claimant in this matter on a retainer and certified the plans. We refer to the following statement from a letter of October 4, 1963 [Cl. Ex. 181 from Charles F. Pope, Executive Assistant, to Lorentz A. Johanson, Supervising Architect:

"They have had drawings and specifications prepared by John J. Weider, Structural Engineers, 343 South Dearborn Street, Chicago, Illinois through the Sherlock Construction Company who had been referred to them by the management of the Museum of Science and Industry in which the Agency is housed."

The same letter from Mr. Pope further stated,

"The available funds are $45,000.00, including professional fees for Architects or Engineers. Col. Clark also advised they had a verbal agreement with Sherlock Construction Company, or Mr. Weider, to pay something over $3000 00, or approximately 7% %for plans and specifications. These plans and specifications were prepared under the direction of a Mr. Lawrence Murphy who, at that time, was assigned to the Agency as a technical adviser, but is no longer with them. Mr. Murphy, at the time, was I believe on leave from the Division of Highways and is working in that Division again."

"Mr. Weider is a registered engineer in the State of Illinois, in good standing. Since the Agency is anxious to have this work done at the earliest possible time, ... and Mr. Weider has already billed the Agency for his fee, . . . we suggest that arrangements be made for the Division to work with him to produce satisfactory contract documents."

In further support of its position, certain cases and statutory provisions are cited by respondent which can be distinguished from the instant case. For example, respondent cites, ***Schnepp and Barnes, a corporation,*** v. ***State,*** 10 C.C.R. 609, which involves a situation in which this court says at page 616, that it was considering an award for "printing for which no contract was held by the claimant". In the instant case, we find that the claimant did have a contract. It had an oral contract to do the work requested. There was ample testimony to support this fact. Claimant had previously done work for the respondent under an oral contract on numerous occasions.

The claimant's contract called for the production of

drawings preliminary to the commencement of an anticipated renovation project. The agreement was not for the performance of the renovation work itself nor for supplying the materials to be installed. The claimant's work was performed antecedent to the coming into being of the type of circumstances governed by the statutory provisions cited by the respondent. The claimant's work was not done as part of the renovation itself. That work was to be done pursuant to a separate contract to be let after bids were taken. This appears to remove the case at bar from the statute cited by the respondent, ***Ch.*** 127, ***Sec. 5.05, Ill.Rev.Stat., 1961,*** which purported to give the Supervising Architect in the Department of Public Works and Buildings exclusive power to contract for construction and repairs of state buildings. Moreover, the letter of Mr. Pope, Administrative Assistant, quoted above, appears to have ratified the contract authorized in this case.

Respondent also calls our attention to ***Illinois Central Railroad Company*** v. ***State,*** 10 C.C.R. **493,** which deals with a claim based on a contract entered into by the railroad with the "ground superintendent" of the Kankakee State Hospital for repairs which were made and which had a definite price attributable to them prior to the time the work was done. This court favorably considers the argument that the statutes then in force conferred the contractual authority on the Director of the Department of Public Welfare and not the grounds superintendent, and that no enforceable contract resulted. In the case at bar, however, the claimant acted with the Director's approval after being given the express order to proceed by the Executive Director, who had contractual authority.

The money for the claimant's compensation was to come from within the funds generally budgeted and

appropriated to the Civil Defense Agency for this purpose. Zedd, who prepared the budget request, testified that it included money for plans and specifications in connection with the renovation. However, the renovation project was abandoned; the Civil Defense Agency later moved its office to Springfield; and the funds that had been appropriated for "contractual services" for the renovation project lapsed.

Respondent does not challenge or question the reasonableness of the 7% engineering fee in this case, but merely says there was no specified budgeted cost on which to compute the amount claimed. This overlooks the testimony of Mr. Zedd who prepared the budget which included a figure of $45,456.64 for the renovation job. Also the letter of Mr. Pope of the state architect's office who wrote, "The available funds are $45,000.00 including professional fees for Architects and Engineers".

This court has in no way altered its opinion expressed in *Illinois Central Railroad Company,* v. *State,* 10 C.C.R. 493, at page 497, that informal agreements such as here alleged open the door to serious abuses of public funds, are dangerous to the public good and are not be condoned. However, the question before us is not whether such oral contracts should be condoned. We believe there are now adequate safeguards in our statutes to preclude a repetition of the circumstances that occurred in this particular case.

Here the only question for us to determine is whether claimant has proved its claim that it had a valid oral contract, as alleged, that should be enforceable by an award in this court. On this issue, we find that claimant has proved its claim by a preponderance of the evidence and is entitled to an award in a sum equal to 7% of

$45,000, the smaller of the amounts shown in the evidence to have been budgeted for the renovation project.

Therefore, for services rendered in accordance with its contract, claimant is hereby awarded the sum of Three Thousand One Hundred Fifty Dollars **($3,150.00).**

(No. 74-CC-144—Claimant awarded $234.00.)

RUTH J. JACOBS, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF PERSONNEL, Respondent.**

Opinion filed April ***17, 1974.***

RUTH J. JACOBS, Claimant, pro se.

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

CONTRACTS—personal seruice. Where an employee of the State was paid less than her position as a clerk-memo was scheduled **for** as payment, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 74-CC-224—Claimant awarded $9,320.00.)

LEEPS, INC., HENRY C. MEYER, and JOHN M. FALASZ, JR., their attorney, Claimants, us. STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed April ***17, 1974.***

LANE, FALASZ, POLLMAN & MUNDAY, 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.

PER CURIAM.

(No 74-CC-354 — Claimant awarded $458 70)

TEXACO, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed *April 17, 1974*

TEXACO, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-368 — Claimant awarded $375.00.)

BETTY UNGER WATSON, PH.D., Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed April *17, 1974.*

BETTY UNGER WATSON, PH.D., Claimant, pro se.

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

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

PER CURIAM.

(No. 74-CC-383 — Claimant awarded $28.00.)

SPRINGFIELD CATHOLIC CHARITIES, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed April *17, 1974*

WILLIAM P. SHEEHAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-406—Claimant awarded $1,418.00.)

B. L. **PETTY,** Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed April *17, 1974.*

B. L. **PETTY,** Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-421—Claimant awarded $212.56.)

EDGAR F. ELDRIDGE, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed April 17, *1974*

EDGAR F. ELDRIDGE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-425—Claimant awarded $238.48.)

FRANK A. THOMAS, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 17, 1974.

FRANK A. THOMAS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-454—Claimant awarded $198.97.)

ILLINOIS SICKLE CELL FOUNDATION, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC HEALTH, Respondent.

Opinion filed April 17, 1974.

ILLINOIS SICKLE CELL FOUNDATION, INC., Claimant, pro se.

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

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

PER CURIAM.

(No. 74-CC-457—Claimant awarded $168.96.)

DREYMILLER & KRAY, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed April 17, 1974.

GEISTER, SCHNELL, RICHARDS & BROWN, 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.

PER CURIAM.

(No. 74-CC-460—Claimant awarded $110.74.)

RICHARD F. NASH, Claimant, *us.* STATE OF ILLINOIS, POLLUTION CONTROL BOARD, Respondent.

Opinion filed April 17, 1974.

ROBERTS, GUNDLACH & LEE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-461—Claimant awarded $123.81.)

RICHARD F. NASH, Claimant, *us.* STATE OF ILLINOIS, POLLUTION CONTROL BOARD, Respondent.

Opinion filed April 17, 1974.

ROBERTS, GUNDLACH & LEE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-471—Claimant awarded $8.98.)

BUSKE LINES, INC., claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT,** Respondent.

Opinion filed April 17, 1974.

BUSKE 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.

PER CURIAM.

(No. 74-CC-475—Claimant awarded $120.00.)

ANDREW F. GUSCHWAN, M.D., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed April 17, 1974.

MARTIN BROZOSKY, Attorney for Claimant.

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

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

PER CURIAM.

(No. 74-CC-487—Claimant awarded $701.20.)

ST. THERESE HOSPITAL, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed April 17, 1974.

ST. THERESE 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.

PER CURIAM.

(No. 74-CC-498—Claimant awarded $2,660.00.)

MILLER INDUSTRIAL SUPPLY Co., **INC.,** Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed April ***17, 1974.***

MILLER INDUSTRIAL SUPPLY Co., **INC.,** Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W.** FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-499—Claimant awarded $110.00.)

DR. **LEWIS TRUPIN,** Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES,** Respondent.

Opinion filed April ***17, 1974***

DR. **LEWIS TRUPIN,** Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD** W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-500—Claimant awarded **$226.23.)**

MOBIL OIL CORPORATION, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed April 17, 1974.

GIFFIN, WINNING, LINDNER, NEWKIRK, COHEN, BODEWES & NARMONT, 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.

PER CURIAM.

(No. 74-CC-504—Claimant awarded **$63.39.)**

MOBIL OIL CORPORATION, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF AGRICULTURE, Respondent.

Opinion filed April 17, 1974.

GIFFIN, WINNING, LINDNER, NEWKIRK, COHEN, BODEWES & NARMONT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-508—Claimant awarded $41.00.)

LONDON SUBURAN SERVICE, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed April 17, 1974.

LONDON SUBURBAN 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.

PER CURIAM.

(No. 74-CC-526—Claimant awarded $2,738.36.)

THOMAS PLUMBING & HEATING Co., Claimant, ***vs.*** **STATE OF ILLINOIS, SECRETARY OF STATE,** Respondent.

Opinion filed April *17, 1974.*

THOMAS PLUMBING & HEATING 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. 74-CC-529—Claimant awarded $19.77.)

GULF OIL CORPORATION, Claimant, ***vs.*** **STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT,** Respondent.

Opinion filed April *17, 1974.*

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.

PER CURIAM.

(No. 74-CC-537—Claimant awarded $16.27.)

GULF OIL CORPORATION, Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed April *17, 1974.*

GULF OIL CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-538—Claimant awarded $18,241.00.)

INTERNATIONAL HARVESTER COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April *17, 1974.*

INTERNATIONAL HARVESTER COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

(No. 74-CC-549—Claimant awarded $282.08.)

PARK CHRYSLER PLYMOUTH, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed April *17, 1974.*

PARK CHRYSLER PLYMOUTH, 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.

PER CURIAM.

(No. 74-CC-556 — Claimant awarded $322.54.)

AMERICAN CHAIN & CABLE CO., INC., Claimant, *us.* STATE OF ILLINOIS, ENVIRONMENTAL PROTECTION AGENCY, Respondent.

Opinion filed April *17, 1974.*

AMERICAN CHAIN & CABLE CO., 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.

PER CURIAM.

(No. 74-CC-557 — Claimant awarded $55.00.)

ROBERT M. GOODWIN, M.D., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April *17, 1974.*

ROBERT M. GOODWIN, M.D., Claimant, pro se.

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

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

PER CURIAM.

(No. 74-CC-558 — Claimant awarded $13.98.)

CHICAGO PROGRESSIVE MERCANTILE CO., INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April *17, 1974.*

CHICAGO PROGRESSIVE MERCANTILE 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.

PER CURIAM.

(No. 74-CC-564—Claimant awarded $135.14.)

DONALD SCHWAB, Claimant, ***vs.*** **STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION,** Respondent.

Opinion filed April 17, 1974

DONALD SCHWAB, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-581 — Claimant awarded $9,121.40.)

HELLRUNG CONSTRUCTION COMPANY, Claimant, ***vs.*** **STATE OF ILLINOIS, CAPITAL DEVELOPMENT BOARD,** Respondent.

Opinion filed April 17, 1974.

HELLRUNG 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.

PER CURIAM.

(No. 73-CC-234—Claimant awarded $6,153.84.)

INA RUTH GRINDLE, Claimant, ***us.*** **DEPARTMENT** OF **LABOR, STATE OF ILLINOIS,** Respondent.

Opinion filed April *18,* ***1974.***

WILLIAM P. SHEEHAN, Attorney for Claimant.

WILLIAM **J. SCOTT,** Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

CIVIL SERVICE ACT—salary for period of illegal removal. Where a civil Service employee is illegally prevented from performing her duties and is subsequently reinstated to her position, she is entitled to the salary attached to the office for the period of her illegal removal.

SAME—*duty* to mitigate damages. During period of illegal removal from office, claimant must diligently seek employment and do all in her power to mitigate damages.

SAME—the State property can deduct amounts employee would be required to pay to FICA and State Employees Retirement System.

HOLDERMAN, J.

This is a cause of action filed by the claimant, Ina Ruth Grindle, against the State of Illinois alleging the following:

That she was a certified Civil Service employee of the State of Illinois, Department of Labor, and was discharged from her certified position on September 21, **1971.** After a hearing, the Civil Service Commission of the State of Illinois, on June 13, **1972,** affirmed the dismissal. This decision was appealed to the Circuit Court of Sangamon County in accordance with the provisions of the Administrative Review Act.

On November 21,1972, the Circuit Judge of Sangamon County entered an Order setting aside and reversing the decision of the Civil Service Commission. The Circuit Court ordered the claimant be reinstated to her Civil Service position and ordered that all back salary be paid and all her Civil Service rights be reinstated.

A copy of the Court Order is as follows:

"1. That the Plaintiff, INA RUTH GRINDLE, mismarked approximately thirteen of twenty-four hundred reports.

2. That the mismarkings were of a mechanical nature and did not prejudice the conclusions and findings in the reports.

3. That the alleged mishandling of the Sparta Printing Company investigation was not supported by evidence.

4. That the record otherwise does not contain evidence sufficient to constitute "just cause" within the meaning of the statute governing demotion and discharge of Civil Service employees.

5. That the findings and decision of the CIVIL SERVICE COMMISSION are not supported by the evidence and are contrary to the manifest weight of the evidence.

IT IS THEREFORE ORDERED that the decision of the CIVIL SERVICE COMMISSION is herewith set aside and reversed.

IT IS FURTHER ORDERED that the Plaintiff, INA RUTH GRINDLE, be reinstated by Defendants to her Civil Service position, together with all back salary and all other Civil Service rights."

Respondent reimbursed the claimant for her salary from July 1, 1972 to January 15, 1973, inclusive.

The present matter at issue is the salary allegedly due the claimant for the period of September 21, 1971 to June 30, 1972, which amount is $6,153.84. This amount is based upon an itemization of salary record computation.

On September 4, 1973, a Stipulation was entered into by and between the claimant and respondent, which is as follows:

"1. That at a certain Administrative Review proceeding before the Circuit Court of Sangamon County, Illinois, Case No. 411-72, in which Ina Ruth Grindle, Claimant herein was Plaintiff, and the Department of Labor of the State of Illinois and the Civil Service Commission of the State of Illinois were Defendants, the Court on November 21, 1972, entered its Order reinstating the Plaintiff to her Civil Service position, "together with all back salary and all other Civil Service rights." A true copy of said Order is attached hereto and shall be admitted into evidence without objection by either party.

2. It is further stipulated by and between the parties that of the total back salary ordered to be paid to Ina Ruth Grindle, the Department of Labor of the State of Illinois has paid gross earnings to her in the amount of $4,438.00 through current appropriation funds covering the period of July 1, 1972, to January 15, 1973, inclusive.

3. That claimant seeks to recover for back pay for the period of September 21, 1971, to June 30, 1972, for which the appropriation has lapsed. Attached hereto is a copy of the Departmental Report of the Department of Labor, dated April 18, 1973, and said report shall be admitted into evidence without objection by either party.

4. That Claimant's salary for the period beginning September 21, 1971, to June 30, 1972, was $6,153.84.

5. It is further stipulated that the report of the Department of Labor, dated May 2, 1973, shall be admitted into evidence without objection by either party.

6. That Claimant sought other employment during the period of September 21, 1971, to June 30, 1972, in and around her home town of Herrin, Illinois, but was unable to obtain any gainful employment.

7. That the copy or copies of the W2 forms of Claimant covering the period of September 21, 1971, through June 30, 1972, in additional to copy or copies of Form 1040, Federal Income Tax Return, covering the period September 21, 1971, to June 30, 1972, which are attached hereto, shall be admitted into evidence without objection by either party."

A further Stipulation was made and entered into between the parties hereto in January, 1974. This Stipulation was to the effect that a letter from Donald A. Johnson, Administrative Assistant of the Department of Labor, dated December 5, 1973, shall be admitted into evidence without objection by either party, with a true copy of the letter being attached thereto, which letter stated the following:

"By our computation, the amounts which would have been deducted from the $6,153.84 owed Mrs. Grindle would have been $360.00 for F.I.C.A and $246.15 for State Employees Retirement Contributions. The employee's contribution rates for that period of time were 5.85% for State Employee's Retirement and 4% for F.I.C.A. Presumably the Social Security Administration and the State Employees Retirement System would make a claim for their share from the State if benefits were restored to Mrs. Grindle for that period of time."

It appears from this Stipulation that from the $6,153.84 which is due the claimant, there should be deducted the sum of $360.00 for F.I.C.A. and $246.15 for State Employees Retirement Contributions.

An award is hereby entered to the Social Security Administration in the amount of **$360.00** and to the State Employees Retirement Fund in the amount of **$246.15.**

An award is hereby entered to the claimant in the amount of **$5,547.69.**

(No. 74-CC-404—Claimant awarded $3,765.14.)

ATLAS VAN LINES, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 18, 1974.

ATLAS VAN LINES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 5829—Claimant awarded $7,500.00.)

EMILE WASHINGTON, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed April 18, 1974.

JAMES P. TATOOLES, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, 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.

PERLIN, C. J.

Claimant Emile Washington has filed suit pursuant to Chapter 37, Illinois Revised Statutes, Section **439.8,** claiming $15,000 damages for unjust imprisonment. That Statute establishes a maximum of $15,000 damages for unjust imprisonment for up to five years.

On January **22,** 1967, one Delores Brooks was accosted by a group of approximately six youths, and raped by four of them. Claimant was arrested fleeing the scene of the crime, and on October 18, 1967, was convicted of the rape and sentenced to a term of from two to five years in the penitentiary. On February 25,1970, his conviction was reversed by the Illinois Appellate Court on the ground that he had not been proven guilty beyond a reasonable doubt. Claimant was discharged from incarceration on April 13,1970,after having served two years, five months, and **26** days of his sentence.

The record before this Court raises several provocative questions. For instance, it is difficult to understand why claimant was apparently the only party ever prosecuted in connection with the rape of Delores Brooks. Claimant testified at his trial that a cousin, one Henry Summers, was at the scene of the crime, and at least had knowledge of what was being done to Ms. Brooks. Claimant also testified that Summers had told him that one "Jimmie Bell" was one the rapists. Yet it appears that neither Summers nor Bell was ever charged in connection with the crime.

At Claimant's trial, Delores Brooks had testified that claimant was not among the youths who raped her. However, the prosecution proceeded upon a theory that claimant's presence at the scene of the crime, and his flight from police, were sufficient to prove his complicity

in the crime. The Appellate Court reversed the guilty verdict on the ground that there was absolutely no evidence that claimant had participated in or facilitated the rape by the other boys.

Called as a witness by the claimant in this proceeding, Delores Brooks again testified that claimant was not one of the rapists. She further testified that she did not know if claimant was present at the rape. Claimant himself testified that on January 22, 1967, he had been visiting a relative, and was on his way home when he innocently happened upon the scene of the crime.

Respondent presented no proof rebutting claimant's evidence, and in fact concedes that claimant was innocent of the crime for which he was imprisoned for almost two and one-half years. We, therefore, find that claimant has established his innocence of the fact of the crime for which he was incarcerated.

In ***Dirkans*** v. ***State, 25*** C.C.R. **344** (1965), we said that in order for a claimant to recover for wrongful imprisonment, "the burden is upon (him) 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." Respondent asserts that claimant has not established the amount of damages to which he is entitled, and therefore should be awarded only a minimal recovery. Claimant contends that he should be awarded $15,000 as compensation for his unjust imprisonment.

Claimant was eighteen years old at the time of his conviction, and had an eighth grade education. Before being accused of the rape of Delores Brooks, claimant, had spent time in a youth correctional facility, but had no prior criminal record.

Prior to his incarceration claimant had been employed by the Corolite Corporation and earned between $65 and $70 per week. Upon his release he was hired by the Coca Cola Company, and earned $118 per week in take home pay.

Claimant is hereby awarded the sum of $7,500.

(No. 5982—Claimant awarded $556.18.)

JOHN W. DEVER AND MARGARET DEVER, for the use **of** the **TRAVELERS INSURANCE COMPANY,** Claimant, *us.* **STATE OF ILLINOIS,** Respondent.

Opinion filed April *18,* 1974.

BARASH & STOERZBACH, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, **for** Respondent.

MENTAL INSTITUTIONS—*degree of* cure required. Where a hospital staff is charged with knowledge of a patient's violent, uncontrollable and demented conduct, reasonable care must be exercised in restraining and controlling patient.

SAME—*negligence.* The State is not an insurer and is liable for damages caused by an escaped inmate of a State institution only **if** negligent in allowing the inmate to escape.

PERLIN, C. J.

This cause was submitted upon the joint stipulation of the parties. On April **23,** 1970, one Elizabeth Hart, a patient of the Galesburg State Research Hospital, escaped from an unlocked ward in the hospital and broke into the nearby home of John and Margaret Dever. She did a considerable amount of damage to the furnishings and the interior of the home before being apprehended by the hospital security force.

The degree of care owed by the State in operating a

mental institution was considered by this Court in *Callbeck* v. *State of Illinois*, 22 C.C.R. 722. There we said,

"The State, in operating a mental institution, and caring for mentally ill persons, is, of course, not an insurer of the safety of its employees. The State is, however, under the same duty as a private person or institution having custody of insane persons. It is required to exercise reasonable care in restraining and controlling dangerous, insane persons committed to its custody, so that they will not have the opportunity to inflict a foreseeable injury upon others."

Thus to recover for the property damage inflicted by Elizabeth Hart, claimant, was obligated to prove by a preponderance of the evidence that respondent did not use reasonable care in restraining and controlling Elizabeth Hart.

We find that claimant has sustained its burden of proof. The hospital records introduced into evidence establish that Elizabeth Hart had a history of violent outbursts, and that the hospital did not take reasonable precautions toward controlling her.

On April 30, 1970, following Elizabeth Hart's escape, Dr. Angelo F. Zocchi, the Clinical Director of the Hospital, prepared a memorandum on the incident for Dr. Thomas T. Tourletes, the hospital superintendant. That memorandum establishes that the State had knowledge of the patient's potential for destructive outbursts:

"After pursuing through two voluminous folders of the abovenamed, it is more than obvious that this girl has a long standing history of mental illness and impulsive acting out, dangerous to herself and to others.

At the time of her admission here in 1965 she was admitted on the basis of the certificates of two physicians describing her as violent, uncontrollable and disoriented, she was immediately placed on the security ward after she attempted to strangle the ambulance driver with whom she was riding.

On April 23, 1970, the patient was transferred from C-28 to D-22 because of inability to sleep, a state of tension, and a demanding and negativistic attitude. She received an IM of Thorazine around midnight and at 1:15 a.m. she was transferred to D-21. About eight hours later at 9:45 a.m. she was returned to C-28. The incident books and nursing notes do not indicate if an

O.D. had been contacted and ordered the transfer back to Ward C-28. Dr. Haim explains her return to C-28 as 'routine' due to the fact that she was on a day treatment on C-28. However, this would not explain why she was still on C-28 on the night of April 23."

It is significant that Dr. Tourletes, the supervisor of the hospital, responded to the memorandum of Dr. Zocchi by writing, "It is apparent that responsible personnel must be made aware and alert to this patient's behavior and be required to manage her accordingly in the future."

The hospital staff is charged with constructive knowledge of a patient's behavioral history, particularly when the patient's file reflects violent, uncontrollable and disoriented conduct. *Clifton v. State of Illinois,* 24 C.C.R. 404. It is clear that Elizabeth Hart had a history of assaultive behavior and had a foreseeable propensity to inflict personal and property damage. It is also clear that she was improperly assigned to an unlocked ward, C-28, during the daytime, from which she made her escape.

In the opinion of this Court, the negligence of Respondent has been established by a preponderence of the evidence.

The parties have stipulated that claimants were damaged in the amount of $566.18.

Claimant is hereby awarded the sum of $556.18.

(No. 73-CC-238—Claimant awarded $6,457.98.)

JOSEPH J. BROWN, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed April 25, 1974.

JOSEPH J. BROWN, Claimant, pro se.

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

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

PER CURIAM.

(No. 73-CC-370—Claimant awarded $140.00.)

GLENN WALKER, J., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed April 25, 1974.

GLENN WALKER, 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.

PER CURIAM.

(No. 73-CC-374—Claimant awarded $3.60.)

BURDETT OXYGEN CO., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 25, 1974

BURDETT OXYGEN CO., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-375—Claimant awarded $10.50.)

BURDETT OXYGEN Co., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed April 25, 1974.

BURDETT OXYGEN Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No 73-CC-376—Claimant awarded $12 60)

BURDETT OXYGEN Co., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed April 25, *1974*

BURDETT OXYGEN Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-377—Clalmant awarded $8.40.)

BURDETT OXYGEN COMPANY, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed April 25, 1974.

BURDETT OXYGEN Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-378—Claimant awarded $3.20.)

BURDETT OXYGEN CO., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed April 25, *1974.*

BURDETT OXYGEN CO., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-379—Claimant awarded $10.50.)

BURDETT OXYGEN CO., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion *filed* April 25, *1974.*

BURDETT OXYGEN CO., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-380—Claimant awarded $8.40.)

BURDETT OXYGEN Co., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed April ***25, 1974.***

BURDETT OXYGEN Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS** G. **OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-381—Claimant awarded $8.40.)

BURDETT OXYGEN Co., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed April ***25, 1974.***

BURDETT OXYGEN Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS** G. **OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-382—Claimant awarded $8.40.)

BURDETT OXYGEN Co., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed April ***25,*** 1974.

BURDETT OXYGEN Co., Claimant, pro se.

WILLIAM 3. SCOTT, Attorney General; **DOUGLAS** G. **OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-383—Claimant awarded $12.60.)

BURDETT OXYGEN Co., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed *April 25, 1974.*

BURDETT OXYGEN Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-384—Claimant awarded $14.54.)

BURDETT OXYGEN CO., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed *April 25, 1974.*

BURDETT OXYGEN CO., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS G. OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 73-CC-360 — Claimant awarded $84.81.)

BEAUCHAMP'S AUTO SERVICE, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 25, 1974.

BEAUCHAMPS AUTO 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,

PER CURIAM.

(No. 74-CC-417 — Claimant awarded $79.26.)

PATRICK O. CREVISTON, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 25, 1974.

PATRICK O. CREVISTON, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-450 — Claimant awarded $327.11.)

COMMONWEALTH EDISON COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 25, 1974.

GEORGE O. SHAFFNER AND JOSEPH C. SIBLEY, JR., 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.

PER CURIAM.

(No. 74-CC-451—Claimant awarded $1,791.36.)

COMMONWEALTH EDISON COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April *25, 1974*

GEORGE O. SHAFFNER AND JOSEPH C. SIBLEY, JR., 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.

PER CURIAM.

(No. 74-CC-452—Claimant awarded $2,763.94.)

COMMONWEALTH EDISON COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion *filed* April *25,* 1974.

GEORGE O. SHAFFNER AND JOSEPH O. SIBLEY, JR., 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.

PER CURIAM.

(No. 74-CC-480 — Claimant awarded $920.36.)

HUSTON-PATTERSON CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion *filed* April 25, 1974.

HUSTON-PATTERSON CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-512 — Claimant awarded $338.42.)

PARK CHRYSLER PLYMOUTH, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion *filed* April 25, 1974.

PARK CHRYSLER PLYMOUTH, 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.

PER CURIAM.

(No. 74-CC-519 — Claimant awarded $80.48.)

UNITED CITIES GAS COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed April 25, 1974.

UNITED CITIES GAS COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-520—Claimant awarded $48.45.)

UNITED CITIES GAS Co., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed April 25, 1974.

UNITED CITIES GAS Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-531—Claimant awarded $270.00.)

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed April 25, 1974.

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-559—Claimant awarded $629.00.)

MICHAEL E. TAYLOR, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed April 25, 1974.

MICHAEL E. 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,

PER CURIAM.

(No. 74-CC-568—Claimant awarded $878.00.)

RAY O'HERRON Co., INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed April 25, 1974.

RAY O'HERRON Co., 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.

PER CURIAM.

(No. 74-CC-572—Claimant awarded $307.18.)

THE FLORA CLINIC, Claimant, *us.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed April 25, 1974.

THE FLORA CLINIC:, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-573—Claimant awarded $45.60.)

CARRIER AIR CONDITIONING COMPANY, A DIVISION OF CARRIER CORPORATION, Claimant, us. STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed April *25, 1974*

CARRIER AIR CONDITIONING Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-582—Claimant awarded $34.56.)

GENERAL PLATE MAKERS SUPPLY Co., Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF PERSONNEL, Respondent.

Opinion filed April *25, 1974.*

GENERAL PLATE MAKERS SUPPLY 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.

PER CURIAM.

(No. 74-CC-583—Claimant awarded $70.00.)

A. C. TOBEY, M.D., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed April 25, *1974.*

A. C. TOBEY, 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.

PER CURIAM.

(No. 74-CC-589—Claimant awarded $11.36.)

STANDARD PHOTO SUPPLY, A DIVISION OF WEIMAN CO., INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC HEALTH, Respondent.

Opinion filed April *25, 1974.*

KAHN, FISCHEL, WEINBERG & BRUSSLAN, 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.

PER CURIAM.

(No. 74-CC-593—Claimant awarded $118.96.)

BILINGUAL EDUCATION SERVICES, Claimant, *vs.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed April *25, 1974.*

BILINGUAL EDUCATION SERVICES, 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.

PER CURIAM.

(No. 74-CC-597 — Claimant awarded $146.02.)

THE FLAX COMPANY, Claimant, us. **STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION,** Respondent.

Opinion filed April 25, ***1974.***

THE FLAX 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.

PER CURIAM.

(No. 73-CC-211 — Claimant awarded $527.20.)

BELLEFAIRE, Claimant, us. **STATE OF ILLINOIS, DEPARTMENT** OF **CHILDREN AND FAMILY SERVICES,** Respondent.

Opinion filed *May 10,* ***1974.***

BELLEFAIRE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **DOUGLAS** G. **OLSON,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-400 — Claimant awarded $6,588.00.)

UNITED STATES STEEL CORPORATION, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES,** Respondent.

Opinion filed May *10, 1974.*

BENJAMIN F. **CORNELIUS,** 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.

PER CURIAM.

(No. 74-CC-412 — Claimant awarded $1,000.00.)

A. **LEMONCELLO PLUMBING** Co., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed May *10, 1974.*

A. LEMONCELLO PLUMBING 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.

PER CURIAM.

(No. 74-CC-466 — Claimant awarded $1,065.60.)

ASA **BUTLER, ADM., ETC.,** Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed May *10, 1974.*

A. **WENDELL WHEADON,** Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

CONTRACTS—*lapsed* appropriation. When the appropriation from which a claim should have been paid ha5 lapsed, the Court will enter an award for the amount due claimant.

PER CURIAM.

(No. 74-CC-525—Claimant awarded $910.00.)

PRESBYTERIAN—ST. LUKE'S HOSPITAL, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed May 10, 1974.

GARDNER, CARTON, DOUGLAS, CHILCREN AND WAUD, 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.

PER CURIAM.

(No. 74-CC-567—Claimant awarded $386.46.)

JAMES G. BIDDLE Co., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion *filed* May *10,* 1974.

JAMES B. BIDDLE Co., Claimant, **pro** se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-576—Claimant awarded $750.00.)

WEST PUBLISHING COMPANY, Claimant, *us.* STATE OF ILLINOIS, ADMINISTRATIVE OFFICE OF THE ILLINOIS COURTS, Respondent.

Opinion filed May *10, 1974.*

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.

PER CURIAM.

(No. 74-CC-587—Claimant awarded $79.67.)

STANDARD PHOTO SUPPLY, A DIVISION OF WEIMAN CO., INC., Claimant, *us.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed May *10, 1974.*

FISCHEL, KAHN, WEINBERG & BRUSSLAN, 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. 74-CC-594—Claimant awarded $177.65.)

SPOON RIVER FS, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed May *10, 1974.*

SPOON RIVER FS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-601—Claimant awarded $34.28.)

CHECKER EXPRESS COMPANY, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed *May 10, 1974.*

CHECKER EXPRESS COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-616—Claimant awarded $39.88.)

SMITH OIL CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed *May 10,* 1974.

SMITH OIL 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.

PER CURIAM.

(No. 74-CC-627 — Claimant awarded $455.17.)

BISMARCK HOTEL, Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed May *10, 1974.*

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.

PER CURIAM.

(No. 74-CC-630 — Claimant awarded $271.77.)

LOUIS R. SILVERMAN, Claimant, *us.* STATE OF ILLINOIS, CAPITAL DEVELOPMENT BOARD, Respondent.

Opinion filed May *10, 1974.*

Lours R. SILVERMAN, 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.

PER CURIAM.

(No. 74-CC-636—Claimant awarded $11,959.55.)

JAMES A. AMAN, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF REGISTRATION AND EDUCATION, Respondent.

Opinion filed May *10, 1974.*

JAMES A. AMAN, Claimant, pro se.

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

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

PER CURIAM.

(No. 74-CC-647—Claimant awarded $10.38.)

AMERICAN Assoc. OF SCHOOL ADMINISTRATORS, Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed May *10, 1974.*

AMERICAN ASSOCIATION OF SCHOOL ADMINISTRATORS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-235—Claimant awarded $41.44.)

NATIONAL EDUCATION ASSOCIATION, Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed May 13, *1974.*

NATIONAL EDUCATION ASSOCIATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-240—Claimant awarded **$193.70.)**

VALLARTA REPORTING SERVICE, Claimant, *us.* STATE OF ILLINOIS, POLLUTION CONTROL BOARD, Respondent.

*Opinion filed May **13,** 1974*

VALLARTA 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.

PER CURIAM.

(No. 74-CC-440—Claimant awarded $452.90.)

ST. JAMES HOSPITAL, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

*Opinion filed May **13.** 1974*

WILCZYNSKI, WILCZYNSKI, CIAMBRONE, KARWOSKI AND PETRARCA, 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.

PER CURIAM.

(No. 74-CC-522—Claimant awarded $400.00)

UNIV. OF CHICAGO—CENTER FOR CONTINUING EDUCATION, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

*Opinion **filed** May **13.** 1974*

UNIVERSITY OF CHICAGO—CENTER FOR CONTINUING EDUCATION, 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

PER CURIAM.

(No. 74-CC-550—Claimant awarded $172.56.)

AMLINGS FLOWERLAND, Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed *May 13.* ***1974.***

AMLINGS FLOWERLAND, 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.

PER CURIAM.

(No. 74-CC-566—Claimant awarded $46.69.)

I.K.T. SERVICE, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed ***May 13,*** 1974.

I.K.T. SERVICE, 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.

PER CURIAM.

(No. 74-CC-606—Claimant awarded $9,928.00.)

INTERNATIONAL HARVESTER COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed May 13, 1974.

INTERNATIONAL HARVESTER COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No 74-CC-612—Claimant awarded $1518.)

CAPITAL CHRYSLER PLYMOUTH, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed May 13, 1974

CAPITAL CHRYSLER PLYMOUTH, 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

PER CURIAM.

(No. 5407—Claim denied.)

STANLEY W. PETERSON, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed July 12, 1973.

Petition of Claimant for Rehearing denied May 13, 1974.

LISCO & FIELD, by ROBERT F. LISCO, Attorney for Claimant.

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

PRISONERS AND INMATES—*wrongful* incarceration. Where claimant after pleading guilty to murder by abortion and sentenced to prison attempted to prove he was wrongfully incarcerated because that specific charge had been eliminated by the new Criminal Code prior to the date of the crime, it was held that respondent had failed to prove his innocence of the "fact" of the crime for which he was imprisoned and recovery was denied.

PERLIN, C. J.

Claimant seeks recovery on the ground of unlawful incarceration pursuant to Chapter 37, §439.8(c) of the Illinois Revised Statutes, for his imprisonment at the Illinois State Penitentiary in Joliet, Illinois, from January 21, 1964, to September 16, 1966. The applicable provisions of the statute are as follows:

"§8. 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 . . ."

It appears from the evidence and from stipulations that claimant was indicted by the Lake County Grand Jury on the charge of murder by abortion in April, 1963. On November 29, 1963, the claimant was allowed to withdraw his plea of not guilty to the charge of murder by abortion and to enter a plea of guilty to involuntary manslaughter, wherein he was sentenced to a term of not less than nine nor more than ten years. Thereafter, a petition for Writ of Habeas Corpus was filed on behalf of claimant in the 12th Judicial Circuit, Will County, Illinois. That court determined that the charge under which claimant was indicated (murder by abortion) had occurred subsequent to the enactment of the new Criminal Code of 1961, effective January 1, 1962. The court fur-

ther held that the specific offense of murder by abortion having been eliminated by the new statutes, there was no offense such as murder by abortion at the time of the indictment.

It further held that involuntary manslaughter was not a lesser included offense in the indictment and that there was no charge to which the plea of guilty could be made. Claimant, therefore, contends that his conviction and sentence are void, thus rendering the incarceration illegal and wrongful.

Claimant Stanley Peterson, who identified himself as an "assembler" confessed to having committed an abortion on Mrs. Dorothy Katalinich, deceased, but that he had been subjected to inhuman and cruel treatment while he was in custody of the Lake County authorities, and believed he could get out on bail if he confessed. He denied, at the time of the Court of Claims hearing, that he committed the abortion which resulted in the death of Mrs. Katalinich, but admitted that he has purchased a rubber catheter for her and that he had rented a cabin for her at the rear of a tavern in Lake County.

Joan Fitzjohn testified that she was present when the decedent first called claimant and arranged to meet him. The witness was with the decedent when arrangements were made to perform an abortion. On April 9, 1963, claimant came to decedent's house and went into the bedroom with decedent carrying a bag. During this period the witness waited in another room of the decedent's house. The decedent passed a fetus a few days later and the witness had occasion to observe it.

On April 26, 1963, the witness accompanied the decedent to a tavern where they met claimant. According to the witness, the decedent was worried because she did

not bleed after passing the fetus on April 9th and she thought she might be having twins. The witness watched the decedent and claimant go into a bedroom of the cabin rented by claimant. Claimant was carrying a small bag. The witness did not stay in the room while the procedure was being performed by claimant, but when claimant said he was finished, she went into the bedroom and saw that the decedent was limp and unconscious. The witness observed claimant pull a catheter from the decedent. Claimant told her that he had committed hundreds of abortions in the last 20 years. The witness then took the decedent to the hospital in her car. Claimant had given her some money.

Respondent contends that claimant had not proved his innocence of the crime for which he was imprisoned as provided in the statute.

In the cases of *Nathaniel Tate* v. *State of Illinois,* 25 C.C.R. 245 (1965) and *Jonnia Dirkans* v. *State of Illinois,* 25 C.C.R. 343 (1965), the Court held that before an award can 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 by him; and (3) the amount of damages to which he is entitled. *(Jack Flint* vs. *State of Illinois,* 21 C.C.R. *80, George A. Pitts* vs. *State of Illinois,* 22 C.C.R. 258.)" (Dirkans at p. 351.)

The Court further stated in *Dirkans* at page 352:

"We find that claimant, Jonnia Dirkans, has substantially failed to prove his innocence of the crime for which he was imprisoned. It is the studied opinion of this Court that the legislature of the State of Illinois in the language of Chap. 37, Sec. 439.8C, Ill. Rev. Stat., intended that a claimant must prove his innocence of the *"fact"* of the crime. It was not, we believe, the intention of the General Assembly to open the Treasury of the State of Illinois to inmates of its penal institutions by the establishment of their technical or

legal innocence of the crimes for which they were imprisoned. It is our opinion the legislators intended to provide a manner of recourse in the Court of Claims, with a specific amount of recovery provided, for a claimant who is able to establish his complete innocence of the "fact" of the crime for which he was imprisoned."

In the instant case, claimant Stanley Peterson has clearly failed to prove by a preponderance of the evidence that he was innocent of involuntary manslaughter, the crime for which he was imprisoned. He failed to produce even one witness to corroborate his testimony. ***(William Bender*** vs. ***State of Illinois,*** No. 5209 (1967).

Recovery is therefore denied.

(No. 7030—Claimant awarded $389.50.)

CHICAGO TRIBUNE COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion* filed *May 13, 1974.

CHICAGO TRIBUNE 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.

PER CURIAM.

(No. 3025—Claimant awarded $5,302.96.)

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

Opinion filed May 14, 1974.

GOSNELL, BENECKI AND BORDEN, LTD., Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, 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.

PER CURIAM.

Claimant filed her Petition for reimbursement for moneys expended for nursing care and help, medical services, and expenses from January 1, 1973, to December 31, 1973, praying for an award in the sum of $5,302.96.

Claimant was seriously injured in an accident on the second day of February, 1936, while employed as a Supervisor at the Illinois Soldier's and Sailor's 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, 1972, to December 31, 1972.

A joint motion of claimant and respondent was filed herein requesting leave to waive the filing of briefs and arguments. In addition, claimant filed Exhibit "1". The exhibit sets out those items upon which agreement has been had with claimant and respondent in the above cause. This motion was granted, and no further pleadings have been filed herein.

The Attorney General does not contest the veracity nor the propriety of the items and amounts set forth n claimant's Exhibit "1".

The Court, therefore, enters an award in favor of the claimant in the sum of FIVE THOUSAND, THREE HUNDRED Two AND 96/100 DOLLARS ($5,302.96). The matter of claimant's need for additional care is reserved by this Court for future determination.

(No. 73-CC-5—Claimant awarded $665.15.)

FORD PRINTING, DUPLICATING, MAILING, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF INSURANCE, Respondent.

Opinion filed May 15, 1974.

FORD PRINTING, DUPLICATING, MAILING, 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.

PER CURIAM.

(No. 73-CC-40—Claimant awarded $262.25.)

CAPITOL MACHINERY COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed May 15, 1974.

CAPITOL MACHINERY 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.

PER CURIAM.

(No. 73-CC-188—Claimant awarded $35.70.)

HOLIDAY INN OF CARBONDALE, Claimant, *vs.* STATE OF ILLINOIS, GOVERNOR'S OFFICE OF HUMAN RESOURCES, Respondent.

Opinion filed May 15, 1974.

HOLIDAY INN OF CARBONDALE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-54—Claimant awarded $504.00.)

METHODIST HOSPITAL OF CENTRAL ILLINOIS, Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed May 15, 1974.

METHODIST HOSPITAL OF CENTRAL ILLINOIS, 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.

PER CURIAM.

(No. 74-CC-134—Claimant awarded $60.00.)

CLARENCE E. BOYD, M.D., Claimant, *vs.* STATE OF ILLINOIS, DIVISION OF VOCATIONAL REHABILITATION, Respondent.

Opinion filed May 15, 1974

CLARENCE E. BOYD, M.D., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-149—Claimant awarded $582.75.)

BLUE M. ENGINEERING COMPANY, A Division of BLUE M. ELECTRIC COMPANY, Claimant, ***vs.*** STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed ***May 15,*** 1974.

BLUE M. ENGINEERING COMPANY, A Division of BLUE M. 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.

PER CURIAM.

(No. 74-CC-185—Claimant awarded $39.171.00.)

D. KOERNER, INC., Claimant, ***vs.*** STATE OF ILLINOIS, CAPITAL DEVELOPMENT BOARD, Respondent.

Opinion filed ***May 15, 1974.***

D. KOERNER, 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.

PER CURIAM.

(No. 74-CC-212 — Claimant awarded $198.00.)

SUPERIOR AMBULANCE COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May *15, 1974.*

SUPERIOR AMBULANCE 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.

PER CURIAM.

(No. 74-CC-226 — Claimant awarded $102,816.00.)

CITY OF CHICAGO, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May *15, 1974.*

CITY OF CHICAGO, Claimant, by Edward F. King, Assistant Commissioner of Health.

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.

PER CURIAM.

(No. 74-CC-335—Claimant awarded $36.06.)

MANSION VIEW LODGE, INC., Claimant, *us.* STATE OF ILLINOIS, GOVERNOR'S OFFICE OF HUMAN RESOURCES, Respondent.

Opinion filed *May* ***15,*** *1974.*

MANSION VIEW LODGE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-336—Claimant awarded $16.20.)

MANSION VIEW LODGE, INC., Claimant, *us.* STATE OF ILLINOIS, GOVERNOR'S OFFICE OF HUMAN RESOURCES, Respondent.

Opinion filed *May* ***15,*** *1974*

MANSION VIEW LODGE, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-484—Claimant awarded $65.00.)

JOHN G. MEYER, M.D., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed *May* ***15,*** *1974.*

DR. JOHN G. MEYER, 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.

PER CURIAM.

(No. 74-CC-503—Claimant awarded $162.89.)

MOBIL OIL CORPORATION, Claimant, *us.* **STATE** OF **ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion *filed May* ***15, 1974.***

GIFFIN, WINNING, LINDNER, NEWKIRK, **COHEN,** BODEWES & **NARMONT,** Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **HOWARD W.** FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-516—Claimant awarded $27.90.)

PERCY E. **OWENS,** Claimant, *us.* **STATE** OF **ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion *filed* May ***15,*** *1974.*

PERCY E. OWENS, 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.

PER CURIAM.

(No. 74-CC-518—Claimant awarded $3,737.00.)

GRAND SPAULDING DODGE, INC., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT,** Respondent.

Opinion Fled ***May 15, 1974.***

GRAND SPAULDING DODGE, 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.

PER CURIAM.

(No. 74-CC-521—Claimant awarded $3,195.21.)

J. F. INCORPORATED, Claimant, *us.* **STATE OF ILLINOIS, CAPITAL DEVELOPMENT BOARD,** Respondent.

Opinion filed ***May 15, 1974.***

J. F. INCORPORATED, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-563—Claimant awarded $5,771.12.)

FOREST HOSPITAL, Claimant, ***us.*** **STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES,** Respondent.

Opinion filed ***May 15, 1974.***

FOREST 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.

PER CURIAM.

(No. 74-CC-580—Claimant awarded $4,484.88.)

CASSWOOD **TREATED PRODUCTS,** Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed May ***15, 1974.***

CASSWOOD **TREATED PRODUCTS** 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,

PER CURIAM.

(No. 74-CC-585—Claimant awarded $146.94.)

MUTUAL WHEEL COMPANY, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES,** Respondent.

Opinion filed May ***15,*** 1974.

MUTUAL WHEEL 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.

PER CURIAM.

(No. 74-CC-591—Claimant awarded $107.41.)

WILBERT G. DIECKHOFF, Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed *May 15,* 1974.

WILBERT G. DIECKHOFF, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-599—Claimant awarded $78.00.)

H. L. **WIBBELS, M.D.,** Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed *May 15,* 1974.

H. L. **WIBBELS, 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.

PER CURIAM.

(No. 74-CC-604—Claimant awarded $39.15.)

COMMONWEALTH EDISON Co., Claimant, *us.* **STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION,** Respondent.

Opinion filed *May 15, 1974.*

COMMONWEALTH EDISON 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.

PER CURIAM.

(No. 74-CC-605—Claimant awarded $419.60.)

NATIONAL RAILROAD PASSENGER CORP. (AMTRAC), Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF REGRISTRATION AND EDUCATION, Respondent.

Opinion *filed May 15, 1974.*

NATIONAL RAILROAD PASSENGER CORP. (AMTRAC), Claimant, pro *se.*

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-607—Claimant awarded $1,597.26.)

CENTRAL OFFICE EQUIPMENT CO., Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion *filed May 15, 1974.*

CENTRAL OFFICE EQUIPMENT Co., Claimant, pro se

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-609—Claimant awarded $143.71.)

CENTRAL OFFICE EQUIPMENT Co., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed ***May 15, 1974.***

CENTRAL OFFICE EQUIPMENT CO., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-611—Claimant awarded $136.80.)

TEDDY R. PRICE, Claimant, ***us.*** STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed ***May 15, 1974.***

TEDDY R. PRICE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-615—Claimant awarded $257.28.)

RAY BOGUE GREER, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed ***May 15, 1974.***

RAY BOGUE GREER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-622—Claimant awarded $344.60.)

DECATUR MEMORIAL HOSPITAL, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed May *15, 1974.*

DECATUR 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.

PER CURIAM.

(No. 74-CC-631—Claimant awarded $103.76.)

LAWRENCE EUGENE BAYLY, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed May *15, 1974.*

LAWRENCE EUGENE BAYLY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-637 — Claimant awarded $40.18.)

SOUTHEASTERN ILL. ELECTRIC COOP., INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed *May 15, 1974.*

JOSEPH HALE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-645 — Claimant awarded $53.81.)

CAPITAL CHRYSLER PLYMOUTH, INC., Claimant, *us.* STATE OF ILLINOIS, OFFICE OF THE COMPTROLLER, Respondent.

Opinion filed *May 15, 1974.*

CAPITAL CHRYSLER PLYMOUTH, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-648 — Claimant awarded $3,323 33)

CENTRAL OFFICE EQUIPMENT Co., Claimant, *us.* STATE OF ILLINOIS, INDUSTRIAL COMMISSION, Respondent.

Opinion filed *May 15, 1974*

CENTRAL OFFICE EQUIP. Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-649—Claimant awarded $7,950.00.)

MEISTER BROTHERS, INC., Claimant, *vs.* STATE OF ILLINOIS, CAPITAL DEVELOPMENT BOARD, Respondent.

Opinion filed May 15, 1974.

MEISTER BROTHERS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-652—Claimant awarded $412.62.)

CITIES SERVICE OIL COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed May 15, 1974.

CITIES SERVICE OIL COMPANY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-660—Claimant awarded $35.14.)

BURROUGHS CORPORATION, Claimant, *us.* **STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION,** Respondent.

Opinion filed May 15, 1974

BURROUGHS CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD** W. **FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 5607—Claimant awarded $2,000.00.)

GOLDA D. **HANKLA,** Claimant, *us.* **STATE OF ILLINOIS,** Respondent.

Opinion filed September 4, 1973.
Petition of Respondent for Rehearing granted March 13, 1974.
Reaffirm prior award to Claimant May 15, 1974.

HARRIS, HOLBROOK AND LAMBERT, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **LEE** D. **MARTIN** and **WILLIAM** E. **WEBBER,** Assistant Attorneys General, for Respondent.

DAMAGES—Where fire destroyed buildings and trees, the damages would be the difference between the fair value of the premises immediately before and after the fire.

PERLIN, C. J.

Claimant Golda D. Hankla seeks recovery of damages of $14,000 which she alleges were caused by the negligence of Respondent when it let a fire from the trash dump at the Anna State Hospital burn several buildings and other material located upon her adjacent property.

The evidence shows that on the date of the fire,

March 8, 1968, Claimant was the owner of approximately forty acres in Union County, Illinois, which was bordered on the south by land owned by the Anna State Hospital.

The Claimant testified that prior to March 8, 1968, improvements consisting of a house, a barn, a storage shed or smokehouse and a combination poultry house, had been located on the property, all of which were destroyed on the day in question, as well as a number of large trees and ground cover, resulting in bulldozing, "which upset the land and the terrain."

Several witnesses testified that a fire had been burning at the Anna State Hospital Dump on the morning in question; Mr. Leland Whitaker, who lived on a farm adjacent to claimant's property, testified that the day in question was windy and that he observed smoke coming from the dump area all day. Herbert Modglin, a forest fire warden, estimated that approximately **32** acres of claimant's land had been burned and that on March 8, 1968, there was wind from the southwest with gusts up to 25 miles per hour. Modglin had examined claimant's premises and noted that the path of the fire could be traced to the hospital's dump. An aerial photograph also supports the conclusion of the origin of the fire, all of which testimony rebuts respondent's theory that the origin of the fire might have come from another source.

On cross examination, claimant testified that the house and buildings had been vacant from February, 1953, until March, 1968, the date of the fire. The property had not produced any income during that time, and that in April, 1965, insurance agent, John C. Cassel had cancelled the fire insurance policy "due to the condition of your buildings."

Claimant further testified that the property was appraised on April 7, 1966, at a value of $2,700, by Mr. Rayburn Ice and Mr. Lloyd Sitter, real estate appraisers for her mother's inheritance tax return which was filed by claimant as executor of the estate. The affidavit of valuation filed with the Inheritance Tax Division of the State of Illinois and with the Clerk of the Court at the Union County Courthouse contained the following statement:

"8 That the buildings (house and barn) on parcel 3, a farm of forty acres, have sustained extensive damage from vandals and are in very poor condition from neglect and unoccupancy, that the farm land in Parcel 3 is overgrown and in need of clearing and rehabilitation"

The house had been constructed in 1912 and was wired for electricity, although it did not have inside plumbing. Claimant stated that she had owned the house since 1965, and had spent nothing to repair it since that time, although she had planned to repair it.

Lowell Young testified for claimant that he is a licensed real estate broker and expressed his opinion that the market value of the Hankla property after the fire was between $4,000 to $6,000. He estimated that the fair market value prior to the burning was $18,000 to $20,000. Mr. Young based his estimate on the loss of the buildings, the fire over the land and the damages to the trees, although he had never been on the property prior to the fire. He had obtained his knowledge of the prior condition from claimant and did not know whether it was habitable before the fire. Mr. Young further testified that had the land not had the fire, it would be worth approximately $8,000 without the buildings.

Lloyd Sitter who appeared as a witness for respondent, testified that the value of the land at the time of the hearing was between $55 and $100 per acre [$3,400 to $4,0001.

Claimant states that: (1)"Fire is a dangerous element and one who sets it out must be prepared to take care of it and prevent its escaping and doing damage to others or be liable for the consequences. *(Indiana I.&I.R.R.* Co. v. *Hawkins,* 81 Ill.App. 570 (1898))" Claimant further states that "The measure of damages in a case where buildings are totally destroyed as well as injury to trees and vegetation due to fire is the general, universal rule, that is, the difference between the fair value of the premises immediately before and after the fire. *Clark* v. *Public Service* Co., 278 Ill. App. 426 (1934); *Central National Bank & Trust Co. of Peoria* v. *Central Illinois Light Co.,* 212 NE 2d 489 (1966)."

The evidence supports Claimant's contention that Respondent was negligent in failing to contain the fire it started in the Anna State dump and that such negligence was the proximate cause of the fire upon claimant's property.

However, claimant has failed to prove that the fair market value of the property before the fire was in any way close to the $18,000 to $20,000 she claims. Indeed, claimant's own affidavit stated that less than two years before the fire, the property, including the buildings, was worth no more than $2,700, and that the buildings were damaged and in very poor condition. No repairs had been made subsequent to that appraisal.

Claimant has presented no evidence, other than the estimate of one who had never seen the improvements before the fire, that the loss of the buildings in any way lessened the value of the property.

It would appear from the testimony of Appraiser Lowell Young, that the difference between the fair market value of the land before and after the fire was

approximately $2,000. Claimant is hereby awarded the sum of $2,000.

(No. 5621 — Claimant awarded $17,410.22.)

WILLIAM M KORDSIEMON and ASSOCIATES, Claimant, *vs.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion *filed May 15, 1974.*

ORLIKOFF & TIERNEY, 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.

PER CURIAM.

(No. 5848 — Claimant awarded $25,000.00.)

GLORIA FUQUA KESSLER, Claimant, *vs.* **STATE OF ILLINOIS,** Respondent.

Opinion *filed* May *15, 1974.*

LEWIS, BLICKHAN & GARRISON, Attorney for Claimant.

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

HIGHWAYS—where state agencies in charge of roads and bridges had knowledge that ice would form on metal bridges before it would form on the road surface, appropriate warning signs should have to be posted to alert motorists of the danger.

EVIDENCE—contributory *negligence.* Previous use of this bridge by claimant was insufficient to prove contributory negligence when it was not shown that claimant had previous knowledge that ice would form on bridge surface.

BURKS, J.

This action was brought to recover damages allegedly caused by negligence of the respondent in failing to maintain the surface of a highway bridge in a safe condition or to warn the claimant of the unsafe condition of the bridge surface when covered with ice or frost.

The bridge, on which claimant's accident occurred, spans the Illinois River on U.S. Route 67 near Beardstown, some 45 miles northwest of Springfield.

This particular bridge, according to the record and photo exhibits, had a steel mesh or grid type of surface which is not commonly found in Illinois or at least in that section. Virgil Roberts, a section maintenance supervisor with the Division of Highways, testified that all of the other bridges in his jurisdiction are surfaced with either blacktop or concrete and that, to his knowledge, this was the only bridge in the entire area of west central Illinois that has this steel mesh type of surface construction.

Beverly Johnson, the State Police Trooper who investigated claimant's accident at the scene a few minutes after it occurred, described the surface of the bridge as having been covered with cement at one time. However, the cement topping had been removed or flaked away leaving the steel mesh exposed on the surface and the rough concrete filling the the square openings in the mesh was lower than the mesh itself. Trooper Johnson identified claimant's photo exhibit as an accurate image of the bridge surface at the time of claimant's accident. James Carl Sellers, a highway maintenance supervisor for District 6, said that this type of surface had existed on the Beardstown Bridge for quite some time prior to claimant's accident.

Continuing with the facts which we find to be supported by the evidence, it appears that on November 24,

1969, at approximately 6:45 a.m., claimant was driving her 1960 Chevrolet southbound on Route 67 from her home in Rushville to her place of employment in Springfield.

It was a cold, frosty and foggy morning, but the pavement from Rushville to the Beardstown Bridge was clear and dry. There was no appearance of ice or snow on the highway. Unknown to the claimant, the bridge was covered with ice which caused very slick driving conditions on the bridge. Claimant was in no particular hurry that morning and had slowed down by reason of a flashing light at the intersection a short distance from her approach to the bridge. When claimant drove onto the bridge her car slid into the railing on the right hand side, then slid over into the northbound lane and collided with a semi-trailer. Claimant's car was demolished and she suffered some severe injuries. She was unconscious for some time after the collision and does not recall exactly what happened on the bridge. Trooper Johnson could not talk to the claimant in her condition, and based his determination as to how her car skidded upon the eye-witness statement of a Mr. Kessler, the driver of the truck with which claimant collided.

Trooper Johnson also confirmed that, although the highway was clear and dry, the bridge surface was covered with a sheet of ice so slippery he could hardly stand up when he walked upon it. Trooper Johnson said he knew that this bridge got slick before the highway did, which he said is a natural thing; that he knew it was customary to salt this bridge on many occasions in freezing weather; but that the bridge had not been salted on this morning prior to claimant's accident. In describing the position of claimant's car and the truck when he arrived at the scene, Trooper Johnson said claimant's car

had turned completely around, in the opposite lane, and had been struck in the rear by the semi trailer. He said it took the truck a long distance to stop after colliding with claimant's car. The Trooper said that when he drove slowly onto the bridge, he could tell from driving on it that it was very slippery.

Respondent correctly states the well established rule that, before claimant can recover damages for her injuries, she must show by a preponderance of the evidence that [1] the State was negligent; [2] that she was free from contributory negligence; and [3] that the negligence of the State was the proximate cause of her injuries. Respondent contends that these three elements were not proven by the evidence introduced and that, therefore, this claim should be denied.

We believe that a careful examination of the facts warrants our finding that the preponderance of the evidence decisively supports claimant's contention on all three essential elements of proof required to sustain her claim. As we analyze the facts on which we base our conclusion, we will refer particularly to our decision in ***Bouey v. State,*** 22C.C.R. 95 in which we held the respondent liable for damages on facts that are quite similar to the case at bar. Although respondent undertakes to distinguish the ***Bovey*** case on comparatively minor points, we find the basic facts in ***Bouey*** to be so strikingly similar to the facts in the claim before us that, it seems to us, the ***Bovey*** decision is directly in point on the key issues involved here.

In the ***Bovey*** case, the claimant's accident occurred on a similarly constructed bridge which spans the Rock River near Dixon. That bridge, similar to the Beardstown bridge, had a steel grid floor with rectangular openings, which, as respondent knew, was subject to becoming icy

and slick on occasions when the approaching highway was dry and free from ice or snow. These facts are exactly the same as the case at bar. It is true, as respondent points out, that the bridge in ***Bouey*** had a defect in the alignment of the steel grid sections which caused some weaving and side swaying motion when the surface was dry. However, it was the ice on the bridge, and not the misalignment of sections, which caused claimant's accident in the ***Bouey*** case as it was in the case at bar.

There is one distinction which makes the authority of ***Bovey*** more favorable to the claimant in the instant claim. The bridge in ***Bouey*** had a large warning sign at its approach which read, "Bridge Slippery When Wet—Frosty". Since there was no frost on the roadway or countryside and the highway was dry, we held that this sign was ineffective as a warning that the bridge might be icy when there was no frost, ice or snow visible elsewhere.

Such a sign, had there been one in the case at bar, might have been regarded as an adequate warning to the claimant since the countryside was covered with frost even though the highway was dry.

Such evidence as we find in the record on this point indicates that there was no sign or device of any kind to warn the claimant of the quick freezing propensity of the steel grid surface of the bridge, or, for that matter, of any other hazard on the bridge. Claimant's photo exhibit showing a view of the bridge from the direction of her approach reveals no warning signs or devices. Since claimant alleged in her complaint that respondent was negligent in failing to warn her of any dangerous condition on the bridge, it would have been an affirmative defense to this allegation if respondent had been able to show that there were any such warning signs. Yet, the

respondent clearly avoided this question in both direct and cross examination of the witnesses which include 4 state employees who were all very familiar with this bridge and the freezing qualities of the steel grid surface. The 4 state employees who failed to mention any warning signs when they testified at the hearing were: Beverly Johnson, State police trooper; Virgil Roberts and James Sellers, both State highway maintenance supervisors; and Neil Morton, State traffic engineer in this district. This court said in ***Tyler u. State,*** 26 C.C.R. 231 at page 242:

> "The State of Illinois owes a duty to the traveling public to maintain adequate and proper warning signs or devices alerting the public to the unusual and dangerous conditions'ahead."

Inferentially conceding that the state failed in its study to maintain any warning signs at the bridge, respondent argues that such signs were unnecessary in claimant's case since she had crossed this bridge many times before and should have known what to expect. In support of this contention, respondent relies on *Pulizzano u.* ***State,*** 22 C.C.R. 234 in which we said at page 244:

> "Warning signs only serve to notify persons of an existing danger. If the danger is shown, a warning sign is useless."

The *Pulizzano* case, from which the above statement is lifted, involves a claimant who fell from a dangerous trail in the black darkness of midnight in a state park, and the claimant there knew the trail was dangerous before the accident occurred. These facts bear no similarity to the case at bar. However, we have considered the question as to whether claimant, even in the absence of warning signs, should have known of the dangerous condition of the bridge on the morning of her accident.

Claimant testified that she had crossed this bridge many times, including *soa* occasions when it was cov-

ered with ice while the pavements were dry. However, she also testified that on such occasions the bridge had been salted. Even if claimant was presumed to know that this bridge became ice in very cold weather when the pavement is dry, she was accustomed to finding the bridge salted when it was icy. Respondent's failure to salt the bridge or to warn of the danger on this particular morning, in our judgment, presented a hazard that could accurately be described as a trap for the traveling public. The dangerous condition of the bridge was certainly not readily foreseeable by the claimant.

We take judicial notice of the fact that, as we said in ***Bouey,*** "It is not unusual for bridges to freeze in snowy, icy, and extremely cold weather, when the pavement is free from ice or snow. This condition occurs, because the ground temperature imparts a warmth to the pavement, while the bridge floor obtains no such warmth".

There is ample testimony in the record that respondent had known for some time that ice would form on this particular bridge in freezing weather when the highway was totally dry, and there was no ice or snow elsewhere in the vicinity. Trooper Johnson said, after describing the construction of the bridge floor, "This [ice on the bridge when the other pavement was dry] is a natural thing". Notwithstanding this knowledge, the policy of the respondent, prior to the date of claimant's accident, was to salt the bridge only after being informed of the dangerous condition. In fact, the respondent made no attempt to check the bridge for ice, but would wait until someone called to notify the maintenance men of ice on the bridge before they would proceed to apply salt. The calls might come from the police, the sheriff, or someone else. Claimant was totally unaware of respondent's policy to salt the bridge only after someone phoned

to inform the highway department that the bridge was icy. It just happened that each time the claimant had previously crossed in ice conditions, salt had already been applied to the surface.

Over objections of respondent, Mr. Sellers, the state highway maintenance supervisor, testified that, immediately after claimant's accident, he personally instituted a new policy for salting this bridge. Under Sellers' new policy, the maintenance employees start to work at 4:00 a.m. rather than 8:00 a.m.; they check this bridge every day rather than wait for someone to call; this schedule includes holidays and weekends unless the weather is warm; and when they find icy conditions, they salt or cinder the bridge.

We have noted respondent's proper objection to any evidence as to changes in procedures which were made after claimant's accident, and the court does not regard such evidence as an implied admission that respondent was guilty of negligence in its prior procedures which caused claimant's injury. We find the record on this point conclusive without the necessity of any implied admission by the respondent. We consider the above testimony of Mr. Sellers admissible under the rule of evidence stated in *Kuhn v. I.C.R.R. Co.*, **111** Ill.App.323 at page 329, and restated in our ***Bouey*** decision at page 101, but only as prologue to his testimony as to conditions existing prior to claimant's accident.

Sellers said that when he took over as supervisor, some 8 months prior to claimant's accident, he was experienced in general road maintenance work but had no prior experience with a bridge surface of the type found on the Beardstown Bridge. Sellers further stated that the state had no written policies that covered his dispatching work crews for salting or cindering bridges. It is appar-

ent to the court that this failure on the part of the respondent, prior to claimant's accident, led Mr. Sellers, as he stated, to institute a policy of his own to make certain that the bridge was examined and salted when necessary under freezing conditions.

It is obvious from the record that, prior to claimant's accident, respondent's procedures in the maintenance of this bridge in freezing weather was incredibly negligent. There were no signs to warn of the danger of ice on the bridge which respondent knew existed in climatic conditions prevailing on the morning of claimant's accident. The bridge had not been salted or even inspected on that morning when respondent knew that the temperature was below freezing. Under the policy in effect at that time, respondent had no procedure for salting or inspecting the bridge until someone would phone in the information that the bridge was icy.

There is no evidence in the record on which the court could find the claimant guilty of contributory negligence. Claimant, who was unconscious after the impact of her collision with the truck, could not remember driving onto the bridge nor what she did immediately prior to the accident. However, she testified that she had slowed down for the intersection a short distance from the bridge and that she had been in no hurry to arrive at work that morning. This would be consistent with the time she had allowed herself to drive to Springfield. The accident was reported to the State Police at 7:00 a.m. She could have driven the 45 miles to Springfield at a low rate of speed and been there by 8:00 a.m..

The only eye witness to the accident was the truck driver who told Trooper Johnson that he just saw claimant's car start skidding and it skidded into his lane of traffic. Trooper Johnson found marks on the right hand

railing of the bridge which he thought was an indication that claimant's car struck this curbing first and then spun over into the opposite lane. Accepting this assumption, which was not confirmed by the eye witness, respondent theorizes in its brief that claimant may have lost control of her car after carelessly "driving into the curb". We consider it an incongruous conjecture to say that the icy condition did not cause the claimant to lose control of her car and strike the curbing, while admitting that the icy condition caused her car to skid into the opposite lane of traffic and turn completely around. We believe the only plausible explanation of this accident is that claimant's automobile skidded on the ice causing her to lose control and to strike the right hand side of the bridge, then skid on the ice into the northbound traffic lane. In the absence of any evidence to the contrary, we find that claimant was free from contributory negligence.

Bearing on the question of damages, the evidence establishes the following facts concerning the claimant, Mrs. Kessler, Prior to the accident she was in good health and had no injury or illness of any kind, according to her family physician. As a result of the accident, she suffered numerous injuries, some severe and permanant. She was hospitalized for three months in hospitals at Beardstown, Springfield and Rushville consecutively. Dr. Arthur G. Hyde, who attended the claimant immediately after her accident, wrote the following statement in a letter dated March 13, 1970, which was admitted into evidence and reads in pertinent part as follows:

"Gloria Fuqua Kessler was admitted to Schmitt Memorial Hospital in Beardstown on November 24, 1969, with multiple extreme injuries Life support and maintenance systems were activated, and after several days of extremely "critical situation definitive evaluation of her injuries revealed fractures of the jaw, comminuted complicated fractures of the pelvis, simple fracture of the right radius, cranio cerebral trauma, and multiple lacerations

facial sutured On December 3, 1969, under local anesthesia, fractures of the jaw were wired by my associate Doctor V I Machuca The wiring proved to be unsatisfactory and was removed On December 9, at the the request of the patient and her family, she was transferred to Memorial Hospital in Springfield, where she was under the care of Doctor Clifford J Lynch ··

The record contains two lengthy statements of Dr. Clifford J. Lynch, claimant's attending physician at the Springfield Hospital, which are consistent with the later testimony and prognosis of Dr. Russel R. Dohner, whose qualifications as a physician are impressive.

Claimant was under the care of Dr. Dohner after she was transferred by ambulance from the Springfield hospital to the Culbertson Memorial Hospital in Rushville, approximately one month after her accident. Claimant did not start walking again until one week after her discharge from the Rushville Hospital, about 3 months after her accident. She walked with the aid of crutches and then a cane and limped when she walked for about 4 months.

The record is replete with evidence of severe pain and suffering experienced by the claimant during her long period of recovery. Claimant testified at the hearing on November 18, 1971, that she still has frequent headaches; that her jaw catches as a result of the fracture, causing difficulty in eating; that she has scars on her right arm, on her face, hands and right foot; and that the rod in her right arm from wrist to elbow causes difficulty in using her right hand and slows her typing speed.

The most serious and permanent injuries suffered by the claimant were the multiple pelvic fractures which, according to Dr. Lynch, "have healed in a slightly displaced position". One hip is quite noticeably higher than the other.

Dr. Dohner explained in detail that claimant's badly

fractured pelvis would always cause her great difficulty in bearing children. He said that on January 26, 1971, a child was born to the claimant by Caesarean section because the risk of having a baby born through her badly injured pelvis was too great. In the future, Dr. Dohner said, "all of her babies will be delivered in the same way. She will have to have a section each time." Dr. Dohner also said, in response to respondent's questions, that the risk of injury or even death to both mother and baby is much greater with a Caesarean section than by a normal delivery; and that there is no reason to believe that claimant would not have had normal deliveries in childbirth if this accident had not occurred.

Respondent does not dispute any of the medical testimony as to the seriousness and permanency of claimant's injuries. Respondent merely points out that *§8D of the Court of Claims Act*, effective at the time of claimant's accident, places a limit of $25,000 on any award that may be made for damages in a case sounding in tort. Considering the expenses incurred by the claimant for medical services, which are well documented in the record, her pain and suffering, and the permanency of her serious injuries, we find that the maximum award should be made.

The claimant, Gloria Fuqua Kessler, is hereby awarded the sum of $25,000.00 as damages for her injuries and losses.

(No. 6692—Claimant awarded $35.00.)

NORTHWEST AMBULANCE SERVICE, INC., Claimant, *vs.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed May 15, 1974

NORTHWEST AMBULANCE SERVICE, 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.

PER CURIAM.

(No. 7001—Claimant awarded $3,412.00.)

CARMEN, ALONZO, d/b/a CARMEN'S MOVERS, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed May *15, 1974.*

EDWIN M. RAFFEL, 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.

PER CURIAM.

(No. 5699—Claimant awarded $1,200.00.)

JOSEPH M. CROUGHAN, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion *filed* March *18, 1974.*
Petition *of* Respondent for Rehearing denied May *20, 1974.*

GORDON AND BRUSTIN, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER and MARTIN SOLL, Assistant Attorneys General, for Respondent.

NEGLIGENCE—where the state should have known the existence of a hole in the pavement, because of its size and the length of time it existed, it was negligent to allow such a condition to remain.

BURKS, J.

While driving his motorcycle on a state highway, claimant struck a hole at the edge of the pavement. This caused an accident in which claimant sustained personal injuries and property loss for which he seeks damages, basing his claim on the alleged negligence of the respondent in the maintenance of its highway.

While engaged in a project to upgrade Route 83 in Villa Park, respondent provided a temporary detour for traffic. Claimant's accident occurred at the point where this northbound temporary detour joined the original Route 83 south of Washington Street in Villa Park. Here the two lanes of the northbound detour came directly into the original Route 83 at almost a 45 degree right angle. Claimant's photo exhibits show that the paved portion of the detour widens in a slight curve at the point where it joins Route 83 for use of vehicles making the right angle turn. Within this curved portion of the detour and at the very edge of Route 83 is the hole which claimant struck with his motorcycle. The hole is approximately 3 feet in circumference. Photos show that the asphalt had crumbled away at the edge of Route 83 adjoining a rut and wash-out about 12 inches deep on the shoulder, exposing the cement foundation of the black top pavement.

Were it not for the detour which entered Route 83 at this point, the hole would be mostly on the shoulder of Route 83 and not in the paved portion of the highway. However, the hole was within the right lane of the detour as indicated by the painted white lines marking the right hand edge of the detour roadway.

Even if we concluded that the hole were on the shoulder, we do not believe the State would be absolved from responsibility under our ruling in ***Lee v. State,*** **25** C.C.R. 29, in which we said at page **34:**

"While the State must use reasonable care in maintaining the shoulder of a highway, there is no basis to hold that **a** difference of three or four inches in the levels of the road and shoulder constitutes a dangerous condition per se."

In the case at bar, the hole was 12 inches deep, a fact that would alone distinguish it from *Lee.* Moreover, we conclude from examining the photo exhibits that the hole may have been partially on the shoulder but mostly within the main roadway of the detour.

We turn next to the question as to whether the State had actual or constructive notice of this dangerous hole in the highway, as essential element which claimant must prove as we stated in *Dockery v. State, 18* C.C.R. *177, DiOrio v. State, 20* C.C.R. *53,* and *Visco v. State, 21* C.C.R. 480.

In *Visco* (Supra) we held that . . .

"Where evidence showed that **a** hole in pavement **16** inches wide, 30 inches long and 10 inches deep had ***existed*** *for a* ***week,*** the State could be charged with constructive notice of such condition of the highway"

In the case at bar, claimant's witness, Joseph Tate, confirmed the accuracy of claimant's photo exhibits; recognized the hole in question; and testified that he knew that the hole had been there "2 or **3** months" prior to claimant's accident, because he had "hit the hole a few times" with his truck. Tate's truck was a Hendrixon Tractor with a 40 foot trailer which he drove over this route about twice a week. Manifestly, the hole would be less hazardous to such a truck than it would be to a motorcycle.

Respondent urges the court to give little weight to Tate's testimony that the hole had been there for "2 or 3 months", since the detour had been opened to traffic only 2 weeks before claimant's accident. Respondent's argument does not alter the facts to which Tate testified. Obviously, the location of the hole did not change, nor

suddenly appear, when the detour was opened. The hole had existed for some time on the shoulder of Route **83.** It was directly in the path of the detour and became a hole in the highway when the detour was opened. The record shows that Tate undertook to explain this in his testimony, and we believe he adequately did so.

We believe that Joseph Tate was a competent witness. He had less reason to be partial than the 2 witnesses from the Highway Department who drove through and inspected the area, 2 weeks before the accident, without noticing the hole or any defect in the road. In any event, the photo exhibits conclusively show that the hole had been in existence for some considerable period of time, longer than necessary to constitute constructive notice to the State under the rule in *Visco* (Supra).

Finally, we turn to the question as to whether claimant was free from contributory negligence.

The record shows that claimant was proceeding at about *25* m.p.h. in a northerly direction on his motorcycle in the right hand lane of the temporary detour. Immediately at his left was an automobile also northbound. As both vehicles approached the end of the detour where they would turn right onto Route **83,** the automobile swung into claimant's lane, taking up half of it and forcing claimant to ride in the extreme right portion of the lane where the hole was located.

Claimant said the hole was barely visible to northbound traffic, and he didn't see it until he was right on top of it. His statement as to the visibility of the hole was confirmed by respondent's witness who never did see it during their inspection. Yet, the photo exhibits gave mute testimony that the hole was there. So does the fact that claimant's motorcycle hit the hole, bounced up and

onto the bumber of the car that was on his left, then slid about 30 feet. Claimant rolled over and over ending up 40 feet from the point of impact.

Claimant admits that he had traveled the accident route twice before but had not previously noticed the hole. This is understandable since the hole was not noticed by the State inspectors. Claimant admits that he was aware of the numerous signs indicating the detour and the large 8 foot sign reading "Road Under Construction. Please Drive Carefully". The record indicates to us that claimant obeyed this warning. We find that claimant was free from contributory negligence.

Claimant saw his doctor the next day after his accident. He had pains in his lower back and neck; his hands couldn't close all the way, and knee was swollen. Dr. Charles Pease took x-rays and recommended a course of treatment. Claimant lost 2 days work from his job. The swollen knee condition lasted 3 or 4 weeks, and the pain in his back, off and on, lasted a few months. His doctor bill was $55. His motorcycle which he had purchased new 6 months before for $850 was a total wreck. It had a salvage value of $25.

For his injuries, loss of time and property damage, the claimant is hereby awarded damages in the sum of twelve hundred dollars. [$1,200.00]

(No. 73-CC-410 — Claimant **awarded** $5,946.00.)

PUBLIC ELECTRIC CONSTRUCTION COMPANY, Claimant, *us.*
STATE OF ILLINOIS, Respondent.

*Opinion **filed June 5,** 1974.*

LANDESMAN & SCHWARTZ, Attorney **for** Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER and MARTIN A. SOLL, Assistant Attorneys General, for Respondent.

CONTRACTS—where joint stipulation entered into between both parties determine the amount due claimant, then such claim shall be paid from appropriate funds available to 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 labor and material services rendered by Claimant as per Change Order No. 3 dated October 1, 1971, for alterations to computer area, Department of Labor, Bureau of Employment Security, 165 North Canal Street, Chicago, Illinois (Project Number 71-8500-7E, award number 71352, dated March 5, 1971). An investigation of this claim by the Illinois Capital Development Board determined that United States Government Funds were made available to the State of Illinois for this expenditure. A pre-trial conference was held on the 28th day of April, 1974, before the Honorable Joseph Griffin, Commissioner of the Court of Claims pursuant to notice. At the pre-trial conference, the parties agreed that the sum of $5,946.00 (FIVE THOUSAND NINE HUNDRED AND FORTY SIX DOLLARS) is due and owing to Claimant for materials and services rendered pursuant to the above mentioned Change Order and Claimant's complaint, the same having been confirmed by the Joint Stipulation filed by the parties.

IT IS THEREFORE DETERMINED AND DECLARED that Claimant has an enforceable claim against federal funds in the amount of $5,946.00 (FIVE THOUSAND NINE HUNDRED AND FORTY SIX DOLLARS) for services rendered as per the Change Order No. 3 dated October 1, 1971, for alterations to computer area, Department of Labor,

Bureau of Employment Security, 165 North Canal Street, Chicago, Illinois (Project Number 71-8500-73, award number 71352 dated March 5, 1971.

IT IS FURTHER DETERMINED AND DECLARED that this claim be paid from the appropriate federal funds available to the Respondent.

(No. 73-CC-461—Claimant awarded $39.55.)

DANNY N. MICHEL, SHERIFF, FAYETTE COUNTY, ILLINOIS, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed June 5, 1974.

DANNY N. MICHEL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; 'HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-168—Claimant awarded $472.55.)

MEMORIAL HOSPITAL OF SPRINGFIELD, ILLINOIS, An Illinois Not-For-Profit Corporation, Claimant, us. STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 5, 1974.

BROWN, HAY & 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.

PER CURIAM.

(No. 74-CC-169—Claimant awarded $662.40.)

MEMORIAL HOSPITAL OF SPRINGFIELD, ILLINOIS, An Illinois Not-For-Profit Corporation, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 5, 1974.

BROWN, HAY & 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.

PER CURIAM.

(No. 74-CC-172—Claimant awarded $380.15.)

MEMORIAL HOSPITAL OF SPRINGFIELD, ILLINOIS, An Illinois Not-For-Profit Corporation, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 5, 1974.

BROWN, HAY & 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.

PER CURIAM.

(No. 74-CC-350—Claimant awarded $679.00.)

BETHESDA GENERAL HOSPITAL, Claimant, US. STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed June 5, 1974

BETHESDA GENERAL HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-506—Claimant awarded $1,634.60.)

MOBIL OIL CORPORATION, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed June 5, 1974.

GIFFIN, WINNING, LINDNER, NEWKIRK, COHEN, BODEWES & NARMONT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-533—Claimant awarded $120.53.)

UNITED VAN LINES, INC., Claimant, *us.* STATE OF ILLINOIS, BUREAU OF THE BUDGET, Respondent.

Opinion filed June 5, 1974.

UNITED VAN LINES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-544—Claimant awarded $700.00.)

PROFESSIONAL AUDIT BUREAU, INC., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES,** Respondent.

Opinion filed June ***5, 1974.***

H. **LEE GRACE,** 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.

PER CURIAM.

(No. 74-CC-579—Claimant awarded **$137.55.)**

SCHERRER EQUIPMENT Co., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION,** Respondent.

Opinion filed June ***5, 1974.***

SCHERRER EQUIPMENT Co., Claimant, pro *se.*

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(**No.** 74-CC-608—Claimant awarded $88.64.)

CENTRAL OFFICE EQUIPMENT CO., Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed June 5, 1974.

CENTRAL OFFICE EQUIPMENT CO., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-638—Claimant awarded $25.00.)

TYPEWRITER SERVICE CO., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 5, 1974.

TYPEWRITER SERVICE CO., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-641—Claimant awarded $47.50.)

BERZ AMBULANCE SERVICE, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 5, 1974.

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.

PER CURIAM.

(No. 6609—Claimant awarded $874.00.)

PITNEY-BOWES, INC., Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion ***filed June 5, 1974***

PITNEY-BOWES, 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.

PER CURIAM.

(No. 6738—Claimant awarded $180.00.)

PITNEY-BOWES, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF INSURANCE, Respondent.

Opinion ***filed*** *June* 5, ***1974.***

PITNEY-BOWES, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 7037 — Claimant awarded $752.98.)

DODGE TRUCKS, INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed June *5, 1974.*

DODGE TRUCKS, 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.

PER CURIAM.

(No. 5483 — Claimant awarded $5,241.57.)

INTERSTATE BAKERIES CORPORATION, A Delaware Corporation, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed June 6, *1974*

GRAHAM & GRAHAM, Attorney for Claimant.

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

NEGLIGENCE—The State has an obligation to keep its roads in a reasonably safe condition.

NEGLIGENCE—Where the State had knowledge of the existence of an accumulation of oil on the roadway and failed to post warning signs **of** such to alert motorists of the danger, it was deemed negligent.

PERLIN, C. J.

Claimant, Interstate Bakeries Corporation, seeks recovery of $5,241.57 for damages to one of its tractor-trailers involved in an accident on U.S. Route **36** at the intersection of Clearlake Village Road on September **26, 1966.** Claimant contends that the State of Illinois was negligent in failing to remove an accumulation of oil from the highway and in failing to post a warning of the

possible existence of the oil, which omissions are alleged to have proximately caused the accident.

On September 26, 1966, Henry Johnson, a truck driver employed by Claimant, was driving a 1965 Chevrolet tractor and a 1959 Fruehoff semi-trailer westbound on U.S. Route 36. Johnson, who had been driving similar trailor-trailers for over twenty-five years, was returning his empty trailer to Springfield after having made a delivery in Decatur, Illinois.

At approximately 3:00 a.m. as a light rain began falling, Johnson approached the intersection of Route **36** and Clearlake Village Road. He testified that he was traveling about forty-five miles per hour. As he reached the intersection, his rig hit two large bumps in the road and an oil slick. He lost traction on the oil, and his wheels locked. Johnson testified that he attempted to control the rig, but it jackknifed and skidded across the lane of oncoming traffic into an embankment where it overturned.

Mrs. Richard Hooper, who lived near the scene of the accident, was awakened by the crash and rendered aid to Johnson. She testified that when she arrived at the crash site she saw another westbound tractor-trailer also lose control at the intersection of Route 36 and Clearlake Village Road and narrowly avoid an accident.

This second tractor-trailer was driven by one Orvand R. Bolting. He testified that as he approached the intersection he saw Claimant's overturned tractor-trailer, and he began to slow his own rig. He said that as he applied his brakes his rig skidded and jackknifed, but that he managed to bring it under control. After coming to a stop, he inspected the highway at the Clearlake Village Road intersection and found that puddles of oil had collected on Route 36.

Robert Walsh, the Illinois State Trooper who first arrived at the accident scene, testified that while still pinned in the wreckage Johnson complained to him that the road was slick. He said that he later talked to Johnson in the hospital where he was taken; and Johnson told him that it was possible that he had "dozed off for a split second." Walsh also stated that he did not observe any skid marks at the scene, and that it did not appear to him that Claimant's rig had jackknifed.

Clarence Samonds, a resident of Clearlake Village, testified that in early September, 1966, the roads in the village had been oiled. When this was done on prior occasions, the roads were sanded, scarified, and rolled to insure that the oil did not accumulate. These steps were not taken in September, 1966, and Samonds testified that oil accumulated on the roads "just like a duck pond."

Shortly after the oil was applied, Samonds noticed that cars coming from the village onto Route 36 were tracking oil onto the highway. On September 4, 1966, Samonds notified both the Sheriff of Sangamon County, Illinois, and the State of Illinois Bureau of Roads that oil was accumulating on Route 36 and creating a dangerous condition.

Shortly after receiving Samond's complaint, the Illinois Bureau of Roads dispatched a maintenance crew to the site. The crew scraped the excess oil off of Route 36 and placed several loads of sand over the highway at the intersection with Clearlake Village Road. Raymond Sklenka, the State employee in charge of maintaining Route 36 at the accident site, supervised this maintenance crew. He testified that he observed cars coming from Clearlake Village track oil on the highway. He further testified that his crew subsequently returned to sand the intersection "three to five times," but he was

unable to recall when the intersection was last sanded before the accident.

Sklenka also testified that no warning signs were ever placed near the intersection to warn of a possible accumulation of oil on the highway.

The State is not an insurer of all accidents which occur on a highway. *Schunk* v. *State of Illinois,* 25 C.C.R. 209, 213. However, the State does have an obligation to keep its roads in a reasonably safe condition; and the State has a further duty to place adequate signs warning of unusual conditions which motorists may encounter. *Breens* v. *State of Illinois,* 21 C.C.R. 83; *Miller* v. *State of Illinois,* 22 C.C.R. 68.

Claimant has shown by a preponderance of the evidence, that the State breached its duty to keep Route 36 in a reasonably safe condition and to warn users of the highway of the possible existence of an accumulation of oil. On September 6, 1966, immediately after the roads in Clearlake Village were oiled, Clarence Samonds notified the Bureau of Roads that cars were tracking oil onto Route 36 and creating a dangerous condition. A maintenance crew scraped and sanded the road, and later returned to the intersection "three to five times" to deal with subsequent accumulations of oil. It is to be noted that the State employees who sanded the road were unable to state when the sanding occurred.

It is thus clear that the State had actual notice on September 4, 1966, that cars from Clearlake Village were tracking oil onto Route 36 where it was accumulating and causing a dangerous condition. It is equally clear, given the fact that a maintenance crew had to return to the site "three to five times," that the State knew that this was a recurring condition. Although the State did make efforts to correct the condition, the re-

curring accumulation of oil at the intersection should reasonably have put the State on notice that its maintenance was ineffective. At the very least the State should have posted warnings alerting motorists of a possible accumulation of oil at the intersection.

This Court finds that the State was negligent in permitting oil to accumulate on Route **36** and in failing to post a warning of its presence. The Court further finds that these omissions proximately caused the damage to Claimant's tractor-trailer.

The parties have stipulated that the accident resulted in $5,241.57 in damages to Claimant's tractor-trailer.

Claimant is awarded damages in the amount *of* $5,241.57.

(No. 6757—Motion of Respondent to dismiss allowed.)

JANET C. MC GILL, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Order filed June 10, 1974.

PRICE, CUSHMAN, KECK and MAHIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General, for Respondent.

RELEASE—a release of one *of* several joint tort-feasors operates as a release of all despite the fact that separate suits were brought for the same action in separate courts pursuant to statutory requirements.

BURKS, J.

ORDER
GRANTING RESPONDENT'S MOTION TO *DISMISS*

This matter is now before the court for a ruling on

respondent's motion to dismiss [filed April 25, 19741. Claimant's objections to said motion [filed on May 91 and respondent's reply [filed May 201 in support of its motion are also before us. The pertinent information in this record, on which our ruling must be based, is restated by the court as follows:

1. This claim was filed on June 9, 1972, asking damages for personal injuries sustained by the claimant on June 12,1970,as the result of an automobile accident in a construction zone in Highland Park.

2. Paragraph 7 of the complaint states that a lawsuit "based upon the same occurrence and injuries" was filed by the claimant on November 23, 1970, in the Circuit Court of Lake County, No. 70 L 650, against the City of Highland Park and others, including the gas, light, telephone, and construction companies, but not including the State of Illinois.

3. On October 24, 1973, pursuant to stipulation of the parties, the said Circuit Court action was dismissed with prejudice and the Order entered therein provided "that said dismissal shall be a bar to the bringing of an action based on or including the claim for which this action had been brought". [A copy of the said order was attached to respondent's motion, a copy of the stipulation to dismiss was attached to claimant's objections, but neither party has furnished this court with a copy of the release.]

4. Claimant did not deny respondent's contention that "Claimant executed a general release to all parties in return for payment of the sum of $4,000.00 in the Lake County Circuit Court action". However, Claimant disputes respondent's contention that the said release and dismissal would release or bar her separate action

pending in this court, since "the State of Illinois was neither made a party to the Circuit Court action nor named as a principal therein". Claimant avers, "It is well settled that where an action is compromised by the parties thereto and dismissed by mutual agreement, the dismissal does not bind or affect persons not made parties to the action."

5. Claimant takes the position that the "City of Highland Park was liable because of negligent acts or omissions committed by the City, its agents or employees',, and that the State of Illinois is also liable because of the same negligent acts or omissions committed by the State, its agents or employees.

6. Claimant argues that she "cannot be held to an election of remedies insofar as either the City of Highland Park or the State of Illinois is concerned, because the Court of Claims Act and the Rules thereunder **(1)** required claimant to file separate actions against the City and the State and (2) required the instant cause in the Court **of** Claims to be continued generally until the final disposition of the Circuit Court action against the City".

7. Respondent argues that the theory of liability urged against the respondent is either (1) that the respondent was a joint tort-feasor with the parties sued in the Circuit Court, or **(2)** that the parties sued in the Circuit Court were respondent's agents. Both theories must necessarily fail, respondent states, because claimant's release of all parties in the Circuit Court bars her action against the State under one of the following rules of law:

(a) Release of one of several joint tort-feasors operates as a release of all; or

(b) Release **of** an agent extinguishes the principal's liability where the action is one predicated on respondeat superior.

The court takes notice of one unusual aspect in the pleadings which wa have considered in our ruling on respondent's motion. We find it significant that the same acts of negligence charged against the City [recited in ¶5 (a) (b) (c) (d) (e) and (f) of claimant's complaint in the Circuit Court] are restated in identical language as acts of negligence against the State [recited in **713** (a) (b) (c) (d) (e) and (f) of claimant's complaint in this court].

If, as claimant contends, the City and the State were guilty of identical acts of negligence, it seems obvious that the City and the State must be regarded as joint tort-feasors even though they are sued in separate courts pursuant to statutory requirements. The law is well established in this state, as respondent suggests, that the release of one tort-feasor releases all joint tort-feasors. *I. L. P.* ***Releases*** *§25.* We see no reasonable basis for an exception to this rule simply because the joint tort-feasors were sued in different forums.

Claimant has cited no authority in her suggestions to the court in opposition to the argument in respondent's motion nor in support of her contention that she "cannot be held to an election of remedies" referred to in ¶6 above. We believe that our conclusion is consistent with the rulings stated in ***I.L.P. Election*** *of* ***Remedies 75,*** and that respondent's motion should be granted for the reasons stated above.

It Is Hereby Ordered that respondent's motion to dismiss is hereby granted and this claim is hereby dismissed.

(No. 74-CC-33—Claimant awarded $2,397.00.)

RELIABLE PLUMBING & HEATING COMPANY, Claimant, *us.* STATE OF ILLINOIS, CAPITAL DEVELOPMENT BOARD, Respondent.

Opinion filed June ***13, 1974.***

RELIABLE PLUMBING & HEATING Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-93—Claimant awarded $153.75.)

CUNNINGHAM MOVERS, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion Fled June ***13, 1974.***

BERNARD A. HENNING & Assoc., 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.

PER CURIAM.

(No. 74-CC-300—Claimant awarded $33,607.63.)

COOK COUNTY HOSPITAL, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June ***13, 1974.***

COOK COUNTY 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.

PER CURIAM.

(No. 74-CC-313—Claimant awarded $140.67.)

STANDARD OIL DIVISION, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed June 13, 1974

STANDARD OIL DIVISION, 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.

PER CURIAM.

(No. 74-CC-339—Claimant awarded $275.00.)

I.M.H. ASSOCIATES, LTD., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 13, 1974

I.M.H. ASSOCIATES, LTD., Claimant, pro se.

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

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

PER CURIAM.

(No. 74-CC-340 — Claimant awarded $50.00.)

I.M.H. ASSOCIATES, LTD., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

Opinion filed June 13, 1974.

I.M.H. ASSOCIATES, LTD., Claimant, pro se

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

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

PER CURIAM.

(No. 74-CC-357 — Claimant awarded $260.00.)

LITTON BUSINESS SYSTEMS, **INC.**, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, Respondent.

*Opinion filed June 13, **1974.***

F. R. RINGLE, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-535 — Claimant awarded $942 50)

ALEXANDERS MOVERS, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed June 13, 1974.

ALEXANDERS 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.

PER CURIAM.

(No. 74-CC-578—Claimant awarded $5.27.)

SCHERRER EQUIPMENT CO., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CONSERVATION, Respondent.

Opinion filed *June* 13. 1974.

SCHERRER EQUIPMENT CO., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-588—Claimant awarded $143.28.)

STANDARD PHOTO SUPPLY, A DIVISION OF WEIMAN CO., INC., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion ***filed*** *June 13, 1974*

FISCHEL, KAHN, WEINBERG & BRUSSLAN, 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.

PER CURIAM.

(No. 74-CC-654 — Claimant awarded $94.15.)

GRUNDY CO. SHERIFF'S DEPT., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed June *13. 1974*

GRUNDY Co., SHERIFF'S DEPT., 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.

PER CURIAM.

(No. 74-CC-657 — Claimant awarded $320.80.)

AUTHORIZED REFRIGERATION PARTS Co., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS, Respondent.

Opinion filed June ***13,*** *1974.*

AUTHORIZED REFRIGERATION PARTS Co., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-661—Claimant awarded $122.28.)

ROW MOTOR SALES, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF LAW ENFORCEMENT, Respondent.

Opinion filed June ***13,*** *1974.*

ROW MOTOR SALES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No, 74-CC-669 — Claimant awarded $10.35.)

GULF OIL CORPORATION, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed June ***13, 1974.***

GULF OIL CORPORATION, Claimant, pro *se.*

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-670 — Claimant awarded $15.61.)

GULF OIL CORPORATION, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed June 13, 1974.

GULF OIL CORPORATION, Claimant, pro *se.*

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-676—Claimant awarded $800.00.)

ROBERT F. VESPA, Claimant, *us.* **STATE OF ILLINOIS, SECRETARY OF STATE,** Respondent.

Opinion filed June 13, 1974.

ROBERT F. VESPA, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-686—Claimant awarded $90.00.)

W. W. DAVIDSON, M.D., S.C., Claimant, *us.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH,** Respondent.

Opinion filed June 13, 1974.

W. W. DAVIDSON, M.D., S.C., Claimant, pro se.

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

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

PER CURIAM.

(No. 7074—Claimant awarded $127.50.)

MAX SHAPS, Claimant, us. **STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID,** Respondent.

Opinion filed June 13, 1974.

MAX SHAPS, 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.

PER CURIAM.

(No. 6130—Claimant awarded $153,677.63.)

AL JOHNSON CONSTRUCTION CO., and MASSMAN CONSTRUCTION CO., d/b/a AL JOHNSON-MASSMAN, Claimant, *us.* STATE OF ILLINOIS, Respondents.

Opinion *filed* June *24, 1974.*

SORLING, CATRON AND HARDIN, AND CARLSEN, GREINER AND LAW, Attorney for Claimant.

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

CONTRACTS—*evidence.* Where the State fails to acquire access to property but such delay does not delay performance by claimant, no damages will accrue to claimant.

SAME—*damages.* Where the State delays in furnishing final drawings for construction of piers, claimant cannot claim damages when not delayed thereby from performing their contract.

SAME—SAME. Claimants are entitled to damages when design changes are imposed **by** State.

SAME—SAME. Where there is a substantial variation in the original contract by reason of shifting from certain specifications to an ultimate design, claimant is entitled to recover proven damages arising therefrom.

BURKS, J.

Claimants in this action seek damages from the State in the amount of $477,894.93. The claim is found upon a contract entered into on June 20, 1967, by and between the respondent and the claimants for bridge pier construction work which was to be performed and which was performed by the claimants.

The issues involved are primarily questions of fact.

Al Johnson Construction Company of Minneapolis,

Minnesota, and the Massman Construction Company of Kansas City, Missouri, engaged in a joint venture under the trade name and style of Al Johnson-Massman, [hereinafter referred to as "contractor" or "claimants"] for the purpose of bidding on a contract with the State of Illinois, [hereinafter referred to as the "State" or "respondent"] of a substructure of a highway bridge over the Illinois River at Hennepin, [hereafter, "Hennepin Bridge"].

This job was officially known as "Federal Aid Interstate Route No. 180, Project No. 1-180-7(5)0, Sec. (06-3, 78-1)B, in Bureau-Putman Counties, bridge substructure, Contract No. 25074".

The substructure of the bridge, the subject matter of this contract, consisted of 14 reinforced concrete piers, with abutments on the east and west banks of the Illinois River. These piers were to support a steel superstruction (the roadway portion of the bridge) which would be erected by others under separate contracts.

The State retained Alfred Benesch and Company [hereafter "Benesch"] of Chicago, as design engineer and consultant.

Benesch is an experienced bridge engineer, and the Contractor has over 40 years experience in the heavy construction business.

Early in 1967, the State informed Benesch that it needed a complete design of the Hennepin Bridge within four months so that the bridge could be opened to traffic within a year and a half. Benesch advised the State that it was impossible to procure a complete design in four months, but that it was feasible to have both design and construction completed in a year and a half. Benesch believed that this could be accomplished if the job were

bid on preliminary drawings and the final plans furnished as the job progressed after the contract was awarded. It was decided to let the job out for bids on this basis.

In its plans to stimulate the economic development of the Hennepin area, the State had embarked upon the project of constructing a four-lane pavement, including the bridge in question, to an area close to a site where the Jones and Laughlin Steel Company was to place a large plant.

Prior to the opening of the bids, the Contractor had received a letter from the respondent stating this project had been given high priority by the Governor; that the construction had been placed on an expedited schedule; and that, while the Division of Highways would continue to expend every effort to help the Contractor, the completion date must be met.

In order to construct this bridge in the shortest possible time, it was decided to allow the bid to be let on the basis of preliminary typical detailed plans on a unit cost basis, and to furnish the final plans as the work progressed in accordance with a "critical path" to be followed by the contractor and the bridge designer.

Bids were opened on May 26, 1967, and the contract awarded to the claimants, the low bidder, for their bid price of $2,342,186. The contract called for a completion date of April 1, 1968, and provided for liquidated damages of $2,000 per day for late completion.

This job was unusual in that it was the first time the Contractor had bid a job for a governmental agency based upon preliminary plans. It was also the first time the State of Illinois had let a bridge job out for bids without having first completed final construction draw-

ings. [At this point, the court takes notice that this unusual feature of the contract distinguishes the case at bar to some extent from ***Illinois Steel Bridge Company*** v. ***State,*** **7** C.C.R. ***75,*** cited in respondent's brief.]

The work included in this contract was for the construction and removal of temporary cofferdams;* excavation; furnishing and driving steel and timber piles; construction of embankments at abutments; and the construction of piers and abutments. The bidding drawings called for the construction of **14** piers. Pier No. 1 was the easterly pier and pier No. **14** was the westerly pier. The documents which the Contractor relied upon in preparing its bid are shown in claimants' exhibits, numbered and tilted as follows: **1.** "Bidding Drawings"; **2.** "Standard Specifications for Road and Bridge Construction of the State of Illinois"; **3.** "Supplement Specifications', revising said Standard Specifications; and **4.** "Notice to Bidders, Specifications, Proposal, Contract, and Contract Bond".

Included in claimants' last mentioned Exhibit **4,** was a schedule showing the time (dates) within which the bid plans were to be prepared, the contract awarded, the final plans furnished, and the sequence of construction of the piers for the substructure.

The schedule called for the east and west abutments to be placed first, by the middle of August, **1967.** It then called for simultaneous construction of piers **1** and 2 on the east bank of the river, and piers 12, 13, and **14** on the west bank of the river. These piers were to be completed by November 15, **1967.** The middle piers of the bridge, piers **3** through **11,** were to be constructed last, and were

***A cofferdam is a watertight temporary structure placed in the river for keeping the water from an enclosed area that has been pumped dry *so* that bridge foundations, piers, may be constructed**

to be completed by April 1, 1968.

We think it is safe to say nothing went according to schedule. Each side blamed the other for the problems that arose almost immediately. The last major work item was not completed until August 26, 1968, and the contractor was still in minor clean-up work as late as November, 1968.

Without attempting at this point to assign reasons, or to place blame, it can be noted that the building of the piers proceeded so slowly that as of April, 1968, when all work on the substructure was supposed to have been completed, the six tallest piers, 1 through 6, were still not completed. All reinforced concrete was not in place until Agust, 1968, when the last two piers were finished. This was nearly 5 months after the final completion date in the original contract.

We have lifted the following comments from the "Departmental Report" by R. D. Schmidt, Engineer of Construction, Department of Public Works & Buildings, Division of Highways:

"Contractor failed to mobilize promptly, move in and commence the work after the contract was awarded on May 26,1967, On June 13,1967, Contractor advised that its equipment would be moved in starting next week. No major items of equipment arrived until July 1, 1967, when 4 barges arrived.

The unloading began on July 5, 1967, but, it was several days after that before the equipment was assembled and ready to perform work.

In order to get equipment and materials to the construction area on the west side of the river, the Contractor built a haul road northerly from Illinois Route 71 to that area. The building of that road started on July 12, 1967. On July 18,1967, Mr. Forbeck and his attorney advised Claimants' foreman not to cut any trees on his land, [Note: Title to Forbeck land had not then been acquired by the State.] Claimants proceeded with building the haul road without going onto the Forbeck property. Building of the haul road continued until August 28, 1961." Page 2.

"After 69 days had elapsed since the award (22% of the completion time) the percentage of work in place was zero. On 40 of the 69 days no work was recorded. Nearly 2 months later when 49% of the contract allowable time had elapsed, 27% of the work was in place, 153 days after the award. . . . ."

"The Contractor completed about 55% of the work by April 1, 1968, a contract time of 311 calendar days. The remaining 45% of the work was done in 151 days." Page 3.

The State's principal responsibility under the contract was to furnish the contractor with approved designs for the piers, so that the contractor could place timely orders for the necessary quantities of reinforcing steel and have the piers built within the contractual time schedule. Respondent's Exhibit 12 shows the dates on which the contractor received from the State constructions plans marked "Not Final", approved construction plans, and the dates on which the plans had been scheduled for delivery. Again, without attempting at this point to assign reasons or to fix blame, we find that the State did not adhere to its schedule in every instance. We find that with reference to piers 12, 13, and 14, although the final plans were due August 1, 1967, they were not received by the contractor until November 8, 1967, October 2, 1967, and September 25, 1967, respectively. We find that, although plans for pier 1 were due August 1, 1967, the contractor received so-called "final" plans for the pier on three different dates, the last revision being dated October 2, 1967. The contractor also received so-called "final" plans for pier 7 on three different occasions: August 10, 1967, September 7, 1967, and September 28, 1967, although under the original scheduling the State was not required to submit the plans for pier 7 until November 1, 1967.

Another duty of the State was to approve the contractor's cofferdam designs. Respondent's Exhibit 11 is a schedule of the dates claimant submitted its cofferdam designs to the State for approval, the dates on which the State returned the designs for corrections, and the dates of final approval. Even without reading the 66 pages of correspondence between claimants and Benesch, some of

it angry, it appears on the face of respondent's Exhibit 11 that claimants experienced a great deal of difficulty in obtaining approval of their cofferdam designs.

From the material covered thus far, we have pointed out that there arose areas of dispute and complaint between the parties during the course of the performance of the contract. We have only touched on three. There are several others. At this point it is more meaningful to discuss the further facts in connection with the issues in the case.

The case, at first blush, appears to be tremendously complex. The voluminous record seems to forbid careful analysis. However, we find that the claims for damages can be summarized succinctly, and that it then becomes intelligible to discuss the legal and factual issues in terms of claimant's ad damnum. These claims fall into 3 major categories with some sub-categories as follows:

I. Damage due to the failure of the State to grant an extension of construction time because of delays beyond the control of claimants.

A. Delay of the State in securing title to the land under piers 12, 13, and 14. [The Forbeck property.]

1. Causing claimants to change its construction plan;
2. Depriving claimants of 55 construction days;

B. Delay of the State in supplying construction drawings of piers 1, 5, 7, and 10 on time;

C. Said delays in securing right of way and in furnishing drawings causing monetary damage to claimants as follows:

1. Cost of complying with wrongfully issued acceleration directives	$123,172.00
2. Cost from delay in receiving final reinforcing steel drawings	72,456.26
Total damages caused by State's delays.	$195,628.26

11. Damages due to alleged material variations by lhe State of the original plans and specifications, with respect to:

A. Design change in re-inforcing steel in pier stems.

1. Substantially increasing the amount of re-inforcing steel required in larger piers;
2. Detailing the increase in an unusual manner so as to prevent the prefabrication of the steel;
3. Causing monetary damage as follows:

(a) Additional cost of reinforcing steel placement.	**$119,807.30**
(b) Additional cost of Class X concrete placement.	**64,025.35**
(c) Additional cost of dewatering cofferdams.	**31,425.87**
Total damages caused by design change in reinforcing steel	**$215,258.52**

B. Changing the size of the footings for the piers from two in the original plans to five in the construction drawings.

1. Necessitating an increase in the size of the cofferdams;
2. Requiring more seal coat;
3. Causing monetary damages as follows:

(a) Additional cost due to net enlargement of cofferdams	**$ 22,259.14**
(b) Additional cost due to non-pay excavation in cofferdams, ...	**2,704.77**
(c) Additional cost of non-pay seal coat concrete in cofferdams	**16,829.68**
Total damages caused by changing size of footings	**$ 41,793.59**

111. Claim for retainage not in dispute. Respondent concedes that this amount is owed to claimants. This payment was withheld by the respondent because of

claimants refusal to accept a "final" accounting.. . . . . $ 25,214.56

Summary of damages claimed:

$195,628.26	Damages due to delays by the State.
215,258.52	Damages due to design change in reinforcing steel.
41,793.59	Damages due to changes in sizes of footings.
25,214.56	Retainage
$477,894.93	Total claim

Respondent's answer to claims I and II are simple enough. Respondent contends that the delays on the part of the State, complained of under I, even if admitted, did not cause claimants any damage because claimants were not prepared to go ahead with the work; and that the changes complained of in II did not constitute a material variation of the contract.

The issues will be discussed according to the outline set forth above.

I. Damage due to failure of the State to grant an extension of construction time because of delays beyond the control of the claimant.

A. Delay of the State in securing title to the land under piers 12, 13, and 14, and the west abutment.

On June 6, 1967, a preconstruction meeting was held at the District Highway Office Building in Dixon to review constructions details. At this meeting the State

revealed that it had not as yet acquired the right-of-way to certain land inland from the west bank of the Illinois River, known as the Forbeck property, and that it would not have the right of way to this property until about August 1. The Forebeck property included the land on which would be constructed the west abutment, pier 14, most of pier 13, and part of pier 12.

The subject of the Forbeck property consumes a substantial part of the record, and claimants regard it as a major portion of their case. However, we believe it can be stated categorically that all of claimants' claims with respect to alleged damages caused by delay on the part of the Senate in acquiring right-of-way over the Forebeck property are without foundation. The simple reason is that, as of July 31, 1967, when the State obtained access to the Forbeck property, claimants had not yet brought their haul road on the western side of the river to Mr. Forbeck's property line. We quote again from the "Departmental Report" (Supra) at page 2: [Information based on the diaries of the State's resident engineer, Mr. Becker.]

"In order to get equipment and materials to the construction area on the west side of the river, the Contractor built a haul road northerly from Illinois Route 71 to that area. The building of the road started on July 12, 1967 On July 13, Mr. Forbeck and his attorney advised claimants' foreman not to cut any trees on his land. Claimants proceeded with building the haul road without going onto Mr. Forbeck's property . . .

"Mr. Forbeck agreed to allow the State and its contractor access on July 31, 1967, and the Contractor was so advised August 2, 1967. On *August 2, 1967, the haul road had not been built to the property line of Mr. Forbeck nor did the claimants have available the equipment to remove the unsuitable material on the Forbeck property. That equipment arrived August 23, 1967, by barge. . .*

"Building of the haul road continued to August 28, 1967. Removal of unsuitable materials under the west abutment began on August 25, 1967 . . . (Dept. Rept. p. 2).

Upon learning at the preconstruction meeting, June 6, 1967, that the State did not have title to the Forbeck

property, claimants concluded that the bridge piers could not be constructed in the sequence set forth in the Notice to Bidders, and requested that they be allowed to reschedule the work so as to start on piers 1, 5, 7, and 10. The State acquiesced, and Benesch agreed to design the piers according to the new construction schedule. Seen in retrospect from the vantage point of the record, this change, although agreed to by the State, was not needed and accomplished nothing.

The matter can be explained in this way: The east and west abutments were intially to be finished as of August 15, 1967. Final plans for the abutments, owed to the contractor by the State as of June 1, 1967, were in his hands by June 29, 1967. As of August 23, 1967, [eight days after the abutments were to be completed1 the equipment needed to haul away unsuitable material in the area of the west abutment, before construction could begin there, had just arrived by barge. Excerpts from entries in the Resident Engineer's Diary for August 21, 24, 25, 1967, show:

> Aug. 21: (Late PM) Luhr & Co. tied up two barges near pier **6.** They have two large crawler cranes to unload and walk back to start removing unsuitable material. . .
>
> Aug. 24: Luhr & Co's large crane broke down west of No. 7 on the haul road. . .
>
> **Aug. 25:** Luhr & Co. started to remove unsuitable material for Al Johnson. . .

As of September 13, 1967, a month after the west abutment should have been completed, the contractor finally finished the job of hauling away unsuitable material. The report of the Resident Engineer for the week ending September 13, 1967 states:

> "Completed excavation of unsuitable material at west approach acd continued placing porous granular embankment for west approach."

Under the initial schedule, piers 12, 13, and 14 were

to have been finished as of November 15, 1967. Claimants initial "critical path" required them to start construction of the cofferdam for pier 14 on July 11, 1967. [Cl. Ex. 39 B] As pointed out above, claimants didn't start the haul road to get to the site where the cofferdam would have to be built until July 12, 1967. As of July 18, 1967, one week later, they should have been starting to build the cofferdam for pier 12 [Cl. Ex. 39 BI. At that point ***they did not even have the equipment on hand to build two cofferdams simultaneously.*** Dairy of Resident Engineer. Entry for July 20, 1967.

"Contractor has another crane on railroad somewhere, long overdue They need it now so work can start on more than one cofferdam "

On August 23, 1967, when they should have been taking the cofferdam from pier 14 to be used at pier 13 [Cl. Ex. 39 BI, their equipment had just arrived by barge to start the basic hauling away of unsuitable material.

The evidence is clear that claimants suffered no damages from the State's delay in acquiring access to the Forbeck property, because claimants were totally unprepared to build the west abutment and piers 12, 13, and 14, according to the original schedule. This fact is visibly substantiated by a photo exhibit in the record [Resp. Ex. 3, 1277-0-341. This is a large blowup of an aerial photograph taken on August 14, 1967, with the outline of the Forbeck property superimposed. In this photo, which was taken fourteen days after the State had access to the Forbeck property, the haul road, plainly visible, still had not moved inland from the river to a point where the contractor could have worked on the west abutment and piers 12, 13, and 14, which are on the Forbeck property.

B Delay of the State in supplying construction drawings of piers 1, 5, 7, and 10 on time

The new sequence of construction requested by

claimants immediately following the preconstruction meeting of June 6, 1967, called for the contractor to start on piers 1, 5, 7, and 10, instead of piers 1, 2, 12, and 14. It should be noted that both sequences called for the construction of pier 1 [a water pier] and merely substituted land piers 7 and 10 for land piers 12 and 14; and water pier 5 for water pier 2. Both sequences called for the contractor to purchase enough material for 4 cofferdams so that 4 piers would be under construction at one time and with a crane working each cofferdam and pier.

Claimants contend that they lost 51 days in their schedule because of the delays in receiving final drawings for pier 1. Without discussing, at this point, the reasons for the State's difficulties with the design of pier 1, it will suffice to say that the State sent the contractor so-called "final" drawings for pier 1 on August 17, 1967. Again on September 7, 1967, and again on October 2, 1967. The last dated set were the drawings from which the pier was built. On page 25 of the "Statement of Facts" section of claimants' brief, claimants state specifically that they are not making claim for the alleged delays in receipt of drawings for the other piers since the delay at the other piers ran concurrently with the delay at pier No. 1, "the critical pier on the job during the time the drawings were delayed".

On pages 22 and 23 of the "Argument" section of their brief, claimants explain how their claim for 51 days delay was computed, and state:

"The key date in determining the duration of this delay is September 1, 1967, the date the deal coat for pier 1 was poured. Pier 1 was the critical pier. ***After the seal coat is poured the re-steel for the footing can beplaced.*** This steel must be on the job site at that time or the work will be delayed. It takes 2 to 3 weeks for the steel to be fabricated and delivered to the job site after the steel supplier receives the drawings. [emphasis added]

"There are 2 ways of computing the delay in this case:

"(1) The seal coat was poured on September 1, 1967. It takes 2 days to

cure the seal coat. In order for the steel coat to be on the job site when needed, final drawings would have to be in the hands of the supplier 2 to 3 weeks prior to that date. Mr. Wolf used August 15, 1967. Final drawings were not received until October 2, 1967. The duration of the delay is the number of days between when the drawings should have been received in order to avoid delay and when they were actually received.

"(2) The seal coat was poured on September 1, 1967. The steel should have been on the job on that date. The steel was not actually received until October 19, 1967, because final drawings were not received until October 2, 1967. The duration of the delay was from September 1, 1967, to October 19, 1967.

"Depending on how the days are counted and what judgments are used, there was a delay of some 48 to 51 days. The Contractor used 51 days in measuring its claim for delay in the sum of $74,245.26. [Cl. Ex. 411"

The fallacy in claimants' arguments is disguised in the following sentence from their first paragraph: "After the seal coat is poured the re-steel for the footing can be placed". This completely overlooks the fact that conditions within the cofferdam at pier 1 were such that the *form* for the pier footing was not finally set until October 30, 1967, and that the first reinforcing steel was not introduced into the form until the following day, October 31, 1967. [This is confirmed by the excerpts from the Resident Engineer's diary excerpted as to pier 1 and attached to respondent's brief.]. But, as claimants tell us in their brief, they had had the steel on hand since October 19, 1967.

Here again, granting that the State failed to come forth with "final" final plans for pier 1 until October 2, 1967, it was on October 31, 1967, when the claimants were, for the first time, ready to use the reinforcing steel. They had it on hand, and suffered no damage by not being able to order it prior to October 2, 1967. Their claim of 51 days loss of time is totally without merit.

The final plans for pier 5 were delivered to claimants on October 10, 1967. Yet, on October 31, 1967, they were still pumping water out of the cofferdam. [Resident En-

gineer's diary, excerpted as to pier 5, and attached to Resp. Brief.] As of March 1, 1968, claimants started putting rebars in the footing.

Only with reference to pier 7 was there an occasion when the delay in receiving final drawings delayed their obtaining steel so that claimants had to shut down work on the pier. Otherwise, claimants were at all times so far behind in their schedule, in large part because of problems with their cofferdams, that the delay in receiving final drawings was of not more consequence than the delay in acquiring the right-of-way to the Forbeck property.

C. Alleged monetary damages arising from alleged delays.

For the same reasons set forth above, the Court finds that the claim for $72,456.26 alleged to be lost from delays in receiving reinforcing steel drawings should be denied.

The Court also finds that the claim for $12,172.00 alleged to be the additional cost of complying with wrongfully issued acceleration directives should be denied, and explains its view of the matter as follows:

On August 28,1967, October 6,1967, and November 1, 1967, the State demanded that the contractor accelerate his work. [Cl. Ex. 18a]. In claimants' Brief ["Statement of Facts", page 211, they state;

"In early November, 1967, the Contractor did accelerate the work by purchasing another cofferdam and renting two additional barges, two additional cranes, material barges, and worked overtime, and on Saturdays and Sundays"

Claimants then go on to say:

"At the time that the State ordered acceleration of the work on November 3,1967, the Contractor was entitled to time extensions due to delay in securing

right-of-way and due to delay in receipt of drawings. If time extensions for these two delays had been granted by the State, the Contractor would not have been behind schedule and any direction by the State to accelerate the work would have been wrongful. Subsequent to November 1, 1967, the job site was *flooded* five times on the following dates:

November 1, 1967 through November 12, 1967
December 11, 1967 through January 24, 1968
January 30, 1968 through February 15, 1968
February 16, 1968 through March 1, 1968
June 25, 1968 through July 18, 1968

"After each flood duration was determined, the Contractor made timely requests for time extensions but received no prompt answer from the State either granting or denying time extensions

"The Contractor continued to pursue the work on an accelerated basis from November, 1967 through the end of the job. As a result of this. [claimants] incurred increased costs which they would not have incurred had the State not wrongfully directed the Contractor to accelerate . . .

"On April 8, 1968, the State granted the Contractor a 74 day time extension because of floods up to February 15, 1968. On May 13, 1968, the State granted Contractor a 10 day extension because of floods, and on September 23, 1968, after the job had been completed, granted another 14 day time extension because of floods. [Cl. Ex. 40B]. On October 23, 1968, the State granted Contractor a 15 day time extension because of its delay in securing the right-of-way at the beginning of the job. [Cl. Ex. 40C]

"On December 13, 1968, the State granted Contractor a 34 day time extension to the contract, extending the completion date of the contract to August 26, 1968, the actual date of completion [Cl. Ex. 40 I]. No specific reason for this time extension was given. No liquidated damages were assessed."

The crux of claimants' position is contained in the following sentences which are requoted for emphasis:

"At the time that the State ordered acceleration of the work on November 3, 1967, the Contractor was entitled to time extensions due to delay in securing right-of-way and due to delay in receipt of drawings. If time extension for these two delays had been granted by the State, the Contractor would not have been behind schedule and any direction by the State to accelerate the work would have been wrongful."

We have held that the preponderance of the evidence supports our finding that claimants were not entitled to any time extensions due to delays insecuring right-of-way, nor due to delays in receipt of drawings. This is true even though on October 23, 1968, the State saw fit to grant a 15 day extension because of its delay in securing right-of-way, and on December 13, 1968, saw fit to grant

an additional 34 day extension, for no assigned reason, extending the completion date of the contract to August 26, 1968, which was the actual completion date.

It is claimants' contention, however, that if all such requests for extensions had been granted, they could ,have finished the job on *September 30,* 1968, without acceleration; [Cl. Ex. 39 F]; that they should have been allowed to finish the job without accelerating; and that finishing the job on August 26, 1968 rather than on September **30,** 1968, cost them an additional $123,172.00. We find that this claim is without merit and should be denied.

II. Damages due to alleged material variations by the State of the original plans and specifications with respect to:

A. Design change in reinforcing steel in pier stems.

1. Substantially increasing the amount of reinforcing steel required in larger piers;

2. Detailing the increase in an unusual manner so as to prevent the prefabrication of the steel.

We find considerable merit in this portion of claimants' cause. As previously stated, this was the first time the State of Illinois had let a bridge job out for bids without having first completed final construction drawings. Claimants summarize their view of the State's changing. designs in mid-stream, so to speak, by the following statement in their brief:

The State wanted a rush job. It received a rush design job from its engineer. The design was determined to be inadequate after the contract had been entered into and after some of the piers had been designed and approved. The State now claims that the Contractor should be the one to bear the loss of increased costs. The State followed the directions of the U.S. Bureau of Public Roads, over which the Contractor had no control; accepted the suggestions of Benesch as to redesign, over which the Contractor had no control; and received the benefit of *a* better designed bridge. To the extent that the State has received a better bridge without incurring the additional cost in connection therewith, the State is unjustly enriched."

The State's unusual procedure of letting the job out for bids without having first completed final construction drawings, was reflected in the language on page **6** of the Special Provisions [Cl. **Ex. 41:**

"Plans. The drawings listed below show the span arrangements, general dimensionu, typical details, borings and various other information for bidding purposes only and will form a part of the contract. *The plans will be supplemented with final construction plans as they are completed in accordance with the Schedule of Design and Construction.* As shown in the schedule it is intended to issue the final plans for construction in several stages for various parts of the project rather than issue drawings covering the entire project at one time."

"The Contractor shall understand that the quantities on the bidding plans may be increased or decreased on the construction plans and there will be no adjustment to the unit bid prices of the contractors from the bidding plans or any additional compensation allowed for any changes as stated herein.'' [Cl. Ex. **4.** page 6]:

Further, in the proposal submitted by claimants, they subscribed to the following language:

"6. The undersigned declares that [the Contractor1 understands that the quantities mentioned are approximate only and that they are subject to increase or decrease; that he will take in full payment therefor the amount of the summation of actual quantities, as finally determined, multiplied by the unit prices shown in the schedule of prices contained herein . . .

"8. The undersigned further agrees that, if the' Engineer decides to extend or shorten the improvement or otherwise alter it by additions or deductions, including the elimination of any one **or** more of the items, he will perform the work as altered, increased, or decreased, at the contract unit prices. [Cl. Ex. **4,** Proposal]."

As pointed out by claimants in their brief, however, the right of the State to increase or decrease .quantities without incurring damages beyond the unit price is not unlimited. The Supplemental Specifications to the Standard Specifications for Road and Bridge Construction [Cl. **Ex. 31** provides:

"Section **4.** Scope of the Work.

4.3 ALTERATIONS, CANCELLATIONS, EXTENSIONS AND DEDUCTIONS. In order that the work may be completed in a satisfactory manner, the Department reserves the right to alter plans, extend or shorten the improvement, add

such incidental work as may be necessary for the satisfactory completion of the work, deduct or cancel one or more of the unit price items and increase or decrease the quantities of work to be performed to accord with such changes, *provided that the changes are not of such magnitude as to constitute a substantial or material variation in the original contract.*"

When claimants bid on the contract, they assumed from the preliminary drawings that they would be able to prefabricate the reinforcing steel. This means that they would prefabricate the steel for the pier footings, stems, pedestals, and caps into "cages" on the banks of the river; transport the prefabricated cages out to the pier by barge; lower them into the forms and pour the concrete. It seems obvious to the court that this would provide a substantial savings over employing iron workers to place and tie the bars up in the air and within the confinement of the forms. The prefabrication plan for the reinforcing steel was reflected in the unit price of **17** cents per pound in claimants' bid. [Tr. **41;** Cl. Ex. 4.1

Nothing in the bidding documents indicated that claimants would not be able to prefabricate the reinforcing steel. They had done this in the past on other jobs, and respondent's witness, Alfred Benesch, clearly indicated that it was the contractor's option to prefabricate or not to prefabricate. Benesch said:

"That is optional with the contractor how he wants to place the steel. We just show him the steel itself and we show him the number of bars. We prepare our details, but we do not tell him how to place the bars, individually or with . . . . whether he wants to make it as a cage and place it, that is his business. To what extent, we leave the contractor a free hand." [Tr. 6741

To use prefabricated cages in the larger piers it was essential that the contractor be permitted to pour the stems in stages and that he be permitted to splice the steel together at the construction joints.

Early in June, 1967, claimants contacted the Benesch Company an the subject of construction joints. Benesch wrote the following letter to claimants in reply:

"Gentlemen:

Reference is made to recent discussions between your Mr. Schlumberger and our office regarding construction joints in the piers. We have conferred with the Bureau of Bridges of the State of Illinois and have reached the following decisions:

1. On piers 1 to 5, two construction joints will be permissible between the top of the footing and the bottom of the cantilevered pier head.

2. For piers 6 to 9, only one construction joint will be permissible between top of footing and bottom of pier head.

3. No construction joints will be permitted for piers 10 to 14 between top of footing and bottom of pier head.

4. All reinforcing bars will be detailed accordingly on our drawings.

5. All construction joints including the one at the bottom of the pier head are optional. No objection will be raised if the entire pier is poured in one continuous operation." [Cl. Ex. 211

Claimants interpreted ¶4 of the above letter to mean that the drawings would show the reinforcing bars being spliced at the construction joints. [T. 65-68].

The initial drawings claimants received for piers 1 and 7 and the first "final" or approved drawings showed the construction joints and splicings exactly as claimants had anticipated. Claimants sent the drawings to the steel supplier who, in turn, proceeded to fabricate and ship the reinforcing steel. Some of the steel arrived on the job within about two weeks, and claimants started to prefabricate the cages.

Then, on August 31, 1967, the claimants received verbal notification from respondent that the August 17, 1967, drawings for pier 1 and the August 10, 1967, drawings for pier 7 were not "final" drawings, and to stop all work on those piers as far as the drawings were concerned. Thereupon, claimants notified their resteel supplier not to ship any more steel on these drawings and stopped assembly of the steel that they had already received. [T. 82-84]. As we discussed earlier in this opinion, the delay in getting final drawings did not *per se* damage the contractor. Although he had started prefab-

rication of steel and actually ended up having to tear it apart in orjer to use it, he was so far behind in his cofferdam work that he could not have installed the steel in August, 1967, even if the plans had not been changed. The prefabricated steel would have had to remain on the banks of the river while he continued to struggle with the cofferdams.

On October 2,1967, the contractor received radically revised drawings that made prefabrication impossible. This was due to the fact that in July or August, 1967, through the intervention of the Federal government, Benesch and Company abandoned the design criteria they had been using up to that point, and substituted another. This matter is fully and accurately explained by claimants in pages 9 through 14 of the "Statement of Facts" Section of their brief.

As a result of respondent's changing from the design criteria of the "American Association of Highway Officials" [AAHO] to that of the "Bureau of Public Roads Ultimate Design" [BPRUD] after the execution of the contract, the Court must decide the following question: Did this change constitute an increase in the quantity of the work to be performed "of *such magnitude* as to constitute a substantial or material variation in the *original contract*" so that contract unit price payments are no longer the proper measure of damages?

We find that determining the *magnitude* of the change is comparatively simple. The exhibits in the record show without dispute that the quantity of reinforcing steel rose from 1,200,000 pounds as originally estimated by the State in the bidding documents [Cl. Ex. 4] to 1,449,630 pounds final quantity [Resp. Ex. 11. Almost all of the increase was in the stems of piers 1 through 7 and also in the footings. For example, the

number of tie bars in pier 7 was increased by 774%. [Cl. **Ex.** 62; T. 720, 721, 724, 10311. These figures represent substantial and dramatic increases in the quantity of the work to be performed.

Yet, to answer our question affirmatively, these changes, however great the magnitude, must amount to a change in the *original contract.* But, what was the *original contract?*

If final drawings using **AAHO** design criteria had been furnished the bidders at the time the project was let for bids, the subsequent switch to BPRUD criteria and resulting in revision of the drawings would, without a doubt, have been a change in the *original contract.* Or, on the other hand, if at the time of the bidding respondent had issued final drawings using BPRUD criteria, there would have been no change in the original contract at all, and the bidders would have known from the outset that prefabrication, for example, was not possible.

The legal problem here centers about the fact that the contract was signed *without* final drawings. *So,* the question remains as to just what the *original contract* was.

A radical answer, [mentioned later in our comments on an analogous case, *Snead & Co. Iron Works* v. *Trust Co., et al.,* (1907) 225 Ill. 4431 would be that,' because of the absence of final drawings, there was no contract, or that the contract was void for want of mutuality.

A less radical answer, which we believe is sustained by the preponderance of the evidence, is that the contract was entered into on the basis of **AAHO** criteria. This is the only reasonable conclusion based on the following **4** significant aspects of the evidence in the record:

(1) The State's original estimate that 1,200,000 pounds of reinforcing steel would be required, is an estimate consistent with AAHO standards, but inconsistent with the **1,449,630** pounds finally used as a result of final drawings being prepared using BPRUD criteria.

(2) The drawings issued prior to August **31, 1967,** were consistent with AAHO specifications and with claimants' assumption that they would be able to prefabricate the steel and splice at the construction joints.

(3) The following testimony of William Hoeltje, vice president of Alfred Benesch and Company, the State's design engineer:

"We did no study to indicate where the additional 23 pounds of steel per cubic yard occurred, or where the increase occurred, but a good portion of the increase in steel was from the additional bars that were added in the footing by the Bureau of Public Roads. Another portion of it, of course, would come from the steel that was added due to the revision caused by the ambiguity in the AAHO's specifications. ***The estimate was made at the time we were still designing all piers under the AAHO specifications. Our original design was based under the AAHO's specifications. Under the AAHO specifications the vertical reinforcing steel is spliced at the construction joints as a requirement of AAHO."*** [Vol. III Abstract. T. 6241

"Under the AAHO design criteria, it is normal practice to have the vertical steel on piers of this type spliced or lapped at construction joints. The preliminary bid plans did not show any construction joints. The Contractor asked that he be able to place construction joints at various locations. We gave him permission. This was contained in Alfred Benesch's letter dated June 26, 1967, which is **Ex.** 21. ***Subsequent to June 26, 1967, because of the direction of the Bureau of Public Roads and the determination that the AAHO specifications were inadequate, Alfred Benesch and Company had to change the design in respect to the lapping of the steel at the construction joints."*** [Vol. III Abst. of T. 6251

"Insofar as we had originally contemplated the design under the AAHO specifications and rejected it as inadequate and utilized the BPRUD specifications, there was a design change." [Vol. III Abstract of T. 6261.

"The Bureau of Public Roads brought the change in the footings to the attention of Alfred Benesch and Company. We then recognized the need in our judgment not to rely on the design criteria of the AAHO specification. ***We decided to change to the BPR specification.*** The Bureau of Public Roads called our attention to the need for a design change in the footings." [Vol. III Abst. T. 6521.

(4) Finally, the admission of the State's design engineer that Benesch did not learn about the BPR Ultimate Design pamphlet until July or August of 1967. Mr. Hoeltze said:

"I first became aware of the U.S. Department **of** Commerce pamphlet 'Ultimate Design' in approximately July or August of 1967."[Vol. III Abst. T. 6541.

The Court finds that the preponderance of the evidence supports our conclusion that the switch from AAHO to BPR Ultimate Design was "a change of such magnitude as to constitute a substantial or material variation in the original contract."

The earlier decisions of this court and the reviewing courts, cited by claimants and respondent, are not decisive of the issues here presented. However, we find that ***Snead &*** Co. ***Iron Works*** v. ***Trust*** *Co.,* ***et al.,*** (1907) 225 Ill. 442, not cited by either party, presents some interesting analogies. From the Supreme Court's opinion at page **448:**

"In 1892, Marshall Field was having erected what may be termed the Wabash Avenue Annex to his retail store in Chicago, D. H. Burnham being employed as architect and superintendent. Bids were requested for the ornamental iron work and [the contractor, Snead] submitted one for $88,643, which being the lowest bid was accepted. The next lowest bid was for $135,000 . . . William **R.** Snead, general manager for the [contractor] signed the contract in duplicate, as well as a series of scale drawings which had been prepared by the architect, ***showing only in a general way the design and character of the iron work.*** It appears that there were in the architect's office, from the time the bids were called for the time the contracts were signed, certain photographs of fine ornamental iron work made in Europe and a specimen of grille work executed by Winslow Bros. Company, iron workers of Chicago. It was controverted as to whether the grille work and photographs were presented to Mr. Snead before he signed the contract. He insists that he first saw them after he had signed the contract, when the photographs were presented to him for signature and he refused to sign them . . ."

The two cases are clearly analogous. The contract for the ornamental iron work on Marshall Field's Wabash Avenue store was let without final drawings. Thereupon,

the contractor, wanting to make certain that the work to be done was going to be compatible with the assumptions he entertained when he submitted his bid and signed the contract, sent a follow-up letter to Architect Burnham [Benesch's counterpart here] to clarify certain points [exactly as claimants here contacted Benesch to get assurance that the piers would have construction joints]. As the work progressed on Marshall Field's store, Burnham's final drawings, [like Benesch's here] turned out to be not what the contractor had in mind when he signed the contract. The Supreme Court continued at page **450:**

"Shortly after the original draft of the contract had been signed by Field, [contractor] entered upon the performance of the contract and furnished the balustrades and elevator screens in accordance with full-sized detail drawings thereafter furnished him by Burnham, protesting, from time to time, however, that the character of the work was more elaborate than the contract contemplated, and that it was not covered by the contract and for that reason should be regarded as extra work. The ornamental features consisted of leaves, buds, fruits, vines and various artistic figures which were not indicated by the scale drawings, and some of which necessitated hand work by skilled iron workers."

Mr. Burnham and Marshall Field did not want to pay *anything* for the additional iron work. In the case at bar, the State has paid for the extra steel, but does not want to pay for the additional labor and equipment needed to install the steel. To that extent the fact situations with respect to the nature and amounts of damages claimed are different, but the language of the Supreme Court at page **452** is pertinent to both situations:

"It is contended by the [Field's Architect] that the scale drawings themselves are not definite and certain, and that under the contract the architect has the power to determine the true construction and meaning thereof; and further, that the architect did determine the meaning of the scale drawings and furnished the detail drawings in accordance with such determination, and that the ambiguity in the contract is thereby cured. In that view of the matter the contract was not only ambiguous, but it was blank and meant nothing so far as it was evidenced by the scale drawings. *The difficulty about this contention* is, *that with the scale drawings in the condition they were when the original draft of the contract was signed by Snead, no one could tell what was*

required, and if that was to be ascertained some months later by the architect, and he had the power to required screens and balustrades that would be of the value of $20,000 or that might exceed $50,000 in value, without any increase or decrease in the contract price for all the iron work, there was no meeting of the minds of the parties and the contract was void for that reason."

The Supreme Court did not hold to this radical outcome, however, and held that Mr. Snead's letter was part of the contract so that the ornamental work as ordered by Burnham became extra work to be paid for over and above the amount specified in the original contract.

This is tantamount to holding that the letter from Benesch and Company and the interpretation claimants placed on ¶4 thereof, is to be considered as part of the ***original*** contract, thus holding that the original contract expressly provided for construction joints and splicing at the joints.

However, it is not necessary to strain for a construction that would incorporate claimants' Exhibit **21** into the contract. Mr. Hoeltje's testimony as previously cited, the quantity of steel shown by the State in the bidding documents, and the drawings issued prior to August **31, 1967,** all show that the original contract was based on AAHO specifications, and that the shift to BPR Ultimate Design was, in fact, a material change in the ***original contract.***

B. Changing the size of the footings for the piers from two, as shown in the original plans, to give in the construction drawings.

1. Necessitating an increase in the size of the cofferdams.

2. Requiring more seal coat.

3. Causing monetary damages in the amount of **$41,793.59.**

Claimants' argument here is that the original drawings indicated that there would be only two size footings for the fourteen piers so that only two sizes of cofferdams would be needed. The final plans showed footings of various sizes, depending on the height of the pier, and claimants argue that this caused them to build larger cofferdams and use more seal coat.

Respondent, in pages 31 through 36 of its brief, demonstrates convincingly that claimants had ample clues from the preliminary drawings to know that there would be more than two sizes of footings, and that using the preliminary drawings he could have computed their approximate sizes.

In view of the length of this opinion, necessitated by a voluminous record which includes 1044 pages of transcript, abstracted by the claimants in 4 volumes, plus reams of charts, photos and exhibits, we will briefly summarize our conclusions as follows:

Right-of-way delay: The manifest weight of the evidence is that claimants were not delayed in performing the contract and suffered no damages because of the State's delay in acquiring access to the Forbeck property.

Drawings delay: Except for a short delay in connection with pier 7 [expressly waived by claimants in their brief. Statement of Facts Section, Page 251, claimants were not delayed in performing their contract, and suffered no damages because of the State's delay in furnishing revised final drawings.

Acceleration damages: As of November 1, 1967, when claimants acceded to the State's demand for acceleration, they were not entitled to time extensions for right-of-way delay or drawings delay. Because of lack of needed equipment and other problems, they were

seriously behind in their own schedule, and the State was justified in demanding acceleration. Claimants' argument that they should have been given extensions through September 30, 1968, to finish the job is without merit.

Design change: Claimants are entitled to damages for the design changes imposed by respondent, and the damage figures are discussed below.

Changing the size of the footings: At the time of preparing their bid, claimants had sufficient information to know that, because the piers were of varying heights, there would be more than two footing sizes. Any loss suffered by claimants in enlarging its cofferdams arose from their failure to calculate the size of the footings from the information available in the bidding documents.

Dewatering damage: With respect to the claim for dewatering damages, both sets of claimants' figures are *estimates.* As pointed out by respondent there is no way to make proper allowance for the portion of the dewatering expenses chargeable to claimants' own problems with respect to the cofferdams [Respondent's Brief 69-70]. Claimants' claim for dewatering damages 'must be denied.

Retainage by the State: This claim is not in dispute. Claimants are entitled to be paid the amount admittedly due when controversies are settled.

Before translating these conclusions into an award in the amount we find to be due the claimants, the court wishes to point out that claimants have been paid the entire amount agreed to in the original contract. Claimants' bid for the job was $2,342,186 and they have been paid to date $2,522,618.32 [less the retainage of

$25,214.56 which is admittedly owed to the claimants]. The additional $155,217.76, which has been paid was in accordance with the original contract, being a unit price contract under which claimants were paid 17 cents per pound for all steel used and contemplated that the quantities of materials actually used might be more or less than the original estimates. In this case it was more. While the price of 17 cents per pound included labor costs, it did not contemplate the additional labor required by the State's changes in specifications which made prefabrication **of** steel cages impossible and amounted to a substantial variation in the original contract.

Claimants compute their claim for damages incurred as a result of the change from AAHO specifications to BPR Ultimate Design by subtracting an *estimated* figure as to what the job would have cost if built according to AAHO from the *actual* cost incurred under BPR Ultimate Design.

There is no problem in connection with the *actual* cost figures. Claimants had cartons of records which they offered to introduce into evidence to support their costs, and respondent does not challenge the accuracy of these figures. Respondent states in its brief at page 65:

> "With regard to answering the claimants' brief on damages, the respondent would reply that, insofar as the records of claimants are concerned, we do not question the records as they reflect the cost of constructing the substructure. We do question the reason for these costs being so high and we challenge the claimants' efforts to attribute the high costs to any wrong doing on the part of the State . . .
>
> "For the respondent to challenge the daily records kept by the claimants would be like the claimants challenging the daily records kept by the resident engineers as reflected by the diaries submitted into evidence, which they, understandably, never challenged."

The problem with *estimated figures* is always less certain. However, as claimants point out, this Court in *Cassidy* v. *State of Illinois,* 24 C.C.R. **419,** accepted the

method of subtracting *estimated* costs from *actual* costs as proof of damages. Although recognizing the problems presented, this Court said in *Cassidy* at page 427:

> "Page 7 of Exhibit No. 3 indicates the actual hours of labor performed by each trade. Claimants then include an estimated number of hours which should have been the hours required had the job been completed on time . . . A difficulty facing this Court is the use of claimants' figures as proof of damages. The figure of 6,880 estimated hours for masonry could be entirely self serving

> "The Attorney General did not question the figure, nor offer any proofs to the contrary, and did not object to the exhibit being offered into evidence."

In the case at bar, the Attorney General did object to the admission into evidence of claimants' Exhibit 41 which embodies claimants' estimates in written form. However, in our opinion, the objection was properly overruled.

The said claimants' Exhibit 41, RAC-1 through RAC-4, "Request for Additional Compensation", had been previously submitted to the State by the claimants on December 20, 1968, as part of their continuing effort to persuade the State to recognize the contractor's claims for additional compensation. The respondent thus had ample time to study this exhibit in advance, prepare an appropriate answer, and bring in an expert witness of its own if it wishes to challenge claimants' estimated figures in the exhibit.

This said exhibit is divided into 4 parts. We are not here concerned with parts 2, 3 and 4, because they deal with the alleged damages claimed to have been sustained from changes in the cofferdam sizes; acceleration directives; drawing delays; and right-of-way delay; all of which we have previously discussed and found to be without sufficient merit to support these claims.

We are here concerned only with RAC-1, which undertakes to set forth the monetary damages resulting

from the change from AAHO to BPR Ultimate Design. We concede that the exhibit, standing alone, unsupported by competent testimony, could be purely self serving. However, for the purpose of this record, it functions only as a convenient summary of the detailed supporting testimony of Mr. Fideles Wolf, the contractor's chief engineer. Mr. Wolf's testimony supporting the figures in the exhibit, found on pages 177 through 260 of the record, stands unrefuted.

In the State's cross examination of Mr. Wolf, found on pages 337 through 477 of the record, we find that no portion of this cross examination is directed specifically to attacking, exploring, or questioning in any way Mr. Wolf's ***estimated*** figures. Nor did the State call an expert of its own to attack the estimated figures as we previously mentioned.

However, we find that claimants are in error in disregarding the actual cost of the steel in computing these damages arising from additional costs of reinforcing steel placement. On page 362 of the transcript, it appears that claimants paid $92,818.73 for the 1,449.630 pounds used. The steel, therefore, cost claimants $.064 per pound. Hence the quantity initially estimated by the State, 1,200,000 pounds, would have cost $76,800.00. Accordingly, claimants' method of computing damages must be altered by including these two figures as follows:

Estimated figures

$115,149.31	total cost w/o material
76,800.00	estimated vaterial cost
$191,949.31	total estimated cost
$204,000.00	bid price on steel

–191,949.31	estimated cost
$ 12,050.69	estimated profit

Actual figures

$219,329.57	cost w/o material
92,818.73	cost of material used
$312,148.30	total actual cost
–246,437.10	actual payment by State
$ 65,711.20	actual loss
$ 12,050.69	estimated profit
65,711.20	actual loss
$ 77,761.89	total loss from placement of additional steel

With respect to claimants' claim for **$64,025.35** additional costs of Class X concrete placement, no problem arises with respect to the cost of the concrete and the amount used, because the estimated amount and the "as built" amount are practically the same. [Resp. **Ex.** 11. The contractor's claim should be reduced, however, by the additional **$13,324.17** already paid to claimants for Class X concrete over the bid price.

In conclusion, the Court finds that the shift from **AAHO** specifications to BPR Ultimate Design was a subtantial variation in the original contract, and that claimants have proven damages arising therefrom in the following amounts:

$ 77,761.89	loss from placement of additional steel as a result of design changes.
50,701.18	additional expenses arising from placement of Class **X** concrete as a result of design change.
$128,463.07	total damages resulting to claimants from design changes.
25,214.56	retainage withheld by the State which is due the claimants
$153,677.63	total amount due the claimants.

Claimants are, therefore, hereby awarded additional payment for extra services rendered pursuant to substantial variations made by the State in the original contract, in the total sum of **$153,677.63** [One hundred fifty three thousand, Six hundred seventy-seven dollars and sixty-three cents].

(No. 6172 — Claimant awarded $45,000.00.)

JAMES STEARMAN AND NOREEN STEARMAN, Claimants, *us.* **STATE OF ILLINOIS,** Respondent.

Opinion filed June 24, 1974.

LEWIS, BLICKHAN & GARRISON, Attorney for Claimant.

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

MOTOR *VEHICLES—negligence.* The use or non-use of seat belts has no relation to the issue of liability.

DAMAGES—When mitigated. Competent evidence is admissible where it can prove mitigation of damages by use of seat belts at time of accident.

BURKS, J.

This action, sounding in tort, seeks damages for personal injuries suffered by the claimants, husband and wife, allegedly caused by the respondent's negligence in failing to warn the claimants of the suspended position of a highway drawbridge spanning the Illinois River at Florence.

This drawbridge, under the jurisdiction and control of the respondent, was constructed so that it would raise to allow river traffic to pass underneath. At both ends of the bridge there were warning lights and barricade gates to stop traffic when the bridge was suspended. The bridge and warning systems were operated by electrical power. In case of a power failure, emergency auxilliary power was available to operate both the bridge and the warning systems.

Several hours before claimants' accident occurred at 5:00 A.M. on February 22, 1971, there was a power failure in the usual source of power at the bridge, and, at the time of the accident, the bridge was being operated temporarily on its auxilliary power. This emergency arrangement required the bridge tender to turn on the warning lights and to lower the gates manually, when the bridge was being raised.

The bridge tender, respondent's employee, admits that he forgot to turn on the warning lights and lower the barricades before he proceeded to raise the bridge just prior to claimants' accident.

It was a dark rainy foggy morning when claimants approached the bridge, eastbound on U.S. Route 54, driving their 1963 model family car returning home from a vacation trip. Since there were no warning lights or barricades at the end of the bridge, claimants proceeded towards the bridge not knowing that it had been elevated

some 19 inches above the road surface. Claimants' automobile was only about four car lengths from the elevated section when the driver, Mr. Stearman, noticed the obstruction. It was then impossible to prevent the car from coming into a collision with the exposed end of the elevated bridge. As a result of the collision, both claimants were seriously injured. These facts are not in dispute.

Respondent concedes that its negligence in failing to activate the warning system before starting to raise the drawbridge was the proximate cause of claimants' accident.

Respondent suggests that claimants were contributorily negligent in failing to have their **1963** model car equipped with seat belts and in not using seat belts at the time of the accident. Respondent cites *Ill.Rev.Stat.* 1969, ***Ch.*** *95½, §12-603(b)* which states:

> "No **person shall operate any 1961 or later motor vehicle** of **the first division that is titled or licensed by the Secretary of State unless the front seat of such motor vehicle is equipped with 2 sets of seat safety belts."**

Claimants effectively answer this point by the facts that, at the time of the accident, they were residents of **233** Carroll Street, Hammond, Indiana, and were driving a **1963** Ford with Indiana registration number 4SW5986. Since their automobile was not "licensed or titled by the Secretary of State", that statute cited above does not apply to the claimants and is therefore not relevant.

Although it is clear that the claimants were under no statutory duty to have their car equipped with seat belts, we have carefully examined the questions, thoroughly presented in respondent's brief, as to whether they were under a duty to have and to use seat belts under the common law standard of ordinary care.

It appears that there have been 4 cases on this subject considered by the reviewing courts of this state:

Mount* v. *McClellan, 91 Ill.App.2d 1 (1968)
Hulsebus* v. *Russian, 118 Ill.App.2d 174 (1968)
Schomer* v. *Madigan, 120 Ill.App.2d 107 (1970)
Hale* v. *Cravens, 129 Ill.App.2d 466 (1970)

Each of these decisions have refined the rules on the issue before us concerning seat belts, and this court will follow the rule expressed in the Appellate Court's most recent announcement in the case of ***Hale* v. *Cravens*** (Supra) where the court said at page 477:

"We adhere to the view expressed in *Schomer* that neither the existence nor the use of seat belts has any relation to the issue of liability, and that an instruction as to the existence or nonexistence, use or nonuse of a seat belt would be proper with reference to damages only when the record establishes by competent evidence that the damages may have been mitigated if a seat belt had been in existence and used"

Under the above rule, respondent concedes that claimants' failure to have or to use seat belts is not contributory negligence that would excuse the state's liability, but properly insists that this fact be considered by the court on the question of mitigation of damages. Respondent's point is that claimants' injuries would probably have been less serious if, in the exercise of ordinary care, they had been using seat belts. This position finds support in the first case on the subject considered by the Appellate Court, ***Mount* v. *McClellan*** (Supra). But the court also said in ***Mount*** at page 5: "The jury may give great or small weight to it, but in gur judgment they

We are subsequently admonished in ***Hale* v. *Cravens*** (Supra), at page 477, that the non-use of seat belts may properly be considered "with reference to damages only when the record establishes by competent evidence that the damages may have been mitigated if a seat belt had been used.''

Looking to the record here for evidence to satisfy the ***Hale*** test, we find that the respondent did elicit, on cross examination of claimants' attending physician, a competent professional opinion that "it is possible, certainly," that claimants' injuries may have been less serious if they had been restrained by seat belts. Although claimants characterize this opinion of their own doctor as "mere conjecture or speculation", we believe it must be properly considered by this court, under the rule in ***Mount*** and ***Hale,*** in determining the sums to be awarded to claimants in damages.

Before turning to the questions of damages, we acknowledge a 1960 opinion of this court which claimants cite as being directly in point, ***Armour & Co.*** v. ***State,*** 24 C.C.R. 170. In that case we granted an award for claimant's total property damages in an accident on a drawbridge. As in the case at bar, the accident was caused by the bridge tender's negligent failure to give timely warning that the bridge was raising.

There were no personal injuries in the ***Armour*** case and, of course, no issue involving seat belts. We must here consider for the first time in this court the rule that claimants' failure to use seat belts may be a mitigating factor in assessing the amount of damages for the severe injuries sufferedby both claimants.

After the accident, the claimants were removed from their automobile and taken to the Illini Hospital in Pittsfield for emergency treatment. From there they were transferred to Blessing Hospital in Quincy.

Claimant, James Stearman, receiving numerous cuts and bruises and sustained steering wheel trauma to the abdomen. He also suffered a compound fracture of the left tibia lower portion and a large laceration of the

leg at the side of the fracture. He also sustained a dislocation of the right foot at the tarsometatarsal joint, with considerable displacement. These injuries required surgery, and this claimant was hospitalized for approximately three months. When James Stearman was released from the hospital, his legs were in a cast for approximately two months. **As** a result of the accident and the hospitalization, he sustained the following financial damages:

1.	Loss of wages for 24 weeks at $225.00	$ 5,400.00
2.	Blessing Hospital bill	4,348.10
3.	Doctor bill, Quincy Clinic	1,325.50
4.	Gem City Orthopedic Appliance	35.00
5.	Emergency treatment, Dr. Rodriguez	50.00
6.	Property damage	125.00
	Total damages excluding pain and suffering and permanent injury	$11,283.60

The extent of James Stearman's injuries is set forth in claimants' numerous medical exhibits, and the extent of his permanent disability was testified to by Dr. Don K. Gilchrist. Dr. Gilchrist testified that this claimant had experienced pain and suffering and would suffer additional pain in the future. Dr. Gilchrist further testified that, at the present time, there appears to be evidence of traumatic arthritis, protruded and dislocated bone in the area of the right foot. This has caused the foot to become flat, and this condition will be permanent. The doctor further stated that this condition would cause difficulty in walking and would cause Mr. Stearman discomfort and pain in the future. Mr. Stearman has now returned to his former employment as a truck driver. However, the doctor testified that the claimant was having some pain in using his foot, which is a handicap in this type **of** employment, and that this could give him additional difficulty in the future. The doctor further testified that the fractured left leg had caused this claimant pain and

suffering, would in the future continue to cause him difficulty, and that his condition was of a permanent nature.

Claimant, Noreen Stearman, was more severely and permanently injured than her husband. As a result of the accident, she sustained the following injuries: (1) Fracture, closed, commuted supracondylar area, right humerus; (2) Fracture, closed, commuted, right femur, enter and subtrochanteric area; (3) Fracture of the third, fourth, fifth, sixth, seventh, and eighth ribs; (4) Fracture of the superior and inferior pubic rami; (5) Contusion, left lung; (6) Fracture, compound, comminuted mandible and maxilla; (7) Lacerations, lip, chin, and right thigh; (8) Cerebral concussion; (9) Hypodolemic shock; (10) Osteomyelitis mandible. (11) Palsy, motor division, right ulner nerve.

As a result of these injuries, claimant, Noreen Stearman, suffered the following special damages:

1.	Blessing Hospital	$14,399.70
2.	Blessing Hospital, therapeutic care	130.00
3.	Dr. Fred E. Cory, dental services	430.00
4.	Dr. Benigno J. Rodriguez	50.00
5.	Dr. Felix M. Martin	380.00
6.	Dr. Steve Farantzos,	1,819.00
7.	Quincy Clinic	1,370.50
	Total, excluding pain and suffering and permanent disability	$18,579.20

The injuries and treatment that Noreen Stearman received are contained in the testimony of Dr. Gilchrist and Dr. Farantzos. The fact that this claimant lived apparently is a credit to the attending physicians.

As a result of her multiple injuries, Noreen Stearman sustained permanent scarring in and about her face, arm and body, She has limited use of an arm, wrist and hand. She has limited use of her hip and leg. She has one

leg shorter than the other and is forced to wear a raised shoe. Dr. Don K. Gilchrist testified that she experienced considerable pain and suffering and would be expected to suffer additional pain in the future. The doctor further testified that the condition of her arm, leg and hip are permanent, and that she has suffered permanent partial disability.

At the hearing on May 25, 1972, claimant, Noreen Stearman, testified that her jaws are wired; that she is unable to bathe herself or to dress herself; that she is unable to do her normal housework or to stand for any extended periods of time. She has fallen on different occasions and cannot get back up; she cannot iron, swim or bowl or carry on the normal functions to which she was accustomed.

The court takes notice that, on the date of claimants' accident, *§8(d) of* ***the Court*** *of Claims* ***Act*** provided that "an award for damages in a case sounding in tort shall not exceed the sum of $25,000 to or for the benefit of any claimant". In oral argument heard by the court on May 14, 1974, counsel for the claimants emphasized the fact that, if you combine the two claimants' total loss for their extensive medical services and loss of wages, it amounts to $29,862.80, which is exclusive of any damages for their pain, suffering and permanent injuries. Counsel concludes that, if there ever were two individuals entitled to the maximum award of $50,000, these claimants must be the ones.

The court cannot legally combine the special losses and permanent injuries of these 2 claimants to justify a total award in excess of the statutory limit for each claimant. We must regard the claims of Mr. and Mrs. Stearman as two separate and independent claims.

We are also under a duty to consider the failure of claimants to use seat belts as a factor that could mitigate the amount of damages.

In the first case considered by the Illinois Appellate Court, *Mount* v. *McClellan* (Supra), dealing with the question as to whether evidence of the existence or use of seat belts is admissable as a factor in determining the common-law duty of care, the court examined cases in other jurisdictions. It noted that in Delaware and Florida such evidence is not admissable. However, the court said, "It seems to us that the better reasoning favors the admissability of the evidence". Citing Indiana, South Carolina and Wisconsin as states which hold this view, the court quoted the following statements from *Bentzler* v. *Braun*, **34** Wis.2d 362 (1967):

> "There is a duty, based on the common-law standard of ordinary care, to use available seat belts independent of any statutory mandate."
>
> "It is obvious that, on the average, persons using seat belts are less likely to sustain injury and, if injured, the injuries are likely to be less serious. On the basis of this experience, and as a matter of common knowledge, an occupant of an automobile either knows or should know of the additional safety factor produced by the use of seat belts."

Admittedly, *Mount* gives the court a wide latitude of discretion when it says that the trier of facts [court or jury] may give "great or small weight to it", but they should consider the matter. In this case we could give the matter a more meaningful consideration if the evidence had been more explicit as to which of the injuries suffered by the claimants might have been avoided, or less severe, if they had been using seat belts. For example, the court has no way of knowing whether the "steering wheel trauma to the abdomen" which Mr. Stearman sustained was any more or less severe than "seat belt trauma" might have been if he had been using a seat belt.

As this record stands, the court must base its judgment on mere "possibilities" and the generally accepted view that the use of seat belts does generally tend to minimize injuries in most cases.

In the claim of Noreen Stearman, who had special damages for medical care totaling $18,579.20, we find that she also suffered permanent injuries so severe that the maximum award of $25,000 is fully justified, notwithstanding any amount that might reasonably be deducted in mitigation pursuant to the rules in ***Mount*** and ***Hale.***

In the claim of James Stearman, whose special damages for medical care and loss of wages totaled $11,283.60, we believe that the severity of his injuries would not justify a total award in excess of the statutory amount even if we were not required to assume that his injuries would have been less severe if he had been using seat belts. Giving a small amount of weight to this assumption in mitigation of his damages, as we are "entitled" to do under the rule of ***Mount,*** we believe that a total award to Mr. Stearman in the sum of $20,000 is fair and reasonable. The court hereby awards damages to the claimants as follows:

To the claimant, James Stearman, the sum of $20,000.

To the claimant, Noreen Stearman, the sum of $25,000.

(No. 74-CC-263—Claimant awarded $1,017.75.)

GOLABOWSKI-SPINNEY-COADY, ARCHITECTS, INC., Claimant, *us.*
STATE OF ILLINOIS, CAPITAL DEVELOPMENT **BOARD,**
Respondent.

Opinion filed June 26, 1974.

GOLABOWSKI-SPINNEY-COADY, ARCHITECTS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-629—Claimant awarded $356.05.)

MEMORIAL MEDICAL CENTER, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Opinion filed June 26, ***1974.***

BROWN, HAY & STEPHENS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-684—Claimant awarded $2,733.18.)

ROGER GOETTEN, Co. TRES. JERSEY Co., Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF LOCAL GOVERNMENT AFFAIRS, Respondent.

Opinion filed June 26, 1974.

ROGER **J.** GOETTEN, Co. TRES., Claimant, **pro** se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-688—Claimant awarded $13,925.00.)

NATIONAL COLLEGE OF EDUCATION, AN ILLINOIS NOT-FOR-PROFIT CORPORATION, Claimant, us. STATE OF ILLINOIS,

SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed June 26, *1974.*

PRICE, CUSHMAN, KECK, MAHIN & CATE, 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.

PER CURIAM.

(No. 74-CC-689—Claimant awarded $781.30.)

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

Opinion filed June 26, *1974*

BARNES HOSPITAL, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-701—Claimant awarded $423.50.)

CALGON CORPORATION, Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent.

Opinion filed June 26, *1974.*

CALGON CORPORATION, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-704—Claimant awarded $209.72.)

RALPH E. ANTONACCI, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF GENERAL SERVICES, Respondent.

Opinion filed June 26, *1974.*

RALPH E. ANTONACCI, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-734—Claimant awarded $73.33.)

ROBERT H. MITCHELL, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed June 26, *1974.*

ROBERT H. MITCHELL, Claimant, pro se.

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

WARRANTS—*funds escheated to State* Where funds have escheated to the State because a warrant **for** its collection was not presented within the one year limitation, the Court will enter an award for the amount due claimant.

PER CURIAM.

The record in this cause indicates that the claim is based on a valid State warrant issued by the State of Illinois to the Claimant. The record shows that the claimant failed to present the warrant for payment within one year. The statutes in the State of Illinois provide that funds held for the purpose of honoring State warrants escheat to the State of Illinois after one year from the date of the warrant. Inasmuch as the warrant was not presented within the one year limitation, the funds escheated and the Comptroller was no longer empowered to honor the warrant, and the claimant's only resource was to make claim for these funds through the Court of Claims. The verified Complaint with the attached affidavit submitted by the claimant constitutes ***prima facie*** evidence of the facts set forth in the Complaint. The letter from the Comptroller dated May 13, 1974, in no way refutes the allegations set forth in the Complaint, and the respondent has not challenged these allegations by the submission of any other evidence.

Accordingly, this Court finds that the warrant was a properly issued warrant, and the sole reason the payment was not made was the fact that the warrant was mislaid for a period in excess of one year before being presented for payment.

IT IS THEREFORE ORDERED that the claimant be awarded, in full satisfaction of any and all claims presented to the State of Illinois in the above captioned cause, the sum of SEVENTY-THREE AND 33/100 DOLLARS ($73.33).

(No. 73-CC-411—Claimant awarded $765.45.)

PUBLIC ELECTRIC CONSTRUCTION COMPANY, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF LABOR, Respondent.

Opinion filed June *27, 1974.*

LANDESMAN & SCHWARTZ, 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. 74-CC-303—Claimant awarded $850.00.)

THE MANAGEMENT GROUP, INC., Claimsnt, *us.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC AID, Respondent.

Opinion filed June *27, 1974.*

THE MANAGEMENT GROUP, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-706—Claimant awarded $341.40.)

TAZEWELL PUBLISHING Co., Claimant, *us.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed June *27, 1974.*

TAZEWELL PUBLISHING *Co.,* Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-707—Claimant awarded $46.80.)

ALLEN L. JONES, Claimant, *us.* STATE OF ILLINOIS, DEPARTMENT OF TRANSPORTATION, Respondent.

Opinion filed June 27, 1974.

ALLEN L. JONES, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-776—Claimant awarded $500.00.)

MABEL WELLS, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed June 27, 1974.

SHERWIN & SHERWIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; MARTIN A. SOLL, Assistant Attorney General, for Respondent.

MOTOR ***VEHICLES—escheat of safety responsibility deposit.*** Evidence disclosed that claimant was entitled to a refund of monies escheated to State pursuant to Chapter 95½, Section 7-503, Ill. Rev. Stat.

PERLIN, C. J

Claimant, Mabel Wells, seeks to recover from the State of Illinois the sum of $500.00, which was deposited by Arthur Wells, deceased, and husband of Claimant,

with the Office of the Secretary of State as evidence of financial responsibility in accordance with the provisions of Chap. 95½, Ill. Rev. Stat. Respondent admitted to all paragraphs of Claimant's complaint, which in part is as follows:

1. That Arthur Wells deposited with the office of the Secretary of State of the State of Illinois in accordance with Chap. 95½, Section 7-204, Ill. Rev. Stat. (1965), as amended, the sum of $500.00.

2. That on July 2, 1973, Arthur Wells was entitled to a refund of said sum (Ill. Rev. Stats. Chap. 95½, Section 7-503), and was so notified by the Office of the Secretary of State of Illinois.

3. That Mabel Wells is the widow and sole heir of Arthur Wells, deceased, said Arthur Wells having died on July 29, 1970.

4. That as a result of the failure of Claimant to file claim for refund, the funds were transferred to the General Revenue Fund on September 28, 1973.

Section 7-503 of Chap. 95½, Ill. Rev. Stat. provides that any person having a legal claim against such deposit may enforce it by appropriate proceedings in the Court of Claims subject to limitations prescribed for such court. It is the opinion of this court that Claimant has complied with this statute and is justly entitled to a refund.

An award is accordingly made by this court to Claimant, Mabel Wells, in the sum of $500.00.

(No. 74-CC-804—Claimant awarded $11.95.)

MOBIL OIL CORPORATION, Claimant, *vs.* STATE OF ILLINOIS, SUPERINTENDENT OF PUBLIC INSTRUCTION, Respondent.

Opinion filed June 27, 1974.

GIFFIN, WINNING, LINDER, NEWKIRK, COHEN, BODEWES & NARMONT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-805—Claimant awarded $7.94.)

MOBIL OIL CORPORATION, Claimant, *us.* STATE OF ILLINOIS, APPELLATE COURT, Respondent.

Opinion filed June 27, 1974.

GIFFIN, WINNING, LINDER, NEWKIRK, COHEN, BODEWES & NARMONT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-807—Claimant awarded $62.59.)

MOBIL OIL CORPORATION, Claimant, *us.* STATE OF ILLINOIS, ATTORNEY GENERAL'S OFFICE, Respondent.

Opinion filed June 27, ***1974.***

GIFFIN, WINNING, LINDER, NEWKIRK, COHEN, BODEWES & NARMOCT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 74-CC-808—Claimant awarded $7.19.)

MOBIL OIL CORPORATION, Claimant, *us.* STATE OF ILLINOIS, VETERANS' COMMISSION, Respondent.

Opinion filed June *27, 1974.*

GIFFIN, WINNING, 'LINDER, NEWKIRK, COHEN, BODEWES & NARMONT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; HOWARD W. FELDMAN, Assistant Attorney General, for Respondent.

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

PER CURIAM.

(No. 6329—Claimant awarded $195.00.)

MOORE BUSINESS FORMS, *Inc.*, Claimant, *us.* STATE OF ILLINOIS, SECRETARY OF STATE, Respondent'.

Opinion filed June *27, 1974*

MOORE BUSINESS FORMS, INC., Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, **for** Respondent.

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

PER CURIAM.

CRIME VICTIMS COMPENSATION ACT

(No. 74-VC-32—Claimant awarded $754.30.)

MICHAEL E. WEAVER, Claimant, *us.* **STATE OF ILLINOIS,** Respondent.

Opinion filed June 26, 1974

MICHAEL E. WEAVER, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **HOWARD W. FELDMAN,** Assistant Attorney General, for Respondent.

CRIME VICTIMS COMPENSATION Am—Where person is victim of violent crime as defined in the Act; has suffered pecuniary loss of $500 or more; notified and cooperated fully with law enforcement officials immediately after the crime; the victim and the assailant were not related and sharing the same household; the injury was not substantially attributable to the victims wrongful act or substantial provocation and the victim; and his claim was filed in the Court of Claims within 2 years of the date of injury, compensation is payable under the Act.

PER CURIAM.

This claim arose out of criminal aggravated battery on January 14, 1974, at Atlanta, Illinois. Michael Weaver seeks compensation pursuant to provisions of the "Crime Victims Compensation Act" (hereafter referred to as "the Act"), Ch. 70 §71 et. seq., Ill. Rev. Stat.

This Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Court; and a report by the Attorney General of the State of Illinois, which substantiates the matters set forth in the application. Based upon these documents and other evidence submitted before the Court, the Court finds as follows:

1. That the claimant was a victim of a violent crime covered under Ch. 70 §71, Ill. Rev. Stat., to wit: "Aggravated Battery $12-4, Ch. 38, Ill. Rev. Stat., 1973".

2. That said crime occurred at 9:30 p.m. on January 14, 1974, at Atlanta, Illinois, at which time claimant suffered facial fractures.

3. That said crime was reported to the Logan County Sheriffs office promptly, and claimant at all times has cooperated with law enforcement officials.

4. That the assailant has been apprehended and prosecuted in Logan County where he was sentenced to a term of one to three years in a State correctional institution.

5. Claimant is not a relative or member of the same household of the assailant.

6. The injury to claimant was not attributable either to his wrongful act or provocation on his part.

7. Claimant has suffered damages in excess of $500.00 compensible by Section 74 of the Act, to wit:

A.	Hospital and surgical expenses	$494.30
B.	Doctors expenses	260.00

8. Claimant has received no other compensation as a result of these injuries.

9. That the proof submitted in support of this claim satisfies all of the requirements of this Act, and the claim is therefore compensible thereunder.

IT IS HEREBY ORDERED that the sum of $754.30 (SEVEN HUNDRED FIFTY FOUR DOLLARS AND THIRTY CENTS) be awarded Michael Weaver as an innocent victim of a violent crime.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT

(No. **00029—Claimant awarded $10,000.00.)**

EDWARD J. MADDEN and **ELEANOR** R. **MADDEN** as parents of **EDWARD MADDEN,** Deceased, Claimant, *us.* **STATE** OF **ILLINOIS,** Respondent.

Opinion filed July 30, 1973.

EDWARD J. MADDEN and **ELEANOR** R. **MADDEN,** Claimants, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, and **VINCENT BISKUPIC,** Special Assistant Attorney, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT—Where **Attorney General's Investigation determines that claim is within the scope** of **Act claim will allowed.**

PER CURIAM.

This claim was filed pursuant to 1971 ***Ch. 48, Sec. 28 et. seq.,*** *Ill.* ***Rev. Stat.,*** "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 claimants, EDWARD J. MADDEN and ELEANOR **R.** MADDEN are the parents of the decedent and are the named beneficiaries under the Application for Benefits. That the decedent, EDWARD MADDEN, was an investigator for the Chicago Police Department, engaged in the scope of his duties on September 28, 1972, within the meaning of Section 282 of the aforecited Act. On said date, Officer Madden was called to the location of a "stake-out" at **1464** West Olive Avenue, Chicago. Officer Madden was at the top of an "L" shaped flight of stairs

with a gun in his hand. A fellow officer, Officer Shurtleff, stepped into the vestibule below and, as he could only see the legs and hands of Officer Madden, he shouted "Hold it right there!" Officer Madden turned. Officer Shurtleff saw the gun in his hand and fired one shot. Officer Madden died on October 2, 1972, from post-operative complications resulting from a gun shot wound of the face "with perforation and compression of the cervical cord, level of the 3rd or 4th cervical". 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 **EDWARD J. MADDEN** and **ELEANOR R. MADDEN,** as parents and next of kin of the decedent, **EDWARD MADDEN.**

(No. 00039—Claimant awarded $10,000.00.)

ROSE L. AHLGRIM, as wife of WARREN AHLGRIM, deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed July 30, 1973.

ROSE L. AHLGRIM, 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.

PER CURIAM.

This claim was filed pursuant to *Ch. 48, Sec. 28 et. seq., 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, ROSE L. AHLGRIM is the wife of the decedent and is the named beneficiary under the Application for Benefits. That the decedent, WARREN AHLGRIM, was a volunteer fireman with the Village of Palatine Fire Department, engaged in the scope of his duty on February 23, 1973, within the meaning of Section 282 of the aforecited act. On said date Fireman Ahlgrim was in the performance of his duties as a firefighter when he was summoned to a fire at the Ben Franklin Store, owned by John Wilson, (Court of Claims No. 00040) also a volunteer fireman with the Palatine Fire Department. A small fire had started in the basement and Firefighters Ahlgrim, Wilson and Richard H. Freeman (Court of Claims No. 00041) proceeded to the basement equipped with a hose and wearing facia! air packs. The fire mushroomed. Smoke became intense, and efforts to reach the firefighters in the basement were unsuccessful. After the smoke subsided Firefighter Ahlgrim was found unconcious. During the 20 to 25 minutes of fire fighting activity, the facial air packs were depleted and Firefighter Ahlgrim had removed his face pack in an attempt to breathe. Firefighter Ahlgrim died on February 23, 1973. The toxicologist's report showed that the "hemoglobin was saturated with 71% carbon monoxide", and the coroner's physician, P. R. Culala, indicated the cause of death as "smoke inhalation". The Court further finds that the Attorney General's office in its investiga-

tion 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 ROSE L. AHLGRIM, as wife and next of kin of the decedent, WARREN AHLGRIM.

(No. 00040—Claimant awarded $10,000.00.)

MARGARET WILSON as wife of JOHN WILSON, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed July *30, 1973.*

MARGARET WILSON, 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.

PER CURIAM.

This claim was filed pursuant to *Ch. 48, Secs. 281 et. seq., 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, MARGARET WILSON, is the wife of the decedent and is the named beneficiary under the Application for Benefits. That the decedent, JOHN WIL-

SON, was a volunteer fireman with the Village of Palatine Fire Department, engaged in the scope of his duty on February 23,1973, within the meaning of Sections 282 of the aforecited act. On said date, Fireman Wilson was in the performance of his duties as a firefighter when he was summoned to a fire at the Ben Franklin Store, owned by him. A small fire had started in the basement and Firefighters Wilson, Ahlgrim (Court of Claims No. 00039) and Richard Freeman (Court of Claims No. 00041) proceeded to the basement equipped with a hose and wearing facial air packs. The fire mushroomed, smoke became intense, and efforts to reach the firefighters in the basement were unsuccessful. When a rescue was finally made, after 20 to 25 minutes had elapsed, Firefighter Wilson was found on the basement stairway with his air pack still on his back, but with the face piece removed. While the air packs are supposedly for 30 minutes use, abnormal or active breathing would consume the air quicker, according to Chief Helms of the Palatine Fire Department. The toxicologist's report indicated that an analysis of the blood showed that the "hemoglobin was saturated with 17% carbon monoxide". Firefighter Wilson died on February 23, 1973, and the physician recited that "there are full thickness burns involving the right hand and forearm, face and forehead, left hand, left shoulder and right side of the chest and abdomen. There is some soot-soiling of head, face and extremeties. There are no marks of external violence aside from the burns." Firefighter Wilson died on February 23, 1973, and the cause of death was related as "smoke inhalation". 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 MARGARET WILSON as wife and next of kin of the decedent, JOHN WILSON.

(No. 00041—Claimant awarded $10,000.00)

GLORIA FREEMAN as wife of RICHARD FREEMAN, deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed July *30,* 1973.

GLORIA FREEMAN, 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 FIREMAN 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.

PER CURIAM.

This claim was filed pursuant to *Ch. 48, Sec. 281 et. seq., 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, GLORIA FREEMAN, is the wife of the decedent and is the named beneficiary under the Application for Benefits. That the decedent, RICHARD FREEMAN was a volunteer fireman with the Village of

Palatine Fire Department, engaged in the scope of his duty on February 23, 1973, within the meaning of Section 282 of the aforecited act. On said date, Fireman Freeman was summoned to a fire at the Ben Franklin Store in Palatine, owned by John Wilson, (Court of Claims No. 00040) also a volunteer fireman with the Palatine Fire Department. Wilson stated that there was a small fire in the basement and Firefighters Freeman, Wilson and Warren Ahlgrim (Court of Claims No. 00039) proceeded to the basement equipped with a hose line and wearing facial air packs. The fire mushroomed, the smoke became intense and efforts to reach the three firefighters in the basement were unsuccessful. After the smoke subsided Firefighter Freeman was found unconcious in the basement. 20 to 25 minutes had elapsed during the firefighting activity and active breathing had depleted the air supply in the air packs. Firefighter Freeman died on February 23, 1973, and the toxicologists report indicates that an analysis of the blood showed that the "hemoglobin was saturated with 79% carbon monoxide". The coroner's physician related that "there are full thickness burns involving the face and forehead. There is some soot-staining of the face. There are no marks of external violence or trauma." The cause of death is recited as "smoke inhalation". The Court further finds that the Attorney General's office in its investigation had 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 GLORIA FREEMAN as wife and nest of kin of the decedent RICHARD FREEMAN.

(No. 00036—Claimant awarded $10,000.00)

MARY JANE STACH, as wife of **ALFRED** E. **STACH,** deceased, Claimant, *us.* **STATE OF ILLINOIS,** Respondent.

Opinion filed August 6, 1973.

MARY JANE STACH, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; **SAUL 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.

PER CURIAM.

This claim, arising out of the death of a fireman killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Fireman Compensation Act", [hereafter, "the Act"] ***Ch. 48, §281 et. seq., Ill. Rev. Stat., 1971.***

The court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence, the court finds as follows:

1. That the claimant, MARY JANE STACH, if the wife of the decedent and is the beneficiary who was

designated by him as stated in her application for benefits.

2. That the decedent, ALFRED E. STACH, was a fireman employed by the Chicago Fire Department and engaged in the active performance of his duties, within the meaning of §2(c) of the Act, on January 6, 1973.

3. That on said date, Fireman Stach was at the scene of a fire at the Forum Cafeteria, 64 W. Madison Street in Chicago. While Fireman Stach was inside the cafeteria fighting the blaze, the building collapsed covering him with debris. Fireman Stach died on January 6, 1973, and the coroner's certificate of death recites the immediate cause of death as "smoke inhalation asphyxia and extensive burns".

4. That Fireman Stach was killed in the line of duty as defined in §2(c) of the Act.

5. That the proof submitted in support of this claim satisfies all of the requirements of the Act, and the claim is therefore compensable thereunder.

IT IS HEREBY ORDERED that the sum of $10,000 (ten thousand dollars) be awarded to MARY JANE STACH as wife and designated beneficiary of the deceased fireman, ALFRED E. STACH.

(No. 00037—Claimant awarded $10,000.00.)

SHIRLEY M. KOWALZYK, as wife of RICHARD E. KOWALZYK, deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed August 6, 1973.

SHIRLEY M. KOWALZYK, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, and VINCENT BISKUPIC, Special Assistant Attorney, 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

PER CURIAM.

This claim, arising out of the death of a fireman killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act", [hereafter, "the Act"] ***Ch. 48, Sec. 281, et. seq., Ill.Rev.Stat., 1971.***

The court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence, the court finds as follows:

1. That the claimant, SHIRLEY M. KOWALZYK, is the wife of the decedent and is the beneficiary who was designated by him as stated in her application for benefits.

2. That the decedent, RICHARD E. KOWALZYK, was a fireman employed by the Chicago Fire Department and engaged in the active performance of his duties, within the meaning of §2(c) of the Act, on January 6, 1973.

3. That on said date, Fireman Kowalzyk was at the scene of a fire at the Forum Cafeteria, 64 W. Madison Street in Chicago. While Fireman Kowalzyk was insije the cafeteria fighting the blaze, the building collapsed trapping him and other firemen in the flaming building. Fireman Kowalzyk died on January 6, 1973, and the coroner's certificate of death recites the cause of death as "smoke inhalation asphyxia".

4. That Fireman Kowalzyk was killed in the line of duty as defined in §2(c) of the Act.

5. That the proof submitted in support of this claim satisfies all of the requirements of the Act, and the claim is therefore compensable thereunder.

IT IS HEREBY ORDERED that the sum of $10,000 (ten thousand dollars) be awarded to SHIRLEY M. KOWALZYK as wife and designated beneficiary of the deceased fireman, RICHARD E. KOWALZYK.

(No. 00038—Claimant awarded $10,000.00.)

ROSEANN MORAN, as wife of TIMOTHY WILLIAM MORAN, deceased, Claimant, *us.* **STATE OF ILLINOIS,** Respondent.

Opinion filed August 6, 1973.

Roseann MORAN, Claimant, pro se.

WILLIAM J. **SCOTT,** Attorney General; SAUL R. WEXLER, Assistant Attorney General, and VINCENT BISKUPIC, Special Assistant Attorney, for Respondent.

LAW ENFORCEMENT OFFICERS **AND** FIREMEN COMPENSATION Am—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.

PER CURIAM.

This claim, arising out of the death of a fireman killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act", [hereafter, "the Act"] *Ch.* ***48, Sec. 281, et. seq., Ill.Rev.Stat., 1971.***

The court has carefully considered the application for benefits submitted on the form prescribed and fur-

nished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence, the court finds as follows:

1. That the claimant ROSEANN MORAN, is the wife of the decedent and is the beneficiary who was designated by him as stated in her application for benefits.

2. That the decedent, TIMOTHY WILLIAM MORAN, was a fireman employed by the Chicago Fire Department and engaged in the active performance of his duties, within the meaning of §2(c) of the Act, on January 6, 1973.

3. That on said date, Fireman Moran was at the scene of a fire at the Forum Cafeteria, 64 W. Madison Street in Chicago. While Fireman Moran was inside the cafeteria fighting the blaze, the building collapsed covering him with debris. Fireman Moran died on January 6, 1973, and the coroner's certificate of death recites the cause of death as "smoke inhalation (carbon monoxide asphyxia)".

4. That Fireman Moran was killed in the line of duty as defined in §2(c) of the Act.

5. That the proof submitted in support of this claim satisfies all of the requirements of the Act, and the claim is therefore compensable thereunder.

IT IS HEREBY ORDERED that the sum of $10,000 (ten thousacd dollars) be awarded to ROSEANN MORAN as wife and designated beneficiarq of the deceased fireman, TIMOTHY WILLIAM MORAN.

(No. 00024—Claimant awarded $10,000.00)

MILDRED SCANNELL as wife of JAMES R. SCANNELL, deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed August 16, 1973.

MILDRED SCANNELL, 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 Act claim will be allowed.

PER CURIAM.

This claim, arising out of the death of a policeman killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Fireman Compensation Act", [hereafter, "the Act"] *Ch. 48, Sec. 281, et. seq., Ill.Rev.Stat., 1971.*

The court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted at a hearing before the full court on July 12, 1973, the court finds as follows:

1. That the claimant, MILDRED SCANNELL, is the wife of the decedent and is the beneficiary who was designated by him as stated in her application for benefits.

2. That the decedent, JAMES R. SCANNELL, was a

policeman employed by the Chicago Police Department and engaged in the active performance of his duties, within the meaning of Sec. 2(c) of the Act, on July 2, 1972.

3. That on said date, Officer Scannell died after physically apprehending an escaping, violent prisoner, previously arrested by the officer. Officer Scannell died at the scene of the occurrence, shortly after returning the prisoner to a police department squadron. The death certificate recites the cause of death as myocardial infarction.

4. That Officer Scannell was killed in the line of duty as defined in Sec. 2(c) of the Act.

5. That the proof submitted in support of this claim satisfied all of the requirements of the Act, and the claim is therefore compensable thereunder.

IT IS HEREBY ORDERED that the sum of $10,000.00 (TEN THOUSAND DOLLARS) be awarded to MILDRED SCANNELL as wife and designated beneficiary of the deceased police officer, JAMES R. SCANNELL.

(No. 00026—Claimant awarded $10,000.00.)

RUTH Mc CLUSKEY, as wife of FRANK S. Mc CLUSKEY, deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed August 16, 1973.

RUTH Mc CLUSKEY, 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 Act claim will be allowed.

PER CURIAM.

This claim, arising out of the death of a fireman killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Fireman Compensation Act", [hereafter, "the Act"] *Ch. 48, Sec. 281, et. seq., Ill.Rev.Stat., 1971.*

The court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted at a hearing before the full court on July 12, 1973, the court finds as follows:

1. That the claimant, RUTH MCCLUSKEY, is the wife of the decedent and is the beneficiary who was designated by him as stated in her application for benefits.

2. That the decedent, FRANK S. McCluskey, was a fireman employed by the Villa Park Fire Department and engaged in the active performance of his duties, within the meaning of Sec. 2(c) of the Act, on October 10, 1970.

3. That on said date, Captain McCluskey collapsed at the scene of an extensive residential fire, while helping his men pull a fire hose line. Two hours were required to contain the blaze and prior to his collapse, Captain McCluskey entered the burning building to assist in directing the firefighting activities. Captain McCluskey was rushed from the scene of the fire to Memorial Hospital of DuPage County, where he remained until October 16, 1970, when he was transferred to Loyola Uni-

versity Hospital, Maywood, Illinois. He underwent heart surgery at Loyola University Hospital from which he never recovered. Captain McCluskey died on October 31, 1970, and the cause of death, as recited in the death certificate, was "acute myocardial infarction".

4. That Captain McCluskey was killed in the line of duty as defined in Sec. 2(c) of the Act.

5. That the proof submitted in support of this claim satisfies all of the requirements of the Act, and the claim is therefore compensable thereunder.

IT IS HEREBY ORDERED that the sum of $10,000.00 (TEN THOUSAND DOLLARS) be awarded to RUTH MCCLUSKEY as wife and designated beneficiary of the deceased fireman, FRANK S. MCCLUSKEY.

(No. 00028—Claimant awarded $10,000.00.)

FRANCES R. O'NEILL, as wife of EDWARD O'NEILL, deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed August 16, 1973.

FRANCES R. O'NEILL, Claimant, by WILLIAM GIBBONS, her attorney.

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 the claim is within the scope of Act claim will be allowed.

PER CURIAM.

This claim, arising out of the death of a policeman killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions

of the "Law Enforcement Officers and Firemen Compensation Act", [hereafter, "the Act"] *Ch. 48, Sec. 281, et. seq., Ill.Rev.Stat., 1971.*

The court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted at a hearing before the full court on July **11, 1973,** the court finds as follows:

1. That the claimant, FRANCES R. O'NEILL, is the wife of the decedent and is the beneficiary who was designated by him as stated in her application for benefits.

2. That the decedent, EDWARD O'NEILL, was a policeman employed by the Chicago Police Department and engaged in the active performance of his duties, within the meaning of Sec. 2(c) of the Act, on November 1,1972.

3. That on said date Lieutenant O'Neill was on duty in the airport terminal at Midway Airport at approximately 9:15 p.m. and was the senior commanding officer in charge of the airport traffic security for the arrival of Senator George McGovern. Lt. O'Neill's commander, Captain Edward **J.** Barry, Traffic Area **3,** received a call that George McGovern was to arrive in advance of his scheduled time. He notified Lt. O'Neill to rush to the airport and take charge of and complete the required traffic control procedures. Lt. O'Neill left Traffic Area **3** headquarters at **3900** S. California "with sirens sounding". Approximately fifteen minutes after his arrival at the terminal, Lt. O'Neill was stricken and

collapsed. Lt. O'Neill died at the airport terminal on November 1, 1972, the death certificate reciting the cause of death as "acute myocardial infarction".

4. That Lt. O'Neill died in the line of duty as defined in Sec. 2(c) of the Act.

5. That the proof submitted in support of this claim satisfied all of the requirements of the Act, and the claim is therefore compensable thereunder.

IT IS HEREBY ORDERED that the sum of $10,000.00 (TEN THOUSAND DOLLARS) be awarded to FRANCES R. O'NEILL as wife and designated beneficiary of the deceased police officer, EDWARD O'NEILL.

(No. 00016—Claim denied.)

NANCY E. WHEELER, as widow and beneficiary of **FREDERICK LELAND WHEELER,** Claimant, *vs.* **STATE OF ILLINOIS,** Respondent.

Opinion filed November 13, 1973.

NANCY E. WHEELER, Claimant, by Thomas Carmody, her attorney.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, and **VINCENT BISKUPIC,** Special Assistant Attorney, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT—Where evidence fails to show that decedent's death occurred during the active performance of duties as a police officer claim **will** be denied.

PER CURIAM.

This action is brought by NANCY E. WHEELER, as widow and designated beneficiary of FREDERICK LELAND WHEELER, deceased, pursuant to the "Law Enforcement

Officers and Firemen Compensation Act", [hereafter, "the Act"] *Ch. 48, Sec. 281, et. seq., Ill.Rev.Stat., 1971.*

Claimant filed an application for benefits, narrative report prepared by her attorney, and coroner's certificate of death. The Attorney General's office investigated the claim, pursuant to Section 4 of the Act, received investigative reports from the Illinois State Police, and Edwardsville Police Department, and recommended that the case be set for hearing. The court, sitting *en banc*, heard the case on May 8, 1973.

The relevant facts, briefly, are as follows: the decedent, was a corporal employed by the Illinois State Police. He began his duties with the Illinois State Police at 8:00 a.m. on November 15, 1971. His activities on said date included a search for a stolen vehicle in East St. Louis, Illinois, a trip to the place of a homicide in Washington Park, Illinois, a drive to Maryville, Illinois, District 11 Headquarters, and a trip to Edwardsville, Illinois. He arrived at Edwardsville, at approximately 6:25 p.m. It is here that his duties as a state policeman ended, according to the testimony elicited from Corporal Wheeler's supervisors. Thereafter, his activities were of a social, personal nature. At approximately 11:00 p.m., the application recites that his death occurred when his service pistol discharged, as it was being transferred, apparently from one hand to another in his car.

The dispositive issue for the Court's determination is whether Corporal Wheeler was on duty at the time of his death at 11:00 p.m.

The Court finds from the testimony and evidence presented that Corporal Wheeler was not on duty at the time of his death and therefore, denies the claim presented herein.

(No. 00042 — Claimant awarded $10.000.00.)

CAROL J. KLAMEN, as wife of RICHARD E. KLAMEN, deceased, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinign filed November 13, 1973

CAROL J. KLAMEN, Claimant, by ROLAND J. MC FARLAND, her attorney.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, and VINCENT BISKUPIC, Special Assistant Attorney, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT—Where Attorney General's Investigation determines that claim is within the scope of **Act** claim will allowed.

PER CURIAM.

This claim, arising out of the death of a volunteer fireman killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act", [hereafter, "the Act"] ***Ch. 48,*** *§281, Ill.Rev.Stat., 1971.*

The court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted at a hearing before the full court on October 12, 1973, the court finds as follows:

1. That the claimant, CAROL J. KLAMEN, is the wife of the decedent and is the beneficiary who was designated by him as stated in her application for benefits;

2. That the decedent, RICHARD E. KLAMEN, was a

volunteer fireman employed by the North Park Fire Department, Rockford, Illinois, and engaged in the active performance of his duties, within the meaning of Sec. 2(c) of the Act, on January 27, 1973;

3. That on said date, Fireman Klamen was en route to the fire house rasponding to a fire call at approximately 10:30 p.m. His vehicle was equipped with an interior blue, rotating light which was operating and illuminated. The weather was raining and sleeting. At the intersection of Rt. 51 and Wood Avenue a collision occurred between Klamen's vehicle and a private passenger vehicle, causing Klamen's vehicle to overturn. Fireman Klamen died of his injuries on January 30, 1973, the coroner's certificate of death reciting the immediate cause of death as "(a) massive pulmonary edema, due to (b) congestive heart failure and (c) contusion of the heart from automobile accident, with other significant findings — contusion of left lung and small laceration; traumatic laceration of the liver and spleen; fracture of the left humerus, right tibia, right fibula, left clavicle and left 6th and 7th ribs.''

4. That Fireman Klamen was killed in the line of duty as defined in Sec. 2(c) of the Act.

5. That this Court finds no evidence to indicate that Fireman Klamen's death occurred as the result of willful misconduct or intoxication.

6. That the proof submitted in support of this claim satisfies all of the requirements of the Act, and the claim is therefore compensable thereunder.

It Is HEREBY ORDERED that the sum of $10,000.00 (TEN THOUSAND DOLLARS) be awarded to CAROL J. KLAMEN as wife designated beneficiary of the deceased fireman, RICHARD E. KLAMEN.

(No. 00046—Claimant awarded $10,000.00.)

LUECELESTINE HICKS, as wife of WENDELL H. HICKS, deceased, Claimant, *us.* STATE OF ILLINOIS, Respondent.

Opinion filed November 13, 1973.

LUECELESTINE HICKS, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, and VINCENT BISKUPIC, Special Assistant Attorney, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION Am—Where Attorney General's Investigation determines that claim is within the scope of Act claim will allowed.

PER CURIAM.

This claim, arising out of the death of a policeman killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act", [hereafter, "the Act"] *Ch. 48, Sec. 281, et. seq., Ill.Rev.Stat., 1971.*

The court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted at a hearing before the full court on October 12,1973, the court finds as follows:

1. That the claimant, LUECELESTINE HICKS, is the wife of the decedent and is the beneficiary who was designated by him as stated in her application for banefits.

2. That the decedent, WENDELL H. HICKS, was a

policeman employed by the Chicago Police Department and engaged in the active performance of his duties, within the meaning of Sec. 2(c) of the Act, on May 29, 1973.

3. That on said date at approximately 12:15 a.m. Officer Hicks was off-duty and had just finished bowling in a league at the Park Manor Bowling Center, 100 E. 75th Street. Officer Hicks left the Bowling Center; returned a minute or two later and announced over the P.A. system to the bowlers that he had noticed some men standing around a car in the parking lot across the street and inquired as to whether anyone owned the car or knew the men. No one responded, and Officer Hicks again left the Center. At the time in question, a Mr. Clarence **A.** Turner, the owner of said automobile, was being robbed by two men in the parking lot. The two robbers told Mr. Turner that they intended to take his automobile. One of the robbers had a gun in his hand. Mr. Turner was being forced to start the car for the robbers when Officer Hicks yelled from across the street "Halt, I'm a police officer". One robber ran from the scene and the other robber drove off in Mr. Turner's car. Officer Hicks got into his car, parked close by; chased the stolen car and blocked it when it crashed into a fence in an alley behind the Chicago Fire Department station at 6858 S. Indiana Avenue. **A** firefighter on duty as a "watchman" in the station reported that he heard "shots", was aware of a commotion behind the fire station and saw a man running from the scene, whom he could not identify. Officer Hicks was found lying on the ground at the rear of his car and was pronounced dead on arrival at St. Bernard's Hospital. The Coroner's Certificate of Death recites the cause of death as "Bullet wound to chest and heart".

4. That Officer Hicks was killed in the line of duty as defined in Sec. 2(c) of the Act;

5. That the proof submitted in support of this claim satisfies all of the requirements of the Act, and the claim is therefore compensable thereunder.

IT IS HEREBY ORDERED that the sum of $10,000. (TEN THOUSAND DOLLARS) be awarded to LUECELESTINE HICKS as wife acd designated beneficiary of the deceased police officer, WENDELL H. HICKS.

(No. 00049 — Claimant awarded $10,000.00)

MARY LOUISE MC COY, as wife and designated beneficiary of Kenneth Mc Coy, deceased, Claimant, vs. STATE of ILLINOIS, Respondent.

Opinion filed January 8, 1974.

MARY LOUISE MC COY, Claimant, pro se.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, and VINCENT BISKUPIC, Special Assistant Attorney, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT—Where Attorney General's Investigation determines that claim is within the scope of Act claim will allowed.

PER CURIAM.

This action is brought by MARY LOUISE MC COY, as widow and designated beneficiary of KENNETH MC COY, deceased, pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," [hereafter, "the Act"] *Ch. 48, Sec. 281, et. seq., Ill.Rev.Stat., 1971.*

The court has carefully considered the application for benefits submitted on the form prescribed and fur-

nished by the Attorney General; a written statement of the decedent's supervising officer; testimony of the witnesses at the hearing held November 12, 1973, and the documents admitted in evidence at said hearing; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application as testified to at the aforesaid hearing. Based upon said testimony, documents, and other evidence, the court finds as follows:

1. That the claimant, MARY LOUISE MC COY, is the wife of the decedent and is the beneficiary who was designated by him as stated in her application for benefits.

2. That the decedent, KENNETH MC COY, was a policeman employed by the East St. Louis Police Department and engaged in the active performance of his duties, within the meaning of Section 2(c) of the Act, on June 7, 1973.

3. That on the afternoon of Thursday, June 7,1973, Detective MC COY was at his home, on vacation. He was called and requested to report for duty that evening by fellow officer William Stannis. Detective Stannis had been informed that a robbery was to be attempted that evening of one Henry Roewe, an East St. Louis tavern owner and resident. Detective Mc Coy responded, in plain clothes, with his 45 automatic weapon and a shotgun. In his ordinary assignments, Detective Mc Coy was not required to wear a uniform; the 45 automatic, while owned by him, (as in the case of most East St. Louis policemen), was the service weapon he was authorized to carry upon his assignments; and the shotgun was also owned by him. Detective Stannis also sought assistance from the Illinois State Police, District 11, Corporal DeIaney and Trooper Johnson. Informants having recited

that the robbery attempt of Mr. Roewe would be at his tavern or at his home, Detective Mc Coy and Corporal Delaney "staked out," waited, at Roewe's tavern, beginning at approximately 7:00 p.m. Detective Stannis and Trooper Johnson waited at the Roewe residence, approximately one-and-half miles away, 3032 Waverly Avenue, East St. Louis, Illinois. Radio communication between the men and sites was maintained. As the suspects approached the tavern, they were frightened away when informed by black children playing in the area that two white men were in the alley near the tavern. This was at approximately 9:00 p.m. Shortly thereafter, the informants, separated from the suspects, and contacted Detective Mc Coy, relating that an attempt would be made at the Roewe residence. There were two informants and three suspects; the informants stated that they had given an excuse to separate from the suspects, stating they were to pick up additional weapons, the suspects having, apparently, only one gun. Detective Mc Coy and Corporal Delaney traveled to the Roewe home, and the four officers took positions in and about the house. Detective Mc Coy, raised the hood of Roewe's car, in the driveway, put on a coat and hat and appeared to be working on the vehicle. At approximately 9:35 p.m., Trooper Johnson relates that the five men were observed across the street from the Roewe home. Trooper Johnson was in a darkened doorway, approximately 20 feet from Detective Mc Coy; he warned Detective Mc Coy, in a low voice, "Here they come Kenny, come inside, come inside." One of the suspects separated from the group and came towards the home, Trooper Johnson stepping back into the doorway, when he heard a warning whistle from Detective Stannis, the pre-arranged signal that the robbery was beginning. Immediately thereafter, Trooper Johnson relates that the following weapon reports and exchanges

were heard — the sound of a single .22 caliber shot, three (3) louder reports from Detective Mc Coy's 45 automatic, and a shotgun blast. In the exchange between Detective Mc Coy and the first assailant, Detective Mc Coy had moved from the front of the car toward the rear. As detective Stannis rushed to get a view and stop the assailant, he mistook Detective Mc Coy for a suspect and fired the shotgun, accidentally striking Detective Mc Coy. Detective Mc Coy had given the shotgun to Detective Stannis for his use at the scene. The first suspect was killed by the shots fired from Detective Mc Coy's 45 automatic. At the time of the tragedy, it was dark. While there was a street light in front of the Roewe home, there was darkness in the area of the Roewe driveway and car, as reported by Trooper Johnson. Detective Mc Coy was pronounced dead on arrival at St. Mary's Hospital in East St. Louis, Illinois.

4. That the above facts amply support our finding that Detective McCoy was killed in the line of duty as defined in Section 2(c) of the Act.

5. That the proof submitted in support of this claim satisfies all of the requirements of the Act, and the claim is therefore compensable thereunder.

IT IS HEREBY ORDERED that the sum of $10,000.00 (TEN THOUSAND DOLLARS) be awarded to MARY LOUISE Mc COY, as wife and designated beneficiary of the deceased police officer, KENNETH Mc COY.

(No. 00031 — Claimant awarded $10,000.00.)

CHRISTINA CARR, as wife of LORING CARR, deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 19, 1974.

SUDDES, DAVIS & WITTMAN, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, 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 Act claim will be allowed.

BURKS, J.

This claim, arising out of the death of a law enforcement officer killed in the line of duty, seeks payment of compensation to the decendent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act", [hereafter, "the Act"] ***Ch. 48, Sec. 281, et. seq., Ill.Rev.Stat., 1971.***

The court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Hearing was held on this claim before the full court in Springfield on August 6, 1973, and counsel for the claimant submitted further written evidence and a memorandum of law on September 3, 1973. Based upon these documents and other evidence, the court finds as follows:

1. That the claimant, CHRISTINA CARR, is the wife of tpe decedent and, in the absence of any designation of beneficiary by the decedent, she would be entitled to the compensation payable pursuant to §3(a) of the Act.

2. That the decedent, LORING CARR, was employed as a game warden in the Law Enforcement Division of the Department of Conservation and was engaged in the active performance of his duties, within the meaning of §2(c) of the Act, on November 17, 1972.

3. That on said date at about 8:12 a.m., Officer Loring Carr was killed in an automobile accident on Route 67 about **13** miles south of Jacksonville. He was on patrol duty, in uniform, riding in a state owned patrol car equipped with state police radio, driven by a fellow law enforcement officer, Eugene Allen. [Officer Allen died in the same accident, and his death is the subject of Claim No. 00035 in this court.] That the said state patrol car was proceeding north in the northbound lane when the southbound automobile, driven by one David H. Liebman, crossed over the center line and into the path of the State Conservation Department vehicle; that the Liebman car crossed into the lane of traffic of the State Conservation Department vehicle without warning, at high speed, and without giving Officer Allen an opportunity to avoid the head-on collision.

4. That Officer Carr was killed in the line of duty as defined in §2(c) **of** the Act.

5. That the proof submitted in support of this claim satisfies all **of** the requirements of the Act, under literal interpretation, and the claim is therefore compensable thereunder.

The court wishes to add, parenthetically, that in several cases of this type we have felt some uncertainty as to the legislature's intent by the words underlined in the following definition in the Act:

> §2(c) "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*** *accecental* ***cause."***

We are mindful of the fact that the legislature's intent cannot always be determined from a particular clause or phrase without considering the general purposes of the

Act when reading it as a whole. There are other parts of the Act, as in §2(a), which leads us to believe that *"other accidental cause"* should include only such accidents that arise from the risks inherent in, and peculiar to, the duties of law enforcement; and that it would not include a normal hazard to which other persons may be equally exposed, i.e., a highway accident caused by the negligence or wrongful act of another party.

Nevertheless, we agree with claimant's memorandum, that the legislature added no such qualifying words to the phrase, "or other accidental cause". We urge the legislature to consider the necessity of clarifying this phrase, as we have indicated, so that the true intent of the legislature may be fully carried out, as mandated in *Ch. 131 §1.01, Ill. Rev. Stat.*, 1971. Until the phrase in question is so clarified, we must administer the Act literally, as we have done in this opinion.

IT IS HEREBY ORDERED that the sum of $10,000 (ten thousand dollars) be awarded to CHRISTINA CARR as wife and beneficiary of the deceased law enforcement officer, LORING CARR.

(No. 00035—Claimant awarded $10,000.00.)

IRMA S. ALLEN, as wife of EUGENE ALLEN, deceased, Claimant, *vs.* STATE OF ILLINOIS, Respondent.

Opinion filed February 19, 1974.

SUDDES, DAVIS & WITTMAN, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, and VINCENT BISKUPIC Special Assistant Attorney, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT—Where Attorney General's Investigation determines that claim is within the scope of Act claim will allowed.

BURKS, J.

This claim, arising out of the death of a law enforcement officer killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act", [hereafter, "the Act"] *Ch. 48, Sec. 281, et. seq., Ill.Rev.Stat., 1971.*

The court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Hearing was held on this claim before the full court in Springfield on August 6, 1973, and counsel for the claimant submitted further written evidence and a memorandum of law on September 3, 1973. Based upon these documents and other evidence, the court finds as follows:

1. That the claimant, IRMA S. ALLEN, is the wife of the decedent and, in the absence of any designation of beneficiary by the decedent, she would be entitled to the compensation payable pursuant to §3(a) of the Act.

2. That the decedent, EUGENE ALLEN, was employed as a game warden in the Law Enforcement Division of the Department of Conservation and was engaged in the active performance of his duties, within the meaning of §2(c) of the Act, on November 17, 1972.

3. That on said date at about 8:12 A.M., Officer Eugene Allen was killed in an automobile accident on Route 67 about 13 miles south of Jacksonville. He was on patrol duty, in uniform, driving a state owned patrol car equipped with state police radio, with a fellow law enforcement officer, Loring Carr. [Officer Carr died in the

same accident, and his death is the subject of Claim No. 00031 in this court.] That the said state patrol car was proceeding north in the northbound lane when the southbound automobile, driven by one David H. Liebman, crossed over the center line and into the path of the State Conservation Department vehicle; that the Liebman vehicle without warning, at high speed, and without giving Officer Allen an opportunity to avoid the head-on collision.

4. That Officer Allen was killed in the line of duty as defined in §2(c) of the Act.

5. That the proof submitted in support of this claim satisfies all of the requirements of the Act, under a literal interpretation, and the claim is therefore compensable thereunder.

The court wishes to add, parenthetically, that in several cases of this type we have felt some uncertainty as to the legislature's intent by the words underlined in the following definition in the Act:

> §2(c) "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."***

We are mindful of the fact that the legislature's intent cannot always be determined from a particular clause or phrase without considering the general purposes of the Act when reading it as a whole. There are other parts of the Act, as in §2(a), which leads us to believe that ***"other accidental cause"*** should include only such accidents that arise from the risks inherent in, and peculiar to, the duties of law enforcement; and that it would not include *a* normal hazard to which other persons may be equally exposed, i.e., a highway accident caused by the negligence or wrongful act of another party.

Nevertheless, we agree with claimant's memorandum, that the legislature added no such qualifying words to the phrase, "or other accidental cause". We urge the legislature to consider the necessity of clarifying this phrase, as we have indicated, so that the true intent of the legislature may be fully carried out, as mandated in ***Ch. 131 §1.01, Ill.*** *Rev. Stat.*, 1971. Until the phrase in question is so clarified, we must administer the Act literally, as we have done in this opinion.

IT IS HEREBY ORDERED that the sum of $10,000 (ten thousand dollars) be awarded to IRMA S. ALLEN as wife and beneficiary of the deceased law enforcement officer, EUGENE ALLEN.

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74-635 People's State Bank of Newton, Admr., Etc.

4362 Gail Burklow, A Minor, Etc.

4691 Henry F. Peszat

4723 Harry S. Haynes and Ida Haynes

4748 Michael Kubala, Admr., Et Al.

4756 Ralph C. Arp

4800 Nancy Snodgrass, Et Al.

4947 Charles J. Nagy

5026 Hugh T. Cartin

5069 Stanley Pantowich and Michael Silverton

5117 Thomas M. Devaney

5123 Jack Dale Quigley, Sr., Admr., Etc.

5160 William O. Franklin and Richard E. Lowe

5192 William C. Meggs

5212 Donald Tjaden

5272 Edward Hardy

5306 Thomas Jackson, A Minor, Et Al.

5320 William *G.* Lukowski

5323 Thelma Goodman, a/k/a Nadine Goodman, As Administrator, Etc.

5325 Page Engineering Company, An Illinois Corporation, Et **AI.**

5377 Rose Kubistol, Admr., Etc.

5435 Willia Mae Williams, Administrator of the Estate of Walter Williams, Deceased, Et Al.

5444 George Roman Froehlish, Individually, Etc.

5472 Anthony J. Riffice, Administrator of the Estate of Marie Riffice, Deceased

5539 John W. Horn

5548 Lee I. Osborn

5576 Richard Longo, Individually, Etc.

5580 Eldon C. Maroon and Betty J. Maroon

5592 Town of Centerville

5662 Crouch Brothers, Inc.

5664 Creative Playthings, Inc.

5684 David Schlossberg, Et Al.

5725 Ethel Gynell Walker

5737 Sherrill *C* Eastwood

5750 American Commercial. Lines, Inc.

5889 Peggy Hiestand and Dean Hiestand

5943 Theresa L. Navigato, Et AI.

6086 Universal Marine, Inc.

6098 Andrew Kowalski

6169 Steven A. Maliszewski, Et Al.

6229 John A. Hanpton, Sr.

6304 Juliet Lindsey

6352 Ceren Heating and Plumbing Co., Et AI.

6363 American Hospital Supply, Inc

6366 Bernice E. Bock

6373 C. J. Erickson Plumbing Co.

6400 Joseph R. Williams

6402 Barichello Plumbing & Heating Co.

6408 Elva Whitehead, Admr. of the Estate of Grayland Whitehead, Deceased

6449 Gail S. Vetzner

6472 Wolfgang Rothes

6473 Noretta A. Fergelec

6514 Kostner Manor

6515 Belden Manor Annex

6593 Michael Valenti, Et Al.

6603 Xerox Corporation

6625 John Holland, M.D.

6665 Mary Burton

6671 Carla G. Kenney

6710 Bertha E. Fried Treuman

6799 Anthony Mills

6817 Robert Gordon

6834 John J. Fields

6922 Regina Williams, Et AI.

6933 Vydra Movers Company, An Illinois Corporation

6950 R. J. Caron

7049 Ronald J. Walters