

COMMONWEALTH OF KENTUCKY
Claims Commission
Agenda
January 23, 2018

Minutes Adopted

The Kentucky Claims Commission received 48 negligence claims filed against the Commonwealth during the month of December, 2017. Angela reports that as many claims as possible were set up and served on state agencies, but she hasn't been keeping track of the number of claims served since she took over intake duties. She will do so beginning with the 2018 calendar year.

Investigators Angela Robertson and Raymond Shields decided 29 claims under \$2,500.00 in December, 2017. Angela reports that 27 of these claims were denied and two (2) were awarded, for a total amount awarded of \$326.17.

At its meeting on December 19, 2017, the Kentucky Claims Commission dismissed four (4) negligence claims and awarded five (5) negligence claims totaling \$25,436.21. Together with the claims investigated in-house, the Claims Commission dismissed a total of 31 negligence claims and awarded a total of seven (7) negligence claims for a total amount awarded of **\$25,762.38** in December, 2017.

*Tony Boto spoke to KCC
re regulatory reductions.*

FOR INSTRUCTIONS FROM THE COMMISSION:

BC-2016-431

Joshua Brown v. Transportation Cabinet, Dept. of Highways

Notes: Agreed Order awarding the Claimant \$5,000.00 in settlement of this claim.

Counsel's Recommendation: Enter the Agreed Order awarding the Claimant \$5,000.00. ✓

BC-2017-149

Norine Childress v. Transportation Cabinet, Dept. of Highways

Notes: Agreed Order of Dismissal entered into by the parties.

Counsel's Recommendation: Enter the Agreed Order of Dismissal as requested by the parties. ✓

BC-2017-284

Robey Farms v. Transportation Cabinet, Dept. of Highways

Notes: Agreed Order awarding the Claimant \$2,500.00 in settlement of this claim.

Counsel's Recommendation: Enter the Agreed Order awarding the Claimant \$2,500.00. ✓

BC-2017-307

Estate of Lyle Criswell v. Kentucky Dept. of Veterans Affairs

Notes: Settlement Agreement awarding the Claimant Estate \$200,000.00 in settlement of this claim.

Counsel's Recommendation: Enter an Agreed Order awarding the Claimant Estate \$200,000.00 as agreed by the parties. ✓

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FULL COMMISSION REVIEW:

BC-2017-053

Christopher Hawkins v. Justice & Public Safety Cabinet / Dept. of Corrections

Notes: Claimant filed for clothing that was stolen when he was placed in segregation and alleges that the grievance committee was coerced into denying his grievance. The Claimant states negligence because the officer did not place his clothes in a secure location, allowing them to be stolen by other inmates. The Respondent stated the inmates that were responsible for the thefts were disciplined and ordered to pay restitution to the Claimant. The Claimant admitted to being in debt over drugs and that his placement resulted from a physical altercation. Video footage of the area did not match the Claimant's allegations. The Claimant emptied his bag of clothing and linens in the floor and claimed he took his good clothes to laundry because no one would want his state clothes. It cannot be determined by the video if the clothes left behind were "good" or "state" clothes. Inmates that stole the items were disciplined and ordered to pay restitution so the claim was dismissed. Claimant has requested a full commission review stating the same facts that were in the initial claim form and noting that he has not received the restitution.

Upheld

Counsel's Recommendation: Recommend the dismissal be upheld due to restitution being issued and to be paid by the inmates that stole the property.

BC-2017-095

Ronald Corman v. Justice & Public Safety Cabinet / Dept. of Corrections

Notes: Mr. Corman filed a claim for missing property after being placed in segregation due to a fight. The Claimant stated he was assaulted by several inmates due to his cellmate leaving the door unlocked. He was placed in segregation and his property was packed up by an officer. Upon being released from segregation, eighteen items of his property were missing. The Claimant provided receipts and grievance forms filed. Claimant stated negligence in securing his property and there should have been a better investigation performed. The Respondent's Answer stated that the Claimant signed the property log that nothing was missing once he was released from segregation. Respondent also stated the Claimant stated that his cellmate had left the door unlocked. Cameras were unable to be viewed when the theft report was filed but the wing was searched and the property was not found. Respondent also notes that no theft report was filed for the missing items. Claimant provided receipts for all missing items and his grievance reports filed regarding this matter. Negligence could not be found on the part of the Respondent and the claim was dismissed.

Counsel's Recommendation: Recommend the dismissal be upheld.

Upheld

BC-2017-190

Somer Escoto v. Transportation Cabinet / Dept. of Highways

Notes: The Claimant filed a claim regarding damage to her vehicle from a huge pothole in Lexington on Vine Street. Two tires were damaged and the vehicle needed an alignment. The Claimant stated negligence because her tax dollars pay for these roads to be fixed and there are constantly potholes on major roads. The Respondent stated that a complaint regarding this location was received via email on 4/14/2017 but the office was closed when the complaint was received. On 4/17/2017, the superintendent went to the

location to conduct an investigation. No potholes were located in the area of the incident. The Respondent stated that the road contained some rough spots which could result in a rough ride but should not have caused the damages reported by the Claimant. No complaints were received prior to this incident regarding this location. The Respondent provided photos of the rough spots which are superficial cracking of the asphalt surface across the width of Vine Street and which do not appear to possess the capability of causing the damages to the Claimant vehicle as alleged. The claim was dismissed for insufficient information. The Claimant requested a FCR but did not provide any additional information.

Upheld

Counsel's Recommendation: Recommend the Commission uphold the dismissal.

BC-2017-191

Glenn Dempsey v. Transportation Cabinet / Dept. of Highways

Notes: The Claimant filed for damage to his vehicle caused by poor road conditions on the "east /west connector" (the actual incident location is the north/south connector) in Franklin County. The Claimant stated the roadway was like a roller coaster. The Claimant stated negligence was that the roadway should have been repaired years ago. The Respondent stated the highway engineer drives the roadway often and the issue is nothing serious. Construction was to begin June 12, 2017. The Respondent stated they believe that speed may have played a role in the incident. Since the Respondent stated the area has been an issue since 2009, the claim was awarded at 50% because signage is present which gave the Claimant time to apply his brakes before coming to the area. Claimant was awarded \$186.49. Claimant has requested the full amount claimed of \$372.97.

Upheld

Counsel's Recommendation: *For discussion.*

BC-2017-325

Aren Enderle v. Tourism, Arts & Heritage Cabinet / Dept. of Parks

Notes: Claimant filed a claim for missing property against General Butler State Park. The Claimant stated that one hour after checking out he realized he left six (6) shirts in his room. He called the front desk and was transferred to housekeeping, but he never received a return call. The Claimant stated the Commonwealth is negligent because the front desk should have checked the room as soon as he called and that the room was not checked until six (6) hours after he called. The Respondent stated that housekeeping checked the room immediately and reported no shirts were located but the hangers were left behind. Housekeeping supervisor checked all of the storage areas and cleaning carts but the shirts were not found. The Respondent stated the Claimant exhibited contributory negligence by leaving the shirts behind after departing the lodge and the value of the shirts cannot be verified. The Claimant did not provide evidence that the Respondent's actions were negligent and the claim was dismissed. The Claimant does not provide and new information for his Full Commission Review.

Upheld

Counsel's Recommendation: Recommend the dismissal be upheld.

MOTIONS:

BC-2017-467

Oterra Roberts v. University of Kentucky

Notes: Respondent's Motion to Dismiss and Claimant's response and Motion to Hold in Abeyance.

Counsel's Recommendation: Overrule the Motion to Dismiss and hold the claim in abeyance pending a ruling in the Fayette Circuit Court case (17-CI-3717). ✓

RECOMMENDED ORDERS:

BC-2015-924

Tiffany Wege v. Transportation Cabinet, Dept. of Highways

Notes: Hearing Officer Tim Cocanougher's Findings of Fact, Conclusions of Law and Recommended Order denying payment of the claim.

Counsel's Recommendation: Adopt the recommendation of the hearing officer. ✓

BC-2016-254

Felicia Pennington v. Transportation Cabinet, Dept. of Highways

Notes: Hearing Officer Carson Kerr's Findings of Fact, Conclusions of Law and Recommended Order denying payment of the claim.

Counsel's Recommendation: Adopt the recommendation of the hearing officer. ✓

BC-2016-344

Jason Hehman v. Transportation Cabinet, Dept. of Highways

Notes: Hearing Officer Carson Kerr's Recommended Order of Dismissal with prejudice for the Claimant's failure to prosecute this matter.

Counsel's Recommendation: Adopt the recommendation of the hearing officer. ✓

BC-2016-364

Joseph and Linda Moore v. Transportation Cabinet, Dept. of Highways

Notes: Hearing Officer Patrick Flannery's Recommended Order holding the claim in abeyance and order the Claimants to bring this matter before the Owsley Circuit Court for a determination of whether sovereign immunity is applicable.

Counsel's Recommendation: Adopt the recommendation of the hearing officer. ✓

Total number of Claims: 14

negotiations
@ ky.gov
Mail box to file
Pleadings

(Amount is exempt, per
KRS 49.010)

otherwise stated.

KRS
13B applies, unless
- How Reg -