REPORTS

OF

Cases Argued and Determined

'IN THE

COURT of CLAIMS

OF THE

STATE OF ILLINOIS

VOLUME 37

Containing cases in which opinions were filed and orders of dismissal entered, without opinion for: Fiscal Year 1985 — July 1, 1984-June 30, 1985

SPRINGFIELD, ILLINOIS
1986

(Printed by authority of the State of Illinois)
(52977 – 300 – 7/86)

PREFACE

The opinions of the Court of Claims reported herein are published by authority of the provisions of Section 18 of the Court of Claims Act, Ill. Rev. Stat. 1985, ch. 37, par. 439.1 et seq.

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

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

OFFICERS OF THE COURT

JAMES S. MONTANA, JR.
Chicago, Illinois
Chief Justice - March 5, 1985—
Judge - November 1,1983—March 5,1985

JOHN B. ROE
Rochelle, Illinois
Judge - March 5,1985—March 26,1985
Chief Justice - April 20,1979—March 5, 1985

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

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

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

RANDY PATCHETT, Judge
Marion, Illinois
March 26, 1985—

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

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

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

REPORTED OPINIONS

FISCAL YEAR 1985

(July 1, 1984 through June 30, 1985)

(No. 6272—Claim denied.)

ELDER MACK, Claimant, *u.* **THE STATE OF ILLINOIS**, Respondent.

Opinion filed September 24,1984.

WISEMAN, SHAIKEWITZ, MCGIVERN & WAHL, P.C. (S. RUSSELL MEYER and ANDREW J. MIOFSKY, of counsel), for Claimant.

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

STATUTES AND RESOLUTIONS—*retroactive law defined.* A "retroactive law" is one which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect of transactions or considerations already passed.

Sam— vested rights defined. A vested right is something more than a mere expectation based upon an anticipated continuance of existing law; it must have become a title, legal or equitable, to the present or future enjoyment of property or to the present or future enjoyment of demand, or

a legal exemption from a demand made by another, and if, before a right becomes vested in particular individuals, the convenience of the State induces amendment or repeal of the law, the individuals have no right to complain.

PRISONERS AND INMATES—*Governor may grant pardon after conviction.* The Constitution of the State of Illinois of 1970 allows the Governor to grant reprieves, commutations, and pardons, after conviction, for all offenses on such terms as he thinks proper, and the manner of applying therefore may be regulated by law.

SAME—*Governor's decisions Concerning pardons are not subject to judicial review.* The recommendations of the Parole and Pardon Board and the decisions of the Governor concerning pardons are not subject to judicial review under the terms of the Administrative Review Act, nor are the recommendations of the Boards successor or the Governor reviewable under the terms of the Code of Civil Procedure, the legislation succeeding the Administrative Review Act.

UNJUST IMPRISONMENT—*conviction and pardon are prerequisite to claim for unjust imprisonment.* The Governor's power to pardon for an offense is expressly conditioned upon there having been a conviction for that offense, and the Court of Claim's jurisdiction to entertain a claim for unjust imprisonment is conditioned upon the Claimant having received a pardon from the Governor, and therefore a claim for unjust imprisonment cannot be considered unless there has first been a conviction and then a pardon.

SAME—unjust imprisonment claim denied—no conuiction. The Claimant's request for compensation for unjust imprisonment was denied where the evidence established that his original conviction was reversed by the appellate court, his second trial on the murder charge resulted in a hung jury and the third trial resulted in an acquittal, and he was thereafter pardoned by the Governor, since there can be no recovery for unjust imprisonment unless the Governor pardons a conviction, and in the Claimant's case, there was no conviction.

ROE, C.J.

Claimant brought this action pursuant to section 8(c) of the Court of Claims Act (Ill. Rev. Stat., ch. 37, par. 439.8(c)), hereinafter referred to as the Act, seeking compensation for time allegedly unjustly served in a State prison. On or about August 1, 1968, he was arrested and charged with murder. He was tried for the offense in Madison County, Illinois, and was convicted and incarcerated in the Madison County jail on December 3, 1968. Thereafter he was transferred to Menard Penitentiary where he remained until approximately February

26, 1970, at which time his conviction was reversed on appeal to the First District Appellate Court of Illinois. Following the reversal he was removed to the Madison County jail where he remained incarcerated until July 31, 1970, at which point he was released on a recognizance bond. He was tried a second time, but the trial ended in a hung jury. On March 3, 1971, a third trial resulted in his acquittal.

The complaint in this case was filed August 31,1971. At the time it was filed, the Court of Claims Act (Ill. Rev. Stat., ch. 37, par. 439.1 et *seq.*) provided that the Court shall have exclusive jurisdiction to hear and determine:

> **"All claims against the State for time unjustly served in prisons of the State where the persons imprisoned prove their innocence of the crime for which they were imprisoned . . . ."**

Effective October 1,1972, the Act was amended so as to read that the Court of Claims shall have exclusive jurisdiction to hear and determine:

> **"All claims against the State for time unjustly served in prisons of this State where the persons imprisoned shall receive a pardon from the Governor stating that such pardon is issued on the ground of innocence of the crime for which they were imprisoned . . . ."**

Following the change in the statute, the Court, by then Chief Justice Perlin, on its own motion, caused an order to be entered in this claim which took note of the statutory amendment and put it on general continuance status in order to allow the Claimant time,to obtain, or attempt to obtain, a pardon from the Governor on the grounds of innocence, and stated that such a pardon was not a condition precedent to compensation for time unjustly served in prison. Claimant followed the Court's directive and applied for and received a pardon on the grounds of innocence from then Governor Daniel Walker on December 20,1974.

Although Chief Justice Perlin's order would seem to have disposed of the question, the threshhold issue raised in this case is under which of the two versions of the statute should this case be decided.

Basically, it is the Claimant's position that the change in the statute was procedural in nature and therefore retroactive, that he acted in good faith in following the Court's order by securing a pardon on the grounds of innocence, that to hold otherwise would in effect be penalizing him for complying with the Court order, and that by virtue of the pardon on the grounds of innocence the **only** issue remaining is the amount of damages to which he is entitled.

Respondent takes the position that the change in the statute was substantive in nature and therefore operates prospectively only. It would have us examine the record and determine if the Claimant proved his innocence of the crime by the preponderance of the evidence. Even if we find that the case should be decided under the amended version of the statute, Respondent would seem to contend that the pardon should not be considered in this proceeding based on an argument that it was a nullity because of certain constitutional infirmities.

Counsel for both sides cited cases seemingly directly on point which support their respective positions in their briefs and sought to distinguish each other's cases in the course of oral argument. While we appreciate counsel's efforts, we have reviewed every case decided in this Court on the issue of unjust imprisonment and must conclude that the decisions are irreconcilable.

This Court has struggled with the statute since the day it became effective in its original version. The first

case decided was **Dirkans** *v.* State (1965), 25 Ill. Ct. Cl. 343, ***rehearing denied*** (1966). It took over six years to be finally resolved. It points out the problems the Court had when the statute was first enacted and set forth the rule upon which all the unjust imprisonment cases were decided up until the statutory change. We also feel that it is relevant to this case from a historical perspective on the issue of legislative intent.

During the **Dirkans** litigation the Court unanimously issued an order for a general continuance, prior to which it had been consolidated with several other pending cases of the same type. In that order, after first reciting the statute, the Court stated:

> "2. The above cases have been filed, and present diverse factual situations concerning 'proof of innocence,' and this Court is unable to determine the legislative intent insofar as 'the persons imprisoned prove their innocence of the crime for which they were imprisoned.'
>
> 3. The Court, therefore, finds that it is unable to hear and determine such cases without further clarification of the statute by an act of the Legislature.
>
> It is, therefore, ordered that all of the above cases be continued generally, without prejudice to either claimants or respondent, pending further action by the Legislature." (*Dirkans*, **supra,** at 347.)

The Court's obvious purpose was to obtain legislative clarification of the statute by amendment. A change in the law enacted at this point clearly would have been applied retroactively. However, after a year of inaction by the legislature, the Court released these hostage claims from general continuance and assigned them to commissioners to hold hearings apparently without any guidelines as to what the elements of the cause of action were.

However, in deciding ***Dirkans,*** the Court in effect made its specific recommendations for statutory change known. It pointed to the New York statute on unjust imprisonment which bears a striking resemblance to our

present version of the Act, and commented that New York's statute relieved the Court of a considerable burden. ***(Dirkans,*** supra, at 351.) The Court went on to state:

"It is the studied opinion of this Court that the Legislature of the State of Illinois in the language of . . . (the earlier version of our Act) . . . intended that a claimant 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. . . . The lawmakers of this State would not have intended to grant that recourse to narcotic addicts, murderers, kidnappers, rapists, and other felons who obtain a reversal of their convictions upon a legal or technical basis, such as insanity at the time of commission of the crime, or the running of the Statute of Limitations against said crime. We believe it was the intention of the Legislature in creating Sec. 439.8C of the Court of Claims Act to provide a method of indemnification of persons innocent of the ***'fact'*** of the crime who have been unjustly imprisoned." (Emphasis by Court.) Dirkans, ***supra,*** at 352-53.

Those observations were made after the Court issued the following rule which would be applied in all of the then-pending and future cases up to the time of the change in the law:

"The burden is upon the Claimant to prove by a preponderance of the evidence (1) that the time served in prison is 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." (Citing cases which dealt with the burden of proof in tort claims.) (Dirkans, ***supra,*** at 351.)

After reviewing the record, the Court in ***Dirkans*** found that the Claimant had failed to sustain his burden of proof.

A reading of the opinions in the cases decided during the period after ***Dirkans*** up to the time of the change in the law (and in certain cases even after the law was changed) illustrates the difficulties encountered by the Court, the Respondent, and the Claimants. The effect of the ***Dirkans*** rule was that a hearing on an unjust imprisonment case amounted to a trial ***de novo*** on the criminal charge, with the burden of proof being on the

Claimant to prove that he did not do the act for which he was charged with having committed a crime. The Court would not retry the evidence in the original criminal trial. (***Strung v. State*** (1965), 25 Ill. Ct. Cl. 231, 234.) No presumption of innocence existed in favor of the claimant, as the Court explained in ***Bender v. State*** (1967), ***26*** Ill. Ct. C1.383, ***rehearing denied*** (1968):

"Claimant's petition for rehearing alleges that the Court has failed to consider the presumption of innocence that has never been overcome in Claimant's case, as there is no lgeal conviction (Claimant had been twice convicted and secured reversals by the supreme court in both instances), and that by dismissing charges the State has conceded to the innocence rather than guilt of Claimant. This Court finds that Claimant has confused two separate forums and two separate theories of law. The original forum wherein the Claimant was tried for an alleged crime, and wherein the Claimant must have been proven guilty beyond a reasonable doubt, and the Court of Claims wherein the Claimant seeks to recover against the State under Sec. 8C of the Court of Claims Act *(sic)*. There is no legal relationship between the findings of the supreme court as to whether or not the civil rights of Claimant were violated, and the finding of the Court of Claims wherein Claimant seeks recourse under a statutory provision in a semi-judicial forum, which was created by the legislature for the purpose of hearing causes of action against the State of Illinois that are constitutionally prohibited in normal courts of law. In this latter forum, rules of evidence and procedure and elements of proof are of a special nature often dissimilar to those rules prescribed in a court of criminal jurisdiction." Bender, ***supra,*** at 388.

Numerous problems involving availability and credibility of witnesses were encountered by both sides, but especially by the Respondent. (***Beard v. State*** (1972), 27 Ill. Ct. Cl. 390.) Witnesses previously unavailable to testify at the criminal trial appeared at Court of Claims hearings. (***Dirkans, supra; Beard, supra; Nunes v. State*** (1970), 27 Ill. Ct. Cl. 250.) Due to the length of time between the criminal trial and the Court of Claims hearing (30 years in ***Conroy v. State*** (1969), 26 Ill. Ct. Cl. 303), exculpatory and accusatory witnesses had disappeared. See ***Napue v. State*** (1962), ***26*** Ill. Ct. Cl. 192, where, after having served 20 ***years*** in a penitentiary, Claimant's conviction was reversed by the United States

Supreme Court and he was unable to locate his wife who was described as "the one person who presumably could have testified as to Claimant's whereabouts at the time of the robbery . . . ." ***Napue, supra,*** at 196.

In many instances the only real evidence of the Claimant's innocence was his own uncorroborated testimony. This led to the Court's holding that the legislature did not intend for such to be a sufficient basis for compensation. ***(Dirkans, supra; Bender,*** **supra;** ***Martin v. State*** (1968), 26 Ill. Ct. Cl. 371; ***Qualls v. State*** (1968), 26 Ill. Ct. Cl. 208; ***Conroy v. State, supra; Shook v. State*** (1969), 27 Ill. Ct. C1.29.

In addition to creating the factual problems, application of the Act and the ***Dirkans*** rule apparently did not enable the Court to achieve consistent decisions on matters of law and perceived legislative intent. In ***Munroe v. State*** (1966), ***25*** Ill. Ct. Cl. 286, the Claimant had been acquitted after his second trial on the grounds that he was insane at the time he committed the act. The Court applied ***Dirkans*** and denied his claim because he was not innocent of the "fact" of the crime, *i.e.* he did the act for which he was charged with having committed a crime. Because of his insanity, however, his commission of that act did not constitute a crime. In ***Beard v. State, supra,*** the Claimant had been convicted of murder but the case was remanded by the appellate court for a new trial which took place five years later and which resulted in an order of discharge. At his hearing before the Court of Claims, the Respondent made the argument that even if he was not guilty of murder, he was still guilty of a lesser included offense. Without reviewing the facts the Court held that the statute specifically referred to the "crime for which he was imprisoned." This leads to the conclusion that a

Claimant may do an act and such act may constitute a crime, but if it was not the crime for which he was imprisoned, then he could receive compensation. The Claimant in ***Beard*** did receive an award. In ***Smith v. State,*** (1969), 26 Ill. Ct. Cl. 290, the Claimant was released from prison where he was incarcerated for a parole violation on a writ of ***habeas corpus.*** The writ had been granted because, due to a technicality, he was not legally considered to have been on parole at the time he committed the Act. In granting an award the Court stated that, "While Claimant Smith's imprisonment for parole violation was not technically an imprisonment for a 'crime,' as stated in the Court of Claims Act, it must be assumed that the word 'crime' as used in the statute encompasses any offense for which a person is illegally imprisoned." ***(Smith, supra,*** at 298.) Smith committed the act for which he had been charged with a crime, but, it was not a crime. In ***Peterson v. State*** (1973), 29 Ill. Ct. C1.398, ***rehearing denied*** (1974), the Claimant had been charged with murder by abortion, pleaded not guilty, and then pleaded guilty to involuntary manslaughter. He was released on a writ of ***habeas corpus*** after the circuit court determined that there was no such crime as murder by abortion (because the Criminal Code of 1961 had abolished it), that involuntary manslaughter therefore could not be a lesser included offense, and that, therefore, no crime had been committed. Peterson's claim was denied by an opinion written by the same judge who wrote the ***Smith*** opinion. In both cases, the Claimants committed the act for which they were charged with having committed a crime. In neither case did the act committed constitute a crime. Different conclusions were reached. The bases of the decisions in each of these four cases was the ***Dirkans*** rule that a determination be made of guilt or innocence of the

"fact" of the crime. It is possible to draw distinctions among these four cases, but they serve to illustrate the problems faced by the Court with the language of the Act and the Court's best efforts in interpreting it.

On October **1,1972,** the Act was finally amended by deleting the requirement that Claimants must prove their innocence of the crime for which they were imprisoned and substituting the requirement that a pardon on the grounds of innocence be received from the governor. A review of the cases following the change also shows very uneven and inconsistent application.

Eighteen days after the new law went into effect, the Court rendered the opinion in ***Tyler v. State*** (1972), ***28*** Ill. Ct. Cl. 90. The earlier version of the Act was applied without any discussion of the change in the Act. Three weeks later the opinion on rehearing in Duncan, ***supru,*** was issued affirming the Court's application of the earlier version without discussion of the change in the Act.

Then on August 20, 1973, two consolidated cases which were filed after the change in the law, ***McCray v. State*** (1976), **31** Ill. Ct. Cl. 423, and ***Dillard v. State*** (1976), **31** Ill. Ct. Cl. 424, were placed on general continuance by order of the Court to allow for time to obtain a pardon. The Court held that the change in the law was both retroactive and jurisdictional. Approximately two weeks later the case at bar, which was filed prior to the change in the law, was put on general continuance for the same reason. Counsel for the Respondent explained at oral argument that the same order of general continuance which was entered in the case at bar was entered in all pending cases of this type at the time. The language of the order would seem to so indicate:

"Inasmuch as the General Assembly of Illinois has changed the law under which this action was brought, an amendment which the court has found to be strictly procedural in nature and therefore retroactive in its effect, this claim and all other similar cases will be continued to allow the claimant adequate time to comply with the procedure now required by law.

Since there are numerous cases of this type now pending, and since the court's position on the legal questions involved has been extensively explained in a recent order, a copy of our comments and conclusions in . . . (*McCray* and *Dillard*) . . . is attached hereto and made a part of this order for informational purposes."

An examination of the docket indicates that at this time there were **13** such claims pending, including *Dillard*, ***McCray,*** and the case at bar. Orders of general continuance to allow time to obtain a pardon were docketed in only five of those cases. In only one instance does the record reflect that a pardon had previously been obtained, ***Harpstreith v. State*** (1975), **30** Ill. Ct. Cl. 546, and it was not issued on the grounds of innocence.

The next opinion rendered was ***Washington v.*** State (1974), **29** Ill. Ct. **Cl.** 371. This claim had been filed before the statutory change, was pending at the time of the **McCray** and ***Dillard*** order, and was not put on general continuance. The Claimant was granted an award based on the earlier version of the Act and the ***Dirkans*** rule without any discussion of the change in the law or any mention of a pardon. Approximately one month later, the Court rendered the decision on rehearing in ***Peterson, supra,*** affirming, without discussion of the change in the Act, a decision applying the earlier version of the Act entered just eight days before **McCray** and ***Dillard*** were put on general continuance.

It was not until a year later that another decision on the unjust imprisonment issue was rendered. Valentine Harpstreith had been imprisoned from April of **1929** to July of **1949,** a period of 20 years. He received a pardon

in December of 1968 based upon " 'twenty years' of service on the life sentence before parole eligibility occurred, plus the good record maintained during the nineteen years since (his) release on parole". (*Harpstreith v. State* (1975), *30* Ill. Ct. Cl. 546, 547.) He filed his claim May 15,1969.

On May 8, 1975, the Court rendered its opinion on the matter. Calling it a case of first impression, the Court held that the Act, ***as it was originally drafted***, did not operate retroactively, so as to create a cause of action based on alleged unjust imprisonment taking place prior to the Act's becoming effective on July 9, 1959. The rationale was as follows:

"A 'retroactive law' has been defined as one which 'takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect of transactions or considerations already passed.' 82 C.J.S. ***Statutes,*** Sec. 412. There is no doubt that (the earlier version of the Act) . . . created a new obligation on the part of the State to compensate individuals wrongfully convicted and incarcerated, as no such duty existed at common law. See ***Campbell v. State,*** 62 N.Y.S.2d (1946).

Section 439.8(c) is silent as to whether it is to be applied retroactively. By contrast, Art. 2, Sec. 9(3a) of the Court of Claims Act of New York grants that Court jurisdiction,

> 'To hear and determine the claim for damages against the State of any person ***heretofore or hereafter*** convicted of any felony or misdemeanor against the State and sentenced to imprisonment, who, after having served all or any part of his sentence, shall receive a pardon which is issued on the ground of innocence of the crime for which he was sentenced.' (Emphasis added.)

The Illinois statute contains no comparable language, and under general rules of statutory construction, such words are necessary if a statute is to be given retroactive application . . . .

We can find no clear direction from the Legislature in (the earlier version of the Act) . . . that the statute is to be applied retroactively, and in the absence of such express direction we are compelled to give the statute only prospective application.

One additional aspect of this issue merits attention, although it has not been raised by either party. Section 22 of the Court of Claims Act, 37 Ill.Rev.Stat., Sec. 439.8, provides in pertinent part

> 'Every claim ***cognizable by the court*** arising under subsection C of Section 8 of this Act shall be forever barred from prosecution therein unless it is filed within **2** years after the person asserting such claim is discharged from prison, or is granted a pardon by the Governor, ***.' (Emphasis added.)

Since Claimant did file this action within two years of receipt of a gubernatorial pardon, it may be contended that Section **22** authorized his cause of action.

The answer to any such contention is found, we believe, in the language of Section 22 referring to claims ***'cognizable by the court*** arising under subsection C of Section 8 of this Act.' We have concluded that Section 8(c) of the Act cannot be applied retroactively. Therefore, Claimant does not have a 'claim cognizable by the court'.'' ***Harpstreith, supra,*** at 551-52.

From that reasoning it is clear that under the earlier version of the Act, a Claimant must have been released from prison subsequent to the effective date of the Act in order to have a cause of action under the Act. Although the Court was under the impression (as noted above) that this was a case of first impression, the issue was present but not dealt with in ***Munroe, supra,*** and ***Smith, supra,*** the latter wherein an award was made.

Respondent relies heavily on certain ***dicta*** contained in ***Harpstreith*** which was not necessary to the conclusion reached. Without any reasoning the Court observed that at the time the Claimant filed his claim, the later version of the Act was not in effect and therefore the Claimant would have born the burden of establishing his innocence of the "fact" of the crime by a preponderance of the evidence. ***(Harpsreith, supra,*** at ***550.)*** However, by even deciding that the Claimant did not have a cognizable cause of action under the Act the Court applied the earlier version.

Five days after the ***Harpstreith*** opinion was filed the Court rendered the decision in ***Mostafa v. State*** (1975), **30** Ill. Ct. Cl. 567. The Claimant therein had been imprisoned from May 6, **1969,** to February **2,1972,** and filed his claim on July **31,1972** (all prior to passage of the

amended version of the Act). He obtained a pardon on the grounds of innocence in May of **1974.** The Court found as follows:

"Since the Claimant in this instance has received such a pardon, the sole obligation of the Court is to find the amount that is due the Claimant and also fix the attorney's fees that should be paid by **Claimant."** *Mostafa, supra*, **at 569.**

It is therefore clear that it was decided under the later version of the Act. Procedurally, ***Mostafa,*** is the same as the case at bar, except for the fact the docket does not reflect that it was ever continued generally to allow the Claimant time to attempt to obtain a pardon and the fact that the Respondent stipulated to the granting of an award therein.

Pirovolos v. State (1976), **31** Ill. Ct. Cl. 82, was the next decision to be rendered on an unjust imprisonment case. The Claimant was released from prison **on** June **18, 1970,** filed his claim on February **14,1972** (again all prior to the effective date of the later version of the Act), and after a general continuance was allowed to enable Claimant to try to obtain a pardon, did receive a pardon on September **21,1974.** The Court applied the amended version of the Act in granting Claimant's motion for judgment on the pleadings in making an award. Procedurally, this case is also similar to the case at bar.

McCray, supra, and ***Dillard, supra,*** were the next two unjust imprisonment cases to be decided. Although these cases were filed shortly after the Act was amended, both Claimants had been released from prison while the original version of the Act was in effect. During the aforementioned general continuance both had obtained pardons on the grounds of innocence. Joint stipulations by the parties as to facts and to the making of an award were filed, and accordingly the Court granted compensation on September 22, **1976.** In so doing the Court applied the amended version of the Act.

Seven months later the next unjust imprisonment case was decided, *Coffey v. State* (1977), 31 Ill. Ct. Cl. 350. Although the claim was filed prior to the effective date of the amended version of the Act, the Court again applied the amended version in deciding the case.

Less than two months later the opinion in *Hammond* v. *State* (1977), 31 Ill. Ct. Cl. 362, was filed. The Claimant had been released from prison on October 8, 1969, and filed his claim on August 3, 1972. There was no mention of a pardon ever having been received and the docket indicates that nothing happened in the case between October 10, 1972, and the date of the opinion. The Court applied the original version of the Act without explanation and made an award. One month later, in a case filed before the statutory change, the Court rendered the opinion in *Dixon v. State* (1977), 32 Ill. Ct. Cl. 36, and again applied the original version of the Act without explanation or mention of a pardon.

On May 12, 1978, Young *v. State*, 32 Ill. Ct. Cl. 78, was decided. The Claimant had been released from prison in the late 1960's and filed his claim sometime in 1972. Although the docket sheet indicates that it was filed on December 15, 1972, the file contains documents predating the effective date of the amended version of the Act. The case was continued generally at the same time as the case at bar to permit the Claimant to attempt to obtain a pardon. Claimant did not obtain the pardon but moved for restoration to active status arguing that a pardon was unnecessary because an appellate court had reversed his conviction. The Court found that:

> "[I]n failing to obtain a pardon on the grounds of innocence since September 5, 1972, when this cause was continued generally to permit him to do so, Claimant has failed to prosecute this action. The Court further finds that in the absence of a pardon on the grounds of innocence, it is without jurisdiction to consider this claim." (Young, *supra*, at 79, 80.)

Earlier in that case the Court stated that the amendment had made a pardon on the grounds of innocence a condition of jurisdiction.

Less than four months later, ***Miller v. State*** (1978), *32* Ill. Ct. Cl. **444,** was decided. Claimant Miller was released from prison on November **19, 1970,** and filed his claim on May **17, 1971.** Just as in ***Harpstreith, supra,*** the Court recalled the problems it faced under the older version of the Act and without providing a rationale stated:

"However, at the time Claimant instituted this action, this amendment was not in effect, and Claimant therefore bears the burden of establishing by a preponderance of the evidence, his innocence of the 'fact' of the crime for which he was imprisoned (citing *Harpstreith, supra).*" (*Miller, supra,* at 448.)

The Court applied the ***Dirkans*** rule and denied the claim. No mention was made of a pardon or a general continuance to get one. ***Miller*** too is similar to the case at bar with respect to the time periods of the release and filing date.

The cases cited above all involved situations where the Claimant was released from prison prior to the effective date of the amended version of the Act and most were filed before that time. There is no pattern nor does one case appear to overrule another. Other than the mere statement that because a certain claim was filed before the change in the law the earlier version would apply, there was no rationale given for application of one version or the other. In ***Harpstreith, supra,*** the Court did apply the original version in finding that the Act did not apply retroactively, but if the same rationale applied to the amended version, all of those cases pending on the effective date of the amended version should have been dismissed.

With this precedential background we now must

decide the first issue in the case at bar. Because the previous decisions have clearly been inconsistent in their interpretations and application of the Act, we do not feel constrained to follow a certain precedent. However, we do not think the issue should be decided from a tabula *rasa* either. We feel that the proper decision should be based upon the intent of the legislature, policy, and historical experience.

When the original version of the Act was first passed, the Court foresaw the difficulties which would be encountered in the course of litigation and attempted to hold the claims in abeyance until the language could be clarified. (See the interim order entered in ***Dirkans, supra,*** quoted above.) Any change at that time clearly would have been applied retroactively because there would have been no other purpose for the order. The three years of experience of deciding cases based on the ***Dirkans*** rule illustrated the foreseen difficulties. Also in ***Dirkans,*** the Court made known what constructive changes should be made by comparing New York's version of the statute and commenting that a great burden on the Court could be easily and effectively lifted and the legislative goals of compensation to truly innocent parties and denial of compensation to guilty persons could be furthered. Although not with the alacrity originally envisioned by the Court, the legislature did acquiesce and changed the statute in accordance with the suggestions made in ***Dirkans.***

Following the effective date of the amendment, the first occasion the Court took to rule on the legal effect of the amendment was the unpublished order by Judge Burks in ***McCray, supra,*** and ***Dillard, supra,*** which continued those claims generally. The order contains a discussion of the Court's experience with the original

version of the Act and the Court's personal knowledge of the legislative intent. The lengthy comments contained therein were expressly made for general informational purposes, future reference, and to provide guidance in similar cases.

In that order the Court held that the amendment was both retroactive and jurisdictional. Interestingly, the Claimants were contending that the amendment was substantive rather than procedural in effect, and that a retroactive application would deprive them of a vested property right. Addressing that argument the Court stated:

"After carefully analyzing the cases cited by the parties, we must conclude that the claimants had no vested property rights which were denied them by the amendment to Sec. 8(c). We believe the applicable rule is that stated by the Illinois Supreme Court in People *v. Lindheimer*, **371** Ill. **367,** 21 N.E.2d **318,** 321.

> (Vested rights) 'must be something more than a mere expectation based upon an anticipated continuance of the existing law. It must have become a title, legal or equitable, to the present or future enjoyment of demand, or a legal exemption from a demand made by another. If, before rights become vested in particular individuals, the convenience of the State induces amendment or repeal of the laws, these individuals have no cause to complain.'

In the case at bar, claimant's rights under the old Sec. 8(c) would not be 'vested until they had been adjudicated by this court."

They had not yet "proved their innocence of the crime" in the Court of Claims, as the version of the Act under which they were claiming their right to compensation had required.

The Court went on to discuss the problems it had faced with proof of innocence under the earlier version and said that it was to *remedy* those situations that the amended version was enacted. The legislature could have repealed the Act outright and made no provision whatsoever for compensating prisoners who served time unjustly. If it had done so, the effect would have been

to obliterate the cause of action completely as if it had never been passed. Instead, the Court said, the Act was amended by creating a different and, what is thought to be, a better ***procedure*** by which this Court can be satisfied as to a claimant's innocence:

"We believe the legislature felt that the Parole and Pardon Board, with its comprehensive records on every prisoner and its investigative powers, should first make a recommendation to the Governor for a pardon 'on the grounds of innocence', and the pardon be issued as a condition precedent to an action for damages in this court.

The legislature obviously felt that the Governor would issue what amounts to a 'Certificate of Innocence' if the record clearly indicates that the prisoner was in fact not guilty of any crime that could have resulted in his imprisonment."

Pursuant to article V, section 12, of the Illinois Constitution of 1970, whether or not a prisoner receives the pardon lies purely in the realm of gubernatorial discretion and such discretion is unfettered by legal technicalities and evidentiary problems.

. In addition to finding the amendment procedural, the Court also found it to be jurisdictional. Upon the effective date of the amendment, the Court felt that its jurisdiction to hear and determine only such claims based upon unjust imprisonment immediately changed and it then had jurisdiction to hear and determine only such claims as were filed in conformity with the amended version of the Act. In this regard the Court noted that it would therefore be appropriate to dismiss the claims with leave to reinstate upon compliance with the jurisdictional requirement, but it did not do so for reasons of convenience only. Rather, it put the claims on general continuance. Significantly, it also noted that a general continuance would be unnecessary to toll the statute of limitations. Compare ***Harpstreith, supra.***

We find the Court's discussion in that order of the effect of the amendment persuasive. We think that the

intent of the legislature as described therein was accurate. The Court had the benefit at that time of personal contact with the legislature and personal knowledge of what it had intended to do. From both the policy perspective and the perspective of the historical experience of the Court of Claims, application of the amended version of the Act is a more desirable and better procedure on the whole, arguments of the Respondent, to the effect that legislative confidence in the Prison and Parole Board and the Governor was misplaced, notwithstanding. We think that if we were to hold that the original of the Act applies we would be perpetuating a burdensome and problematical situation thought to have been remedied long ago. Accordingly, we hold that the case at bar should be decided under the amended version of the Act.

Having decided that the amended version of the Act applies, the next step in this case is to determine whether the person imprisoned, the Claimant, received a pardon from the Governor on the grounds of innocence of the crime for which he was imprisoned. The record is clear that on December **20,1974,** Governor Walker issued such a pardon. However, Respondent contends that under the Constitution of the State of Illinois of **1970,** the Governor exceeded his authority in granting the pardon. The Constitution provides as follows:

"The Governor may grant reprieves, commutations, and pardons, *after conviction*, for all offenses on such terms as he thinks proper. The manner of applying therefore may be regulated by law." (Emphasis added.) (Ill. Const. 1970, art. V, sec. 12.)

Respondent reasons that because of the appellate court's reversal of Claimant's conviction and his subsequent acquittal at trial, Claimant technically and legally stood convicted of nothing at the time the pardon was granted

and therefore the pardon was not granted "after conviction," nor was there anything for which Claimant could be pardoned.

This is the first instance that this precise issue has been raised in this Court, although it would seem to have been similarly present in one form or another in nearly every claim brought under the Act after it was amended. In not one of the cases ever decided in this Court since the cause of action was first created in **1959,** do the records indicate that a person was released from a State prison solely by virtue of a pardon by the Governor. In only one case, ***Harpstreith, supra,*** was a pardon granted while ***a*** conviction still stood. In that case the pardon was granted approximately **20** years following the Claimant's release from prison, and was not based upon his innocence of the crime for which he was imprisoned, but on his "twenty years of service on the life sentence before parole eligibility occurred, plus the good record maintained during the nineteen years since his release on parole." ***(Harpstreith,supra,*** at 547.) In every other case where a person had been convicted at one time and a pardon was granted, it was granted after the conviction had been removed by post-trial relief obtained through the courts, *e.g.*, convictions reversed on appeal ***(McCray, supra; Dillard, supra; McKibben v. State*** (1977), **32** Ill. Ct. Cl. **147;** ***Hurling v. State*** (1978), **32** Ill. Ct. Cl. **125.)** In one case where the Claimant had what would seem to be the ideal factual situation in his favor, new evidence in the form of a confession by another to the murder of which the Claimant was convicted, a motion for a new trial was filed. After evaluation by the State's Attorney the motion was acquiesced in, the court granted it, and the State then nolle prossed the charges. He was then granted a pardon. ***(McDonald v. State*** (1980), **33** Ill. Ct. Cl. **45.)** It is clear that issue is of

importance not only in this case but, as historically foreshadowed, future potential claims as well.

The initial question which must be answered in deciding the issue is whether or not this is the proper forum in which to raise it. It is the Claimant's position that it is not. He contends that the appropriate place for such an issue to be argued is at the hearing on the pardon and, regardless of whether or not the pardon should have been given, the fact is that it was and is now part of the record.

Claimant apparently was referring to the hearing procedure before the Parole and Pardon Board, which, at the time Claimant applied for his pardon, was empowered to make recommendations to the Governor as to whether or not a pardon should be granted, pursuant to the grant of authority contained in section **3—3—13** of the Unified Code of Corrections. (Ill. Rev. Stat., ch. **38,** par. **1003—3—13.)** This statute provided as follows:

"Sec. 3—3—13. Procedure for Executive Clemency.

(a) Petitions seeking pardon, commutation or reprieve shall be addressed to the Governor and filed with the Parole and Pardon Board. The petition shall be in writing and signed by the **person under Conviction or** by a person on his behalf. It shall contain a brief history of the case and the reasons for executive clemency.

(b) Notice of the proposed application shall be given by the Board to the committing court and the state's attorney of the county where the conviction was had.

(c) The Board shall, if requested and upon due notice, give a hearing to each application, after which it shall, without publicity advise the Governor by a written report of its **recommendations** which shall be determined by a majority vote. The Board shall meet to consider such petitions no less than **4** times each year.

(d) The **Governor** shall decide each application and communicate his decision to the petitioner and to the Board." (Emphasis added.)

As the Claimant pointed out at oral argument, several people are supposed to be given notice of the

application for the pardon and presumably would be allowed to be present and to argue at a hearing. The Attorney General is not one of those people who are to be notified. As the law currently reads, in certain instances the sheriff of the county from which the offender was sentenced and certain municipal law enforcement officials are also entitled to notice, but only after a pardon has been granted. However, in view of the Illinois Supreme Court's opinion in ***Smith v. Jenkins*** (1927), **325** Ill. **372, 156** N.E. **290,** it is at least open to question whether these notice provisions, if challenged, can pass constitutional muster. Interpreting a provision of the Constitution of **1870** granting the Governor pardon powers which is substantially similar to the present pardon provision, the Court stated:

"The only restriction which the legislature may impose upon the Governor's power refers to regulations relative to the manner of applying for reprieves, commutations and pardons, and the act on that subject does not purport to, and does not, restrict the Covernor's authority except to that extent. The giving of statements or opinions by the judge or prosecuting attorney is not made a condition precedent to the Governor'saction, and the requirement of them does not hamper his freedom in any way, for the Governor may act without such statements for any reason satisfactory to him. The publication of notice may also be dispensed with by the Governor when, in his judgment, justice or humanity requires." Smith, supra, at 291-92.

The supreme court has also examined the nature and duties of the Parole and Pardon Board. In ***Abner v. Kinney*** (1964), **30** Ill. **2d 201, 195** N.E.2d **651,** the Court said:

"The Parole and Pardon Board has two separate and distinct functions. One is to act as the Governor's agent in hearing applications for executive clemency, in which the Board has no power to grant a pardon, reprieve or commutation, but merely to submit a recommendation to the Governor, who is free to accept or reject the recommendation. The other is when it sits as an administrative body with the power to make final decisions in parole matters. The latter power has been granted it by the legislature." **(Abner** *v.* **Kinney,** supra, at **205.)**

Using the Court's analogy to agency principles, the Parole and Pardon Board, when functioning in the

former capacity mentioned above, was but an extension of its principal, the Governor, with the persons it dealt with on notice that its authority was ultimately qualified or limited. It could only make recommendations and its recommendations were in no way binding.

Moreover, there were no statutorily or judicially defined standards of persuasion for the decision-making processes of the Parole and Pardon Board. It was free to make a recommendation either way on any petition. (See Attorney General's Opinion No. **S—727,** issued March **22, 1974.)** As explained therein, the General Assembly intentionally declined to formulate substantive standards to guide the Parole and Pardon Board in the performance of its duties regarding pardons because it recognized that since the Governor is free to accept or reject the recommendations of the Board, he should be the one to formulate substantive standards for its operations insofar as pardons are concerned, and it decided that any attempt by the legislature to set substantive standards might be construed as an unconstitutional infringement upon the pardoning power granted to the Governor. By the same reasoning, recommendations by the Board and decisions by the Governor concerning pardons were not subject to judicial review under the terms of the Administrative Act, nor are recommendations made by the Board's successor agency and decisions by the Governor reviewable under the terms of Article III of the Code of Civil Procedure, the legislation succeeding the Administrative Review Act.

Although it may have been an appropriate place in which to begin, we do not think that the Parole and Pardon Board was the exclusive forum for making the argument raised in this case. To find otherwise would be

tantamount to saying that the Governor was the sole interpreter of the extent of his constitutional authority. Pardons have been challenged in other forums in this State, including the Court of Claims.

In ***Deneen v. Gilmore*** (1905), **214** Ill. **569, 73** N.E. **737,** and ***Johnson v. George*** (1900), **186** Ill. **122, 57** N.E. **804,** the supreme court held that attorneys might be disbarred because of a conviction of a crime involving moral turpitude, notwithstanding the fact that a pardon had been granted prior to the institution of the disbarment proceeding. Although the court in ***Gilmore*** also found misconduct after the pardon, the court in ***George*** found the pardon to have little or no effect on the moral character required for the practice of law. It stated:

"But the pardon could not efface the moral turpitude involved in the crime. It could not obliterate the moral stain upon his character. That remains." George, supra, at 806.

The ***George*** case arose as a result of an information being filed against the respondent therein and was before the court on a rule to show cause. ***Gilmore*** was before the court on a petition for disbarment originally filed there.

In ***People v. Rongetti*** (1946), **395** Ill. **580, 70** N.E.2d **568, *rehearing denied*** (1947), the defendant was convicted of practicing medicine without a license. One of the issues raised was whether or not he had a right to practice medicine by virtue of a pardon granted by the Governor, restoring his rights of citizenship, which had been forfeited by a prior conviction of manslaughter. The supreme court made a determination as to the effect of the pardon on his later conviction and declined to accord it the effect claimed by the defendant.

In ***Symonds v. Gualano*** (1970), **124** Ill. App. 2d 208,

260 N.E.2d 284, the issue presented was whether or not the restoration of the defendant's rights of citizenship, granted by the Governor, removed his ineligibility to hold public office created by his prior convictions for an infamous crime. The appellate court decided that the effect of the pardon was such that the ineligibility was removed. Its decision was on an appeal of an order, entered pursuant to the mandate of the appellate court, ousting the defendant from public office. The defendant had obtained a pardon after the mandate.

In ***People v. Chiappa*** (1977), 53 Ill. App. 3d 639, 368 N.E.2d 925, the defendant had been found guilty of involuntary manslaughter following a jury trial. Subsequent to this conviction, but before oral argument of the appeal of the conviction, he received a pardon from the Governor. The penultimate issue on appeal was whether the appeal had been rendered moot due to the pardon.

In ***People v. Glisson*** (1978), 69 Ill. 2d 502, 372 N.E.2d 669, the supreme court was called upon to decide the effect of a gubernatorial pardon on a petition for expungement made pursuant to section 5 of "An Act in relation to criminal identification and investigation." (Ill. Rev. Stat., ch. 38, par. 206—5.) The petitioner had been convicted, subsequently received a pardon, and sought an expungement order from the circuit court. The circuit court granted the petition, the order was affirmed on appeal, and the supreme court granted ***certiorari.*** The issue involved the language in the expungement statute cited above limiting the availability of expungement to those persons "not having previously been convicted of any criminal offense or municipal ordinance violation, (who have) been charged with a violation of a municipal ordinance or a felony or

misdemeanor, (and are) acquitted or released without being convicted." In deciding the effect of the pardon with respect to the expungement statute, the court stated that, "The petitioner, because of his conviction, is obviously beyond the statute's reach."

The litigation over the pardons involved in the cases discussed above involved the ***effect*** that was to be accorded the pardons. The authority of the Governor to grant the pardons was not challenged nor were the pardons themselves. The only reported case from the judicial system on the authority of the Governor to grant pardons in absence of an outstanding conviction which we could locate dates back **to 1846. In** ***Ex parte Birch*** (1846), **8** Ill. **134,** the Illinois Supreme Court, acting on a petition for a writ of ***habeas corpus*** stated that the Governor cannot pardon before conviction according to the Constitution of the State of Illinois as it then existed. In that case, however, the court was not sitting in review of a ***fait accompli*** of the Governor in that it was not being asked to overturn a pardon already granted, but acting on a petition of a prisoner to be released instead of being tried for an offense for which he alleged entitlement to be pardoned.

At the least, it can be concluded from those cases discussed above that the proper forum for deciding the effect to be given a pardon is any court having jurisdiction over the cause of action wherein the effect of the pardon is at issue. Clearly, then, the Court of Claims is a proper forum for the Respondent to litigate the effect to be given to a pardon in a claim for unjust imprisonment.

We turn now to the merits of the Respondent's argument. It **is** uncontested that the Claimant did receive a pardon from the Governor on the grounds of

innocence of the crime for which he was imprisoned. We think it a proper determination for this Court to make as to what effect this pardon is to have on the claim at bar. A plain reading of the Act would seem to indicate that the Claimant has demonstrated his entitlement to an award thereunder. However, we decline to accord the pardon that effect. We agree with the Respondent that the Governor was acting beyond the scope of his authority in granting a pardon under the circumstances involved here. The Governor is only authorized by the Constitution to grant a pardon after there has been a conviction, and the Claimant stood convicted of no crime at the time pardon was granted. Our position herein is consistent with that in **Coffey *v.*** State, wherein the Court stated:

> "Thus, the Governor's power to pardon for an offense is expressly conditioned upon there having been a conviction for that offense, and the jurisdiction of this Court to entertain a claim for unjust imprisonment is expressly conditioned upon a Claimant first having received a pardon. It, therefore, appears self-evident that we cannot entertain a claim for unjust imprisonment unless there has first been a conviction, and then a pardon issued in accordance with . . . the Constitution, which conditions the Governor's power to pardon upon the existence of a conviction." **Coffey *v.* State** (1977), **31** Ill. Ct. Cl. 350, 352.

In maintaining this position we are not reviewing and overturning a purely discretionary act of the Governor. Obviously, this Court cannot act in such a manner. We have not and will not consider the merits of the Governor's actions. In declining to give the Governor's pardon its purported effect vis *á* **vis** the Act, we are fulfilling the Court's role as an advisory body of the legislature.

For the reasons stated herein, it is hereby ordered that this claim be, and hereby is, denied.

(No. 75-CC-1344—Claim denied.)

HELEN PREIKSCHAT, DONNA J. PIKEY, JAMIE PIKEY, a minor, by her mother and next friend, Donna J. Pikey, and TIMOTHY PREIKSCHAT, a minor, by his father and next friend, Orton Preikschat, Claimants, *v.* THE STATE OF ILLINOIS and THE ILLINOIS DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, Respondents.

Opinion filed January 2, 1985.

HELEN PREIKSCHAT and DONNA J. PIKEY, pro *se*, for Claimants.

NEIL F. HARTIGAN, Attorney General (TERENCE E. KIWALA, Assistant Attorney General, of counsel), for Respondents.

HIGHWAYS—state's duty to maintain *highway*. The State is chargeable with a duty to maintain its roads and highways in a reasonably safe condition for the purpose for which they were intended, and in order for a Claimant to recover for injuries due to a breach of that duty, the Claimant must prove by a preponderance of the evidence that there was a breach and that the breach proximately caused the injuries sustained by the Claimant.

SAME—automobile accident—construction *site—claim* denied. The Claimants failed to prove by a preponderance of the evidence that the State breached its duty and that the breach caused the injuries sustained when the Claimants' vehicle was hit by another vehicle which allegedly went out of control at a construction site, where the highway surface was allegedly "slick and slippery with loose material" and there was no notice of the dangerous condition, since the Claimants failed to show that the highway surface proximately caused the accident, and the State produced evidence that the site was marked with all the signs and barricades required by law and that the highway was not dangerous to the public.

POCH, J.

This is a claim for personal injuries sustained by Claimants as a result of an automobile accident which occurred on August **19, 1973,** at **1-70** at mile post **15.46, 3/4** mile east of Illinois Route **159,** Collinsville, Madison County, Illinois.

Claimants allege in their complaint that at the time of the accident Respondent was engaged in construction work in the area of the accident.

Claimant, Donna J. Pikey, was operating an automobile in an easterly direction upon 1-70. Her passengers were Claimants, Helen Preikschat, Jamie Pikey, a minor, and Timothy Preikschat, a minor. At that time Herbert Buehneman was driving along the same highway in a westerly direction and Tina L. McGhee was driving in an easterly direction along the same highway.

Claimants allege that the highway, at that time and place, was under construction and that Respondent negligently maintained the highway by leaving the surface "slick and slippery with loose material, loose gravel, oil and tar and covered with holes and soft shoulders," and further, that Respondent failed to give any notice to motorists of the dangerous condition of the highway and failed to post signs reducing the speed of vehicles. As a result, Herbert Buehneman and Tina L. McGhee were caused to lose control of their vehicles and strike the automobile occupied by Claimants.

Claimants' case consisted of the testimony of Claimants Preikschat and Pikey.

Mrs. Preikschat had no direct testimony as to the allegations of negligence of the Respondent.

Mrs. Pikey testified that when she was in her car she observed gravel upon the highway as well as an "oily substance." She also testified that she observed a sign reducing the speed limit on the highway, a detour sign and barricades on the highway indicating that she was entering a detour or construction zone. She testified that her automobile was struck by both the Buehneman vehicle and the McGhee vehicle. There was no testimony on the part of any Claimant as to holes or soft shoulders on the highway and no evidence was

produced by Claimants showing or tending to show that the gravel or oily substance upon the highway proximately caused the accident.

Claimants produced no medical evidence or medical bills whatsoever, although Claimants testified about their own injuries.

Respondent produced witnesses by way of evidence depositions and former testimony as follows:

Richard Baker, an independent eyewitness who was travelling upon the highway in question, noticed no abnormal conditions on the surface of the road. He testified that the road surface was dry and that the accident was caused by Buehneman crossing over the center line at a fast rate of speed. He further testified that barrels and signs reducing speed were present.

Walter Robinson, an independent witness, also testified that the highway surface at the scene of the accident was normal and that the Buehneman car went over the center line striking Claimants' automobile at about 60 miles per hour.

Howard Tritt, safety coordinator for Hoeffken Brothers, the highway contractor on the job, testified that all of the signs, barricades and lights required by State law were erected and in place.

Hoyt Simmons, the resident highway engineer employed by the State of Illinois Highway Department, testified that he and his assistants inspected the pertinent portion of the highway daily and never observed any contractual deviations by the contractor and never observed that the highway was dangerous to the public.

The Court has consistently held that the State is chargeable with a duty to maintain its roads in a

reasonably safe condition for the purpose for which they are intended. It follows, therefore, and we have so held, that in order for Claimants to prevail in a case of this nature, they must prove by a preponderance of the evidence that the Respondent breached its duty and that said breach proximately caused the injuries complained of. We find that Claimants have failed to so prove both the breach of duty and causation.,

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

(No. 76-CC-1699—Claimant awarded $38,159.00.)

CONSOLIDATED FREIGHTWAYS, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed May 14,1985.

CRAIG & CRAIG (**RICHARD C. HAYDEN** and **MILLARD S. EVERHART**, of counsel), for Claimant.

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

HIGHWAYS—state is not insurer of all accidents that occur on a highway. Although the State is not an insurer of all accidents that occur on a highway, it does have an obligation to keep its roads in a reasonably safe condition and a duty to place signs warning of unusual conditions which motorists may encounter.

SAME—tractor trailer accident—slippery highway—State had notice—claim allowed. Three accidents involving tractor trailers owned by the Claimant occurred on the same stretch of highway, and an award was granted to the Claimant, since the evidence established that there had been numerous accidents on that stretch of highway caused by a strip of tar which became extremely slipperly when wet and the State had notice of the condition, but no warning signs were posted.

POCH, J.

This is a claim for damages arising out of three accidents involving three vehicles owned by Claimant. All of these accidents occurred approximately one mile east of Barry, Illinois, on U.S. Route 36.

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

The accidents occurred on the following dates:

On April 21, 1974, tractor trailer driven by Billy J. Platt, on October 27, 1974, tractor trailer driven by David H. Allen, and on November 3,1974, tractor trailer driven by Jack N. Dodd.

Testimony of the drivers disclosed that all accidents occurred when the drivers encountered a section of the highway which was slippery and wet in each occurrence, each driver was unable to control the truck that he was operating, and as a result each truck slid from U.S. Route 36 and crashed along an area north of said highway. The section of the highway in question had a strip of tar which, on becoming wet, became extremely slippery. There were no warning signs alerting the motoring public of said condition.

The testimony of the police officers who investigated these three accidents was that the road was wet and very slippery due to the tar on said road. One of the officers testified that there were other accidents that occurred due to the slippery condition of the road. Some time after the occurrence of these accidents, an asphalt overlay was placed over the general area because it was

deemed necessary due to the fact that the area was bad, had wheel lanes and alligator crack.

After reviewing the complete record in this case we find that although the State is not an insurer of all accidents which occur on a highway, it does have an obligation to keep its roads in a reasonably safe condition and the duty to place signs warning of unusual conditions which motorists may encounter.

Despite numerous accidents on U.S. Route 36 east of Barry, Illinois, during the same or similar weather conditions, the State failed to warn the motoring public of the dangerous condition. Therefore, due to the negligence of the State, the Claimant is entitled to an award.

Claimant is hereby awarded the sum of thirty eight thousand one hundred fifty nine ($38,159.00) dollars.

(No. 77-CC-0610—Claimant awarded $72,638.48.)

ROBERT SCHNEIDER and FLOYD HARRIS, Administrators of the Estate of Lloyd Harris, Deceased, Claimants, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed* May *17,1985.

JONES, OTTESEN, FEICKERT & DERANGO, for Claimant Floyd Harris.

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

PERSONAL INJURY—*Structural Work Act applies to State.* **The Structural Work Act applies to the State of Illinois, and when there is a wilful violation of the Act, the State may be found liable.**

SAME—scaffold collapse—Structural Work Act violation—award granted. The State was liable under the Structural Work Act for the injuries sustained when a scaffold collapsed and caused the painter of a State bridge to fall some 20 feet, and an award was granted to the painter's estate after he died of unrelated causes, reflecting the difference between what he would have made had he not been injured and the amount paid by workers' compensation, plus a sum reflecting pain and suffering.

PATCHETT, J.

This case is an action by two Claimants, Robert Schneider and Lloyd Harris' estate, for injuries sustained on April 22,1975, as a result of a fall from a scaffold. The scaffold was set up in order to allow them to paint a State-owned traffic bridge located at the U.S. Route 50 overpass of the L & N railroad tracks in St. Clair County, Illinois. This opinion applies to the case of Lloyd Harris' estate only. A separate opinion will be written for Robert Schnieder.

The facts are basically undisputed. Lloyd Harris fell some 20 feet after the scaffold he was working on collapsed. This was the result of the scaffold cables being attached to certain rollers, one of which came loose. This allowed the scaffold from which he was working to fall to the ground. The bridge was owned by the State of Illinois. Mr. Harris was working for the Gus T. Handge Company of St. Louis, Missouri. The Handge Company had a contract with the State of Illinois to paint the bridge. Mr. Larry Lipe, a resident engineer employed by the State of Illinois, inspected the bridge work on a daily basis.

Mr. Harris' injuries were severe. There was significant damage to his left tibia and ankle joint. As a result of the injury, the Claimant's decedent lost 65 actual working weeks and underwent surgery for the insertion of Steinman pins and manipulation. As of July

7, 1980, the Industrial Commission found him to have a 75% disability of the left leg.

The Structural Work Act does apply to the State of Illinois. This was settled in the case of *Hosey v.* State (1965), 25 Ill. Ct. Cl. 144. Further, from the facts presented, it is clear that there was a wilful violation of the Structural Work Act, as that term is used under that Act in this case. Therefore, we find that liability by the Respondent exists.

In this case Lloyd Harris died on July 21, 1980, through unrelated causes. Parties hereto have stipulated that in the event of a finding of liability, his estate would have stipulated that the only additional elements of damage would be the pain and suffering of the Claimant's decedent and the difference in wage loss between money paid to him by workers' compensation and what he would have made had he worked. All other claim for damages has been waived by the estate.

It is clear that the compensation awarded to Mr. Harris under the Workers' Compensation Act totals $30,647.72, which consists of medical expenses in the amount of $5,860.42, lost time of $9,787.30, and disability of $15,000.00. We hereby award that amount plus wage differential of $16,990.70. This sum reflects the difference between what Mr. Harris would have made had he not been injured, assuming a 40-hour week, and the amount paid to him by workers' compensation. In addition, we award the sum of $25,000.00 to reflect his pain and suffering during the five years from the date of the accident until his death.

Therefore, we find that liability exists on behalf of the Respondent. It is hereby ordered that the estate of Lloyd Harris be and hereby is awarded the sum of $72,638.48.

(No. 77-CC-1300—Claimant awarded $68,320.00.)

I & D PHARMACY, INC., Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed July *2,1984.*

Order on motion for reconsideration filed October 4,1984.

Order on motion seeking interest filed March 18,1985.

LISCO & FIELD, for Claimant.

NEIL F. HARTIGAN, Attorney General (PAUL M. SENGPIEHL and ROBERT J. SKLAMBERG, Assistant Attorneys General, of counsel), for Respondent.

FRAUD—*Claimant's fraud bars claim.* There is no dispute that fraud perpetrated by a Claimant will bar a claim, and the State has the burden of proving such an affirmative defense by clear and convincing evidence.

CONTRACTS—*contract for filling medical prescriptions for public aid recipients—award granted.* A retail pharmacy participating in the program to fill medical prescriptions for public aid recipients was granted an award for the prescriptions filled during the period of time the pharmacy was appealing a decision that it had been making misrepresentations about the quantity of its services, since the State failed to prove the affirmative defense of fraud by clear and convincing evidence, even though it had ample time to verify the claimed misrepresentations.

INTEREST—When interest is recoverable against the State. Interest is recoverable against the State only if it is specifically provided in a statute, and interest statutes are to be strictly construed, since they are in derogation of the common law.

SAME—*sections 2—1303 and 5—118 of Code of Civil Procedure do* **not** *apply to State.* Sections 2—1303 and 5—118 of the Illinois Code of Civil Procedure, allowing the award of interest and costs under certain conditions, do not apply to the State of Illinois, since these sections do not specifically and clearly name the State of Illinois (Ill. Rev. Stat., ch. 110, pars. 2—1303, 5—118).

POCH, J.

The Claimant and Respondent had entered into a contractual agreement many years prior to 1976 wherein the Claimant, a retail pharmacy, was to participate in the medical assistance program and fill medical prescriptions for public aid recipients. This contractual relationship went on for many years, and in early 1976

the Respondent, through the Illinois Department of Public Aid, undertook an investigation into certain claimed irregularities. After a hearing the Department of Public Aid, acting at the order of its director, affirmed the decision of the hearing officer that Claimant had been making misrepresentations about the quantity of its services and had been submitting altered prescription forms for payment by the Respondent. The director then terminated the Claimant's contract with the State.

The Claimant appealed this action, and the Claimant and the Department of Public Aid entered into a settlement agreement which included termination of the contract. While the appeal was pending the Claimant filled **10,725** prescriptions for public aid recipients for which Claimant alleges that it is owed **$68,320.00** for such services.

The Respondent asserts that the Claimant is not entitled to payment for services after the original termination of the contract and that the Claimant's acts constituted a fraud upon the State which bars the claim.

The Respondent's initial defense is that the services rendered after the contract was terminated by the director on February **26, 1976,** are not entitled to payment. The director took such action without referral of the claimed fraud to the Attorney General for prosecution. Section **12—16** of the Illinois Public Aid Code (Ill. Rev. Stat. **1975,** ch. 23, par. **12—16)** provides that the Attorney General shall have the right to initiate court action against a vendor. While the director has the authority to promulgate rules governing the quality and quantity of medical services rendered by vendors (Ill. Rev. Stat. **1975,** ch. 23, par. **12—13),** there is no statutory authority for the director to act as he did in the instant case in terminating Claimant's rights under the contract.

The Supreme Court of Illinois has had occasion to review the statutory duties and rights at issue. In ***Bio-Medical Laboratories, Inc. v. Trainor*** (1977), 68 Ill. 2d 540, 370 N.E.2d 223, the court found that the director of the Department of Public Aid did not have authority to suspend a vendor's right to continued participation in the medicaid program. We find this authority to be persuasive and controlling. The Claimant's contract was terminated by the director. While this decision was being appealed, the Claimant continued to fill prescriptions for public aid recipients, which totaled 10,725 during the time the appeal was pending. We therefore find that the director's action was improper and that the Claimant could continue to fill prescriptions until the date it voluntarily terminated its participation in the medical assistance program.

The Respondent additionally interposes the defense that the Claimant's alleged fraudulent acts relieve the State from any duty to pay Claimant any amounts for prescriptions filled. The Claimant offered into evidence its 10,725 prescriptions to justify its claim. The Respondent produced two witnesses to attempt to prove the Claimant presented fraudulent and altered prescriptions. The evidence is clear that there was no actual proof of fraud. The State never attempted to verify the correctness of the amount of medication prescribed or whether the recipients ever received the medication prescribed. None of the physicians who issued the prescriptions were interviewed or called by the State as witnesses.

While there is no dispute that fraud perpetrated by a Claimant will bar a claim (Ill. Rev. Stat. 1979, ch. 37, par. 439.14)' the Respondent had the burden of proving such an affirmative defense. Where the State alleges that

a claim is barred by the Claimant's fraud, such defense must be proved by clear and convincing evidence. *Altmer v. Zamora* (1981), 94 Ill. App. 3d 651,418 N.E.2d *506; Turzynski v. Libert* (1970), 122 Ill. App. 2d 352,359, 259 N.E.2d 295.

The Respondent's reliance on ***Bethune Plaza, Inc. v. Department of Public Aid*** (1980), 90 Ill. App. 3d 1133, 414 N.E.2d 183, is misplaced. That decision does not change the standard of proof of fraud by clear and convicing evidence in order to constitute an affirmative defense. In ***Bethune,*** a hearing examiner found that there was fraud perpetrated by the plaintiff. The appellate court, in reversing the circuit court, found that the decision was based on speculation. Such a holding does not modify the well established principle that fraud must be established by clear and convincing evidence.

A review of the evidence adduced by the Respondent fails to prove the affirmative defense of fraud by clear and convincing evidence. While the State can speculate that there is attempted fraud, that is not sufficient reason to deny the claim herein. The State has not met its burden of proof that the Claimant has presented some fraudulent or altered claims for payment. The State claims that $35,809.57 of the claims is improper. They have not proved this by clear and convincing evidence. The Respondent had ample opportunity during the pendency of this claim to make independent verification of claimed alterations and misrepresentations.

The Claimant has met its burden of proof. The Claimant is, therefore, entitled to payment of its claim in the sum of $68,320.00.

It is hereby ordered:

That the Claimant, I & D Pharmacy, Inc., be

ORDER ON MOTION FOR RECONSIDERATION

POCH, J.

This cause coming to be heard upon the motion of the Respondent for reconsideration of this Court's opinion entered on July 2, 1984, entering an award in favor of the Claimant, due notice being given and the Claimant filing his reply and objection thereto, and this Court being fully advised.

Finds:

That there are no new factual or legal issues that have been raised by the Respondent that would cause this Court to vacate its previous opinion granting an award in favor of the Claimant.

It is hereby ordered:

That the motion of the Respondent for reconsideration of the opinion of this Court of July 2, 1984, be and the same is hereby denied.

ORDER ON MOTION SEEKING INTEREST

POCH, J.

On July 2,1984, this Court entered an award for the Claimant in the amount of $68,320.00. The Claimant brought a motion seeking interest pursuant to section 2—1303 of the Code of Civil Procedure (Ill. Rev. Stat., ch. 110, par. 2—1303) and costs under section 5—118 of the

Code of Civil Procedure (Ill. Rev. Stat., ch. **110,** par. 5—**118).** The applicable sections of the Code are set forth as follows:

"§2—1303. Interest on Judgment. Judgments recovered in any court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied or 6% per annum when the judgment debtor is a unit of local government, as defined in Section 1 of Article VII of the Constitution, a school district, a community college district, or any other governmental entity. When judgment is entered upon any award, report or verdict interest shall be computed at the above rate, from the time when made or rendered to the time of entering judgment upon the same, and included in the judgment. The judgment debtor may by tender of payment of judgment, costs and interest accrued to the date of tender, stop the further accrual of interest on such judgment notwithstanding the prosecution of an appeal, or other steps to reverse, vacate or modify the judgment."

"§5—118. Costs on dismissal. Upon the action being dismissed, or the defendant dismissing the same for want of prosecution, the defendant shall recover against the plaintiff full costs; and in all other civil cases, not otherwise directed by law, it shall be in the discretion of the court to award costs or not; and the payment of costs, when awarded, may be collected in the same manner as judgments for the payment of money are enforced."

The Illinois Supreme Court has held that interest is only recoverable against the State if it is specifically provided in a statute. "Interest statutes, like statutes imposing costs, are in derogation of the common law and must be strictly construed. Nothing is to be read into them by intendment or implication." ***City of Springfield V. Allphin*** (1980), *82* Ill. **2d 571,413** N.E.2d **394.**

Consistent with the foregoing, it is the opinion of this Court that these sections of the Code do not specifically include the State of Illinois. In other sections of the Code involving costs, the legislature has specifically included the State of Illinois. Section **2—611** which imposes expenses and attorney fees states as follows: "The State of Illinois or any agency thereof shall be subject to the provisions of this section in the same manner as any other party." (Ill. Rev. Stat., ch. **110,** par. **2—611.)** This Court, therefore, finds that interest and costs are not recoverable against the State of Illinois

under sections **2—1303** and **5—118** of the Illinois Code of Civil Procedure because these sections do not specifically and clearly name the State of Illinois.

(No. 77-CC-1480—Claimant awarded $75,000.00.)

MITCHELL WARE, Claimant, *v.* **THE STATE OF ILLINOIS,** Respondent.

Opinion filed March 19,1985.

CHARLES LOCKER, for Claimant.

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

ATTORNEY GENERAL—***duty to defend public officials.*** The Attorney General has a statutory duty, in certain instances, to defend or pay for the defense of public officials in criminal as well as civil cases, and this duty is conditioned upon the thrust of the action involved being premised on an act resulting from the performance of an official act (Ill. Rev. Stat. 1983, ch. 14, par. 4).

SAME—Federal criminal charges against State official—award granted for defense of charges. A former State official was awarded the legal fees he expended in defending himself against Federal criminal charges arising from his purchase of electronic surveillance equipment while serving as head of the Illinois Bureau of Investigation, since the Federal indictment was based entirely on alleged violations in the Claimant's performance of his official duties, and the Attorney General had a statutory duty to either provide a defense or pay for such defense, but failed to even exercise his discretion in determining whether a defense should be provided.

ROE, C.J.

The case at bar presents for consideration several complex and important issues, all of which are matters of first impression before this Court. It is fortunate, therefore, that the facts of the controversy are essentially undisputed, thus enabling the Court to focus on the law applicable to these novel matters.

The Claimant, Mitchell Ware, filed his complaint in August of 1977, and following some threshold motions

brought by the Respondent before the full Court, the claim was assigned to a commissioner for a full hearing. Over 22 separate hearings, arguments and motions were held over an extended period of time, eight witnesses testified extensively, 33 exhibits were received into evidence, and divers motions were filed as were many hundred pages of briefs in support thereof and in opposition thereto.

From this lengthy record, the following material facts emerge as either uncontroverted or proved by the preponderance of the evidence:

Findings of Fact

1. The Claimant, Mitchell Ware, an attorney licensed in the State of Illinois, after serving many years in various law enforcement capacities as, inter ***alia,*** deputy superintendent of Chicago police, chief of Illinois Narcotics Bureau, etc., was, in August of 1969, appointed by then Governor Richard Ogilvie to the post of chief of the Illinois Bureau of Investigation (I.B.I.). The principal function of that agency was to investigate and bring to justice matters involving narcotics, organized crime and specially assigned "difficult" or "sensitive" cases.

2. The I.B.I. consisted of, and Claimant supervised, over 100 officers. These officers were initially trained at the policy academy in Springfield and thereafter received ongoing training and continuing education from various State and Federal agencies.

3. The I.B.I. was assigned, on a permanent basis and at all material times herein, an Assistant Attorney General, appointed by then Attorney General William J. Scott.

4. Prior to and subsequent to 1969 the I.B.I. owned

and used, in the normal course of its activities, diverse electronic surveillance devices and equipment, including such items as "Cal Sets" (transmitters and recorders), "Schmitt Devices" and Bell & Howell Recorders. In addition, the agency from time to time borrowed similar surveillance equipment from various State, county, and Federal law enforcement offices.

5. In late 1969 at Zion, Illinois, Claimant and other officers of the I.B.I. attended a law enforcement seminar sponsored by Illinois Attorney General Scott. Among others participating in this activity were Charles Rogovin (U.S. Department of Justice), G. Blakely (senate judicial committee), and **A.** Rody (assistant customs inspector). Materials presented included voices of organized crime figures on tapes and obtained from surveillance devices, training in the use and application of electronic equipment, and training in the use of various surveillance techniques, including the use of "cheese boxes," parallel microphones, mouthpiece inserts, "leeches," wall transmitters, "cube mikes," recorder brief cases, parabolic microphones, pair registers, etc. Attendees were trained in the use, purchase, detection, and installation of all of this equipment.

6. In **1970** a meeting of the Illinois Law Enforcement division's task force on organized crime took place. In addition to the Claimant herein, present were Herbert Brown from Governor Ogilvie's staff, Marlin Johnson, head of the Chicago, Illinois, office of the Federal Bureau of Investigation, Joel Flaum, now U.S. district court judge, then first assistant U.S. attorney, and Edward Hanrahan, then State's Attorney of Cook County, Illinois. At said meeting the Claimant requested a Federal grant to purchase for his agency the electronic

surveillance equipment recommended to him at the 1969 Zion seminar.

7. Thereafter, the Claimant received a grant from the **U.S.** Justice Department to purchase said equipment and did, in fact, purchase for his agency room transmitters, Schmitt devices, body transmitters, and telephonic surveillance devices. All purchase orders were processed by the State of Illinois in the normal course.

8. Training of I.B.I. agents included proper procedures in the use of electronic surveillance; to wit, prior to use, permission was asked and had to be obtained from the State's Attorney of the county in which surveillance was to occur. Claimant Mitchell Ware had no authority to give such permission nor did he ever do so.

9. In the spring of 1970, then Governor Richard Ogilvie personally directed the Claimant, Ware, to investigate the attempted murder by bombing of State Representative Barr. The investigation of this crime, thought to be connected with organized crime and the Jayne murder, was accomplished in concert among the I.B.I., State's Attorneys of Cook County and Will County, the F.B.I., the Will County sheriff's office and the Joliet mayor's office. Various electronic surveillance techniques were employed. All participants in the investigation were made aware of all activities, and investigation status reports were made directly to Governor Ogilvie. Claimant Ware, however, did not personally participate in any portion of the investigation, but did report results thereof to the Governor on at least six occaisions.

10. In 1976, the F.B.I. informed the Claimant that

the purchase by him of surveillance equipment and its use by his agency were being investigated for possibly being in violation of Federal criminal laws. The Claimant duly informed then Attorney General Scott and Assistant Attorney General James Zagel, who denied any duty to defend or represent him in connection with the investigation, and thereupon the Claimant engaged private counsel (Eugene Pincham and Sam Adam). The Claimant was indicted by a Federal grand jury, as was his successor in office, Richard Glicke. The ***gravamen*** of the indictment was for the illegal purchase and use of electronic surveillance equipment and conspiracy in connection therewith.

11. On several occasions, both before the indictment and thereafter, orally and in writing, the Claimant made claim upon the Attorney General for representation and/or reimbursement for legal fees expended. Each such request was denied.

12. After a three-week trial before Federal Judge George Leighton, a directed verdict was ordered. The court commented to the jury that at all relevant times the Claimant was simply performing his assigned duties of office.

13. Claimant's attorneys, Pincham and Adam, in addition to attending and participating in the three-week trial, attended at least 90 meetings with the Claimant and witnesses. Substantial time was also expended in other discovery, meetings with co-counsel Thom Foran, etc.

14. The Claimant and his counsel had agreed upon legal fees of $75,000.00. In the opinion of the Court, this amount was fair and reasonable, taking into account the complexity of the matters, expertise **of** counsel, **time** expended, and custom and comparable fees charged

and paid in the community for similar services under similar circumstances.

15. The Attorney General had never authorized payment or reimbursement for attorney fees of State officers or employees incurred in the defense of criminal cases as a matter of policy.

16. At no time in the case did the Attorney General make any investigation whatever to determine' the nature of the indictment, whether it was the result of performance of an illegal duty, etc.

17. At the time in issue (1976), the Attorney General had a budget of $924,900.00 available for payment of legal fees to part-time or special assistant attorneys general.

Conclusions of Law

Section **4** of "An Act in regard to attorneys general" (Ill. Rev. Stat., ch. **14,** par. **4)** defines the Attorney General's duties, ***inter alia***, as follows:

> **"Third—Todefend all actions and proceedings against any state officer, in his official capacity in any of the courts of this state or the United States."**

Paragraph **6** of the same chapter, in discussing certain situations where the Attorney General is unable to attend a proceeding, states:

> **"Whenever the Attorney General . . . is . . . unable to attend . . . any cause or proceeding,** ***civil or criminal, which it is or may be his duty to prosecute or defend. . . ."***

It seems clear to us that the quoted statute imposes an absolute duty, in certain instances, upon the Attorney General to defend or pay for the defense of public officials in criminal as well as civil cases. This statutory obligation is conditioned upon the thrust of the action (or indictment) being premised upon an act resulting from performance of an official act or in furtherance of

an official duty. Paragraph 6 specifically contemplates this protection being extended to criminal matters.

In the instant case it is abundantly clear that Claimant's indictment was based entirely upon his alleged law violations in and about the performance of his official duty; to wit, the purchase and use of electronic surveillance equipment. Thus, it was the statutory duty of the Attorney General to either provide Claimant with a defense or to pay for such a defense by appointing a "special assistant" for such purpose.

The Respondent basically advanced four arguments:

First, that in no case is the Attorney General ever obliged to tender a defense to a public official in a criminal case. Although this has heretofore been the policy, we feel that it is contrary to the express mandate of the legislature.

Second, that in any event, Claimant was not indicted for performance of duty. A fair reading of the indictment and interpretation thereof belies this defense. At no time was the Claimant accused of any act for his personal benefit or for that of any other individual, nor for any form of bribery, corruption, misfeasance or nonfeasance.

Third, that even if all other defenses fail, the Attorney General may not be held accountable for any error committed with regard to an act of discretion for which he has immunity. ***The true issue, however, is not whether the Attorney General erred in his discretionary conclusion as to whether or not a defense was owed but rather whether or not he exercised or attempted to exercise any discretion at all.***

Respondent explains that although it might appear

that discretion plays no part in a policy that applies to all criminal actions, regardless of the facts involved, the discretion is in the creation of the policy rather than its actual administration. We disagree. We find that the facts prove beyond any reasonable doubt that there was no exercise of discretion at all. At no time were the facts weighed or considered and a conclusion reached that no defense should or could be tendered (which would have been an exercise in discretion). Rather, it is clear that the Attorney General decided without any consideration of the actual facts and arbitrarily that no defense was due. This is not a discretionary error.

Fourth, that the doctrine of ***Fergus v. Russell*** **(1915)**, 270 Ill. **304,110** N.E.2d **130,** would somehow be violated by an award in this case. Briefly stated, that case held that the Attorney General has the exclusive authority to represent a public official or interest of the State in litigation. Clearly the ***Fergus*** rule has no application to a case such as the one at bar where the Attorney General was asked for representation and refused before any obligation to outside counsel was incurred. This distinction is equally applicable to *Dunlop v. State* **(1917), 3** Ill. Ct. Cl. **107,** and ***Fusek v.*** *State* **(1975), 31 Ill.** Ct. Cl. **170.**

For the above reasons, it is hereby ordered that the Claimant, Mitchell Ware, be and hereby is awarded the sum of **$75,000.00** in full and final satisfaction of this claim.

(No. 78-CC-1656—Claimant awarded $28,241.40.)

J.J. ALTMAN & Co., Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed July 2, 1984.

MARVIN W. GOLDENHERSH, for Claimant.

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

CONTRACTORS—*insurable* interest defined. It is necessary that the insured profit or gain in some way from the continued existence of a property in order to be considered to have an insurable interest in the property; otherwise the insured would not suffer a loss in the event the property were damaged or destroyed.

SAME—*additional* work—supervision *of* subcontractors—award granted. A construction manager hired by the State to supervise subcontractors involved in repairing damage to a State office building was granted an award for the additional work caused when a water valve broke and flooded the building, notwithstanding the fact that the Claimant was named as an insured in a builders risk insurance policy, since the only insurable interest in the building belonged to the State, which failed to pursue its claim, and the Claimant justifiably relied on the State to pursue a claim under the insurance policy.

POCH, J.

The Claimant, J.J. Altman & Company, has brought this claim seeking $28,241.40. The claim is for additional services performed by the Claimant as 'construction manager for the repair of damage to a State office building in East St. Louis being constructed under contract with the Capital Development Board, an agency of the Respondent.

The contract between the Claimant and the Capital Development Board called for the payment of additional sums to the Claimant if additional work was needed on the construction project. The Claimant was acting as the construction manager for the project,

supervising subcontractors, each of which had a separate contract with the Capital Development Board.

The additional work performed by the Claimant was caused by water damage sustained when a valve broke causing flooding which caused extensive damage. The repair of the building was supervised by the Claimant. There is no dispute that the work performed by Claimant was authorized. The Capital Development Board agreed that $28,241.40 represented the value of the additional services performed by Claimant.

The Capital Development Board and the Claimant were named as insureds in a builders. risk insurance policy. The insurance company paid for certain repair work but refused to pay for the cost of Claimant's services. Neither Claimant or Respondent filed suit against the insurance company for payment of the claim.

The Respondent contends that the Claimant failed to exhaust its available remedies against the insurance carrier and thus has no standing to pursue its claims in this Court. See Ill. Rev. Stat. 1979, ch. 37, par. 439.24—5.

The testimony of the Claimant's witness was not refuted by the Respondent. It is, therefore, uncontradicted that Claimant relied on the Capital Development Board to pursue the claims with the insurance carrier. Furthermore the Capital Development Board did acknowledge the validity of the claim in this case. The Claimant did not suffer any loss due to the water damage. The Respondent was the owner of the premises and had an insurable interest in the building. The Claimant was not responsible for the damages caused by an independent subcontractor of the Respondent, under its own contract with the Capital Development Board.

If the Claimant has no insurable interest in the

property loss there is no legal duty to file suit against the insurance carrier. In this case the Claimant was only the construction manager and had nothing to gain from the continued existence of the building. In ***Lieberman v. Hartford Fire Insurance*** Co. (1972), **6** Ill. App. 3d 948, 287 N.E.2d 38, the Court defined what constitutes an insurable interest. It is necessary that the insured profit or gain some advantage by the continued existence of the property, and that if the property is damaged or destroyed the insured then suffer a loss as a result thereof. Therefore to have an insurable interest the insured must have suffered a loss. See also ***Rexnick v. Home Insurance*** Co. (1977), **45** Ill. App. 3d 1058, **360** N.E.2d **461.**

Merely because the Claimant was a named insured does not cause the Claimant to have an insurable interest in the property. The named insured must sustain a loss as a result of the damage in order to have an insurable interest.

In this case the J.J. Altman Co. was a named insured but had no insurable interest in the property. It was not the owner of the property. It would not have benefited by the continued existence of the building and it did not suffer any loss by the flooding of the building.

The Capital Development Board had the insurable interest and suffered the loss due to the flooding of its office building. The Respondent had the opportunity and the duty to pursue its insurable interest. Its failure to do so should not cause the Claimant to forfeit its claim for services rendered pursuant to its contract.

Since the Claimant had no insurable interest in the property the Respondent's allegation that the Claimant failed to exhaust any claimed remedies against the insurance carrier is without merit.

The Respondent requested that the Claimant supervise the repair, work. The contract between the Claimant and the Capital Development Board provided for payment for such services. The Respondent does not dispute that such services were performed.

The Claimant is entitled to recovery of the sum of **$28,241.40** for services performed pursuant to the contract with the Respondent.

It is hereby ordered that the Claimant, J. J. Altman & Company, be awarded the sum of twenty eight thousand, two hundred forty one dollars and **40** cents **($28,241.40).**

(No. 79-CC-0721—Claimant awarded $240,000.00.)

PORA CONSTRUCTION COMPANY, an Illinois Corporation, Claimant, *v.* CAPITAL DEVELOPMENT BOARD, a body politic and corporate, Respondent

Opinion filed November 9, 1984.

O'BRIEN & O'ROURKE and PETER PETRAKIS, for Claimant.

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

CONTRACTORS—*delays* caused by State—award granted contractor. Where the State's conduct with regard to the construction of an addition to a college facility so interfered with the work progress that it amounted to a breach of the contract with the Claimant, the Claimant was granted an award as compensation for the damages flowing from the delays, since the contract contained no clause providing there would be no damages for delays, the delay was the unanticipated fault of the State, the damages were not included in any change order, and they were of such an overall impact that they constituted a breach of the contract.

HOLDERMAN, J.

The final hearing on the above-entitled claim was held on June 13, 1983, in the Court of Claims hearing room, 188 W. Randolph Street, Chicago, Illinois.

From the evidence introduced at the hearings it appears that in February of 1975, Claimant, Pora Construction Company, entered into a contract with Respondent, Capital Development Board, to act as general contractor in the construction of Phase II of the Morraine Valley Community College (MVCC). This was an addition to an existing college facility, which had been Phase I. The contract price was initially $5,156,626.00.

The addition to be constructed by Pora consisted of two two-story structures, connected by an enclosed bridge, as well as adjacent parking areas, landscaped areas, walkways and the like, all totalling approximately 199,000 square feet. The buildings were to include classrooms, laboratories, study units, computer areas and a library.

For construction purposes, the project was designated by area and by various unit numbers. The building which was to connect to the two existing MVCC facilities and which therefore would be put to use first, was designated Units 3 and 5. The other building was labelled Units 1 and 2. The enclosed bridge between the two buildings, which was to connect with Units 3 and 2, was to be Unit 4. Unit 4 was to span a scenic drive running north and south through the campus, which had theretofore been a public highway known as 88th Avenue.

Caudill Rowlett Scott (CRS), a Houston, Texas, firm, was appointed by CDB to act as its archi-

tect/engineer (a/e) for the MVCC project. According to article 2 of the general conditions of the contract documents, CRS, as a/e, was to provide general administration of Pora's contract, to interpret the contract, to judge Pora's performance, to accept or reject work, and to act as the owner's representative with respect to the project. Accordingly, as the owner's representative, CRS prepared and published the plans and specifications for the project. The CDB, as owner, had authority to stop the work, or any portion thereof, and was responsible for promptly furnishing all surveys, easements, information and instructions, pursuant to article 3 of the general conditions.

Pora, as required by article 4 of the general conditions, submitted an estimated progress schedule of the entire MVCC project for the a/e's approval, indicating dates for starting and completion of all stages of construction. According to that schedule, based on the plans and specifications as originally provided by the owner, the project was to be constructed between March 17, 1975, and June 19, 1976, within the 420 days' completion time specified in the contract. A subsequent revision of the schedule extended the completion date to October 1, 1976. Claimant contends that various owner-caused delays caused a job overrun of Pora's work for approximately eight months from this extended completion date.

Pora's plan of construction anticipated a certain orderly and logical sequence to the construction of the Phase II facility. As a result of meeting with representatives of the college, it was decided that the building designated Units 3 and 5 would be completed and ready for occupancy first, as it was the building adjacent to the existing facility. Work would then proceed in steps

progressing away from the existing college, with the bridge next and finally the other building (Units **1** and **2).** The specific construction sequence, then, was to be **5-3-4-2-1.**

As a result of various delays occasioned by the alleged action, omissions and changes by the CDB, the final completion of Pora's work under the contract, as amended from time to time, occurred approximately **242** days after the completion date, as extended. Those alleged owner-caused delays were the focal point of the evidence adduced in this case. It is claimed, that as a result of the alleged owner-caused delays, Pora's work schedule was altered and impeded to such an extent that Pora incurred **$379,045.00** of compensable damage flowing directly from the impact of the delays and obstructions caused by the CDB.

The complaint in this case specifies the manner in which several separate actions or omissions of CDB combined to cause delay and unwarranted expense to Pora and alleges actionable breaches of express or implied covenants of the contract between Pora and CDB. Specifically, the four contractural breaches, and therefore the four legal issues involved herein, were as follows:

1. **A** breach of the implied warranty of the accuracy and sufficiency of the plans and specifications;

2. a breach of the implied covenant to facilitate the progress of the work;

3. a breach of the implied warranty of access to the job site; and

4. a breach of certain express provisions of the general conditions of the contract.

In the present situation the contract documents did not set a fixed time for completion but required the contract to be completed in **420** days. The length of the contract was established by the Claimant. The contract

reserved the right to CDB to stop work, change specifications and reject the work of the contractor. (Sections **12.1** and **2.2.12** of the general conditions.) The contract documents provided that if the Respondent exercised its rights previously stated or if delay in the progress of the work was caused by the Respondent, then the contract would be modified by extending the completion time of the contract and/or adjusting the contract price for any changes or delays. This project also ran into unexpected bad weather, unfavorable soil conditions and changes in the specifications.

The Claimant in the present case did modify the contract by using the change order provisions of the contract. Claimant is now requesting additional compensation for costs due to the delay and damages caused by the decrease in labor effectiveness because the work was done in winter months.

Claimant is claiming reimbursement for additional costs it claims it sustained as a result of lack of accessibility to the site; problems concerning the removing of certain telephone and Commonwealth Edison lines and poles; delays to work as a result of pile driving difficulties; delay due to switchgear revision and elevator installation; and also delays due to handicap ramp installations and the revision of the expansion joints to be used in the concrete.

When Claimant began driving piles it was determined that more soil tests were needed. This caused some delay. The job site was intersected by a heavily travelled highway known as 88th Avenue, which road was not vacated prior to the start of construction. This caused some inconvenience to the work progress on the project. The same applies to the delay in the removal of

the telephone lines and poles and the electric lines and poles which were situated on the job site.

The switchgear to be used in the building had to be reordered. This caused some delay. A delay was also occasioned by a change in the plans calling for the installation of an elevator and handicap ramps. Intermingled with the delays and contributing thereto was extremely bad weather which caused a delay of 56 days out of the first three months. Certain other delays were also encountered, some attributable to the Respondent, and some to the Claimant. As a result of the delays the project was pushed into the winter of 1976-77. The winter weather caused a slowdown of the work. It further necessitated installing temporary heat and the enclosing of the buildings so that the inside work, including the electrical, plumbing, heating and carpentry work, could be done.

Claimant seeks to recover for what it calls its direct field costs. It also seeks to recover for its alleged indirect cost consisting of home office overhead covering the overrun of **242** days which it claims amounts to the sum of **$72,827.00.** For the direct costs and indirect costs, Claimant seeks a total of $369,045.00.

It is next to impossible to directly pinpoint the delays and the responsibility therefor and to assess the items of damage directed thereto as claimed by the Claimant. There is further a contention by Respondent that Claimant should have been compensated only through the submission of change orders and the approval thereof by the architect/engineer, or in failure thereof by arbitration in accordance with the terms of the contract.

The Respondent's contention is that the delays

caused by changes in specifications and other events resulting in delays in the progress of the work were not breaches of the contract which provided that "the owner without invalidating the contract may order changes in the work. . . ." It further argues that any delays were also covered by the contract provisions to the effect that through change orders the contract price can be adjusted and an extension in time to perform can be given if Claimant is delayed and suffers a loss because **of** it. Respondent states that while Claimant has been paid the contract price adjusted by many change orders it seeks additional compensation because of alleged delay damage not recovered through the change orders.

On this point Claimant's position is that its claim for delay damages differs from the change order situation, which procedure, it says, is to compensate **for work** which was not originally specified and does not include the "impact of a change". Impact damages are unascertainable at the time of a change order and, Claimant argues, the change order procedure cannot deal with delay claims. It agrees that there is a situation when delay claims cannot exist and that is when the contract includes specifically a "no damage for delays" clause which wasn't the case here.

This issue of the case was very extensively and ably briefed and argued by both sides. Resolution of this issue is not without difficulty. The Respondent cites ***Gleason v. State*** (1902), **1** Ill. Ct. Cl. **233,** where it was held that Claimant was not entitled to delay damages because it should have proceeded under the contract to have the contract extended and adjusted for the delay. Further, Respondent relies on ***United States v. Rice*** (1942), **317 U.S. 61,** where the court held delays in the project could not be considered a breach of contract

since the contract provided the government had power to alter, suspend and change the contract.

In answer, Claimant contends that ***Gleason*** is no longer the law of this State in light of the evolution of the theory of delay damages. In answer to ***Rice,*** Claimant states it deals with interpretation of ***Federal*** procurement contracts, that it has been criticized even in Federal courts, and that it ,isnot the law of this State.

This Court is of the opinion that while change orders do take into account delay costs, that notwithstanding, there can be and were delays occasioned by Respondent which could not and were not included in the change order procedure. The real difficulty however is assigning culpability for each delay when part of it could be attributed to the weather, part of it could be attributed to Respondent, part attributed to Claimant and part of it included in the change orders. We do not believe it possible to separate each delay into one specific category solely in every instance nor to mathematically, with any.accuracy, dilute the alleged delay damages by such delay factors as may have been included in specific change orders for which Claimant has been paid.

Respondent contends that if damages were its responsibility at all, they should be limited to **49%**of amount claimed, as the balance would be attributable to the weather or to Claimant's own fault. There is some merit in Respondent's contention. Certainly the weather was a contributing factor and certainly some portion of the delays were covered by the change orders.

The thrust of Claimant's claim is to a great extent based on the damages caused by the interruption of its planned sequential performance brought about by the

various delays. Respondent argues that all this could have and should have been handled by resorting to change orders. It seems to us, however, that much of the impact damages could not reasonably be anticipated at the time of the change orders. In addition, the change orders didn't cover every delay.

The overlapping of the various delays both in cause and in damages makes it impossible to isolate the exact amount any particular delay caused. The whole has to be considered in preference to an itemization, while the latter must be given such consideration as is ascertainable.

Respondent argues that if damages are awarded they should not include $96,000 in labor costs as they were included in the change orders. There is some merit in this contention as we do not find it unreasonable to expect Claimant to include a labor factor in his change orders at the time they were agreed upon.

A synopsis of the delays shows their magnitude and the impact flowing therefrom.

It appears that 88th Avenue intersected the site of the MVCC project, dividing Units 3 and 5 from Units 1 and 2 and running beneath the bridge of Unit 4. The plans submitted to Claimant indicated that this public highway was to be closed. When Claimant moved in March 10, 1975, the street was still being used and this presented a major problem. The road was not closed until July 3, 1975. During the interim the crew had to work across traffic on 88th Avenue. Also, Claimant had to stop work until it got a permit from Cook County.

Further, there were utility poles present, some on each side of the highway. This caused a great deal of burdensome inconvenience in pile driving and in

moving equipment across the road with utility wires present. The lines were not removed until June 13,1975, and some not until July 1975. The presence of the poles caused Claimant to undertake drastic changes in procedure from what it had contemplated.

The specifications required piles to reach a 25-ton bearing capacity, but due to the nature of the soil, the pile driving had to be stopped until test borings could be made to determine the proper length to drive the piles. This delay caused the other work to be stopped also, as the pile driving was a necessary preliminary to other construction.

Further, the specifications called for a bearing-plate type of expansion joint made from ruberoid or equal. Ruberoid was not available and a substitute was obtained and used in 16 expansion joints. However, the work was again stopped by owner until the expansion joints were redesigned for prospective use. This error apparently was the fault of the architect in its original set of specifications. Again this caused an interruption in Claimant's continuity of progress and a delay in concrete pouring and other work. The orderly progress of performance being interrupted is the basis of Claimant's claim.

In addition, the switchgear specified caused a problem and was redesigned. Originally it was scheduled to be installed prior to December 1978. This apparently was due to an error in the specifications furnished. The delay in the installation caused an interruption in pouring slabs. It was not until November 1976 that the newly designed switchgear was installed and much of the other construction was dependent on this item. The delay was such a severe departure from

the original anticipated installation that Claimant suffered damages not possible to include in any change order.

Originally there were no handicap ramps specified at the entrances, but a change was made to require such ramps at six entrances. Claimant furnished a proposal on January 14,1976, for the ramps, but it was not until July 12, 1976, that the details of the ramps were made final. Again the sequential progress of the work was drastically interrupted.

The plans originally called for a pedestrian ramp to the second floor of Unit 3, but no elevator was specified. The contractor was put on hold until the matter could be resolved. The hold direction was March 1, 1976, and applied to "areas affected by the proposed changes.'' The "areas affected" were not defined, however, leaving the matter suspended in a state of confusion. On April 29, 1976, Claimant was provided with specifications for a hydraulic elevator. It was not until August 18, 1976, that Claimant received a change order for the elevator—5 1/2 months after the hold order. The delay in respect to the elevator compelled concrete pouring to proceed in the winter of 1976. The six-month delay caused a severe delay in Claimant's orderly progress of performance. Claimant contends this, along with the other delays, was a violation of owner's duty under the contract to facilitate the progress of contractor's work.

Further delay was encountered in contracting for and the laying of carpet. It was planned to start in March 1976, but didn't start until January 1977. Until the carpet was in, other trades could not complete their work—the laboratory furniture work, certain school equipment, access flooring, electrical units and plumbing, all were delayed.

All in all, the magnitude of the delays attributable to Respondent's dilatory practices warrants some recovery by the Claimant. No change order could encompass the impact damages caused by the extensive delays.

Respondent strongly urges that article **8,** section **8.3** of the contract's general conditions adequately covers the procedure for time delays.

Section **8.3.1** provides:

"If the contractor is delayed at anytime in the progress of the work by any act or neglect of the owner or the architect, or by any employee of either, or by any separate contractor employed by the owner, or by changes ordered in the work,' or by labor disputes, fire, unusual delay in transportation, unavoidable casualties or any cause beyond the contractor's control, or by delay authorized by the owner pending arbitration, or by any cause which the architect determines may justify the delay, then the contract time shall be extended by change order for such reasonable time as the architect may determine."

Article **12** of the general conditions provides for change order procedure, wherein it states that the owner, without invalidating the contract, may order changes in the work and the contract sum shall be adjusted accordingly, and if the adjustment can't be agreed upon it should be determined by the architect. **(12.2.1.)**

Respondent contends these contract provisions were agreed upon and, according to their terms, any claim not made would be waived.

However, article **7,** section **7.6.1** provides that the duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

Therefore, Claimant would be barred were he suing under the contract, but his theory here is that the owner-

caused delays amounted to a breach of contract in interfering with his orderly performance of work.

As stated earlier, Respondent cites the 1902 case of ***Gleason v. State, supra.*** In that case Claimant's contract had been terminated by the State under applicable provisions of the contract due to failure of Claimant to perform. Thereafter, the State took possession of the buildings and completed the work spending about **$57,000** in excess of the ***Gleason*** contract. Claimant in ***Gleason*** demanded additional compensation for work done up until the time of suspension of the contract. The suit was in ***assumpsit*** for the value of work done by Claimant. The Court held that the State was justified under the contract to suspend work by Claimant.

One item of damages claimed in ***Gleason*** was for delay in work through winter months. The Court denied this, **as** it said it wasn't clearly shown to be the fault of Respondent, but even if it was, they should have proceeded under the contract terms to have the architect estimate the loss, and if not satisfied, resort to arbitration as provided in the contract. This they did not do. The Court concluded that what the State paid to complete the contract after suspension exceeded any claim the contractor could make.

In ***Gleason,*** the Court refused to consider the claim because it "wasn't clearly shown" that the delay was the fault of Respondent, and what the State paid exceeded any claim that the Contractor could make. The case seems to support the fact that the contract provided that the proper remedy to pursue was through arbitration if the architect's value of extra work was unsatisfactory. See ***Gleason, supra,*** **244** ***et seq.***

Does ***Gleason*** actually foreclose Claimant? **It's** true,

delay damages are expected to be covered by a change order, but weren't the delays such that they wouldn't be expected to be included in a change order? Is there not a breach of contract where the owner's own fault, independent of all others, causes delays of such magnitude that the impact is not possible to calculate? The owner is required not to interfere with the expeditious performance by the contractor. We believe that in this case the owner interfered at least in substantial part. This being the case, the Claimant isn't required to go without a remedy except through approval of the architect.

In this regard our case has a limited application and is confined to a case where the owner's sole conduct so interfered with the work progress that it amounts to a breach of contract.

This holding of the Court is limited strictly to cases where all the following elements are substantiated by the evidence:

1. Where the contract contains no clause which provides there shall be no damages for delays; and,

2. Where the delay is caused solely by the unanticipated fault of the owner without concurring causes; and,

3. Where, the delay damages are not already included in any change order nor, because of their nature and extent, they reasonably can be expected to be included in such change order by either party to the contract; and,

4. Where the damages solely caused by the owner create such an overall impact that they can be said to be a violation or breach of the contract not to interfere with expeditious performance of contractor.

Claimant is awarded $240,000, based on **65%** culpability applied to total damages of **$369,045.**

(No. **79-CC-1145—Claim denied.)**

McNEILL ASPHALT Co., Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

***Opinion filed November* 26,1984.**

DAVID B. DALEY, for Claimant.

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

SUBCONTRACTORS—*subcontractor's sole remedy against owner is with Mechanics' Lien Act.*

SAME—*claim for additional work denied—Mechanics' Lien* **Act** *sole remedy.* **Where a subcontractor assigned its claim for additional excavation work to the contractor based on the contractor's agreement to pursue the claim against the State, the claim was denied, since the claim was not against the State, but for funds being held for the contractor, and the subcontractor's sole remedy was under the Mechanics' Lien Act.**

ROE, C.J.

McNeill Asphalt Co., Claimant herein, seeks to recover $54,031.90, which it alleges is due pursuant to a contract between Claimant, as general contractor, and the Department of Transportation of Illinois, for construction of an airport runway extension at the Kewanee Municipal Airport at Kewanee, Illinois. For the purpose of earth excavation and embankment and attendant dirt removal, the general contractor employed Strunk Brothers Company as subcontractor.

Following the completion of the project, the State paid the general contractor (Claimant) the entire remaining balance, known and admitted by the State to be due under the contract. After such final payment was made, the subcontractor filed a mechanic's lien. Upon ascertaining that all the funds to which its lien could attach had been disbursed, the subcontractor filed suit against the Claimant in the circuit court of the Fourteenth

Judicial Circuit of Henry County, general division, case No. 78-C-13, for moneys alleged to be due based upon additional cubic yards of dirt excavated and carted by it and elevation surveys and plans submitted to it.

The contractor and subcontractor thereupon entered into a stipulation voluntarily dismissing the contractor in return for an assignment of a claim the contractor may have against the State. The assignment provided that in consideration of the aforesaid release, the contractor would undertake to actively pursue a suit against the State and any recovery thereon would accrue entirely to the subcontractor, with the condition that failure of any recovery would not affect the forgiveness of the claim that the subcontractor may have against the contractor, their account being settled between them on the basis of said assignment.

The net effect of the aforesaid assignment is that this claim before this Court is one exclusively of the subcontractor, Strunk Brothers Company, even though ostensibly pleaded by the general contractor. The Illinois appellate court, in ***Bates & Rogers Construction Corp. v. North Shore Sanitary District*** (1981), **92** Ill. App. 3d **90,414** N.E.2d **1274,** held that it was improper for a general contractor to plead the claim of a subcontractor since the subcontractor stood in a different relation to the State than the contractor, and further stated that the subcontractor's sole remedy is under the Mechanics' Lien Act.

Although admitting that the subcontractor has an interest in this claim, Claimant contends that this suit is based upon its own claim. This is contrary to the facts. The assignment executed by the Claimant transferred all of its right, title and interest in the claim, if any, to the subcontractor, and Claimant no longer has any rights in

the property assigned. (*People v. Wurster* (1981), 97 Ill. App. 3d 104,422 N.E.2d 650; *Stavros v. Karkomi* (1976), 39 Ill. App. 3d 133,349 N.E.2d 599.

Inasmuch as there is no contractual relationship between the subcontractor and the State, the subcontractor has no standing to sue in its own name. (*Weiland Tool & Manufacturing Co. v. Whitney* (1963), 40 Ill. App. 2d 70, 188 N.E.2d 756.) The Illinois Mechanics' Lien Act has adequately preserved the rights of the subcontractor (Ill. Rev. Stat., ch. 82, par. 23) by providing the method of filing liens against the owner. Hill *Behan Lumber Co. v. Marchese* (1971), 1 Ill. App. 3d 789,275 N.E.2d 451, a case in point, held:

"Our research reveals that the *sole* (emphasis added) remedy of subcontractors against the owner of the premises is with the Mechanics' Lien Act." (Citing *Traubco Food v. United Auto Workers* (1970), 123 Ill. App. 2d 106, 258 N.E.2d 817; *Vanderlaan v. Berry Construction Co.* (1970), 119 Ill. App. 2d 142, 255 N.E.2d 615; *Sudarth v. Rosen* (1967), 81 Ill. App. 2d 136, 224 N.E.2d 602.

The opinion of this Court in the case of R. *D. Lawrence Construction* Co. *v. State* (1982), 35 Ill. Ct. Cl. 709, is further determinative of the issue herein. In *Lawrence,* the general contractor filed suit in this Court on its own behalf for a stated amount and for an additional amount on behalf of its subcontractor. This Court awarded the general contractor the amount of its own claim, but denied the amount claimed on behalf of the subcontractor. In the instant case at bar, the subcontractor failed to perfect its statutory lien and this Court cannot provide it greater rights than as provided by statute.

The Claimant finally contends that the claim herein comes within sections 8(a) and (b) of the Court of Claims Act and its provisions. (Ill. Rev. Stat., ch. 37, pars. 439.8(a), (b).) The contention is untenable. It is not

a claim against the State, as discussed ***supra,*** since it is in reality a claim against the funds held for a contractor, and can only be enforced by a subcontractor in the manner provided for under the Mechanics' Lien Act. Neither is this claim one founded upon any contract as none exists in the case at bar.

As for the merits of the claim, although it is unnecessary for us to rule on, we make the following observations.

The claim of **$54,031.90** is based upon conflicting testimony governing the amount of dirt "cut and carted to the embankment area" of a runway extension of the project. The general practice in determining the quantity of dirt hauled is by taking surveys of the elevation of the area involved before and after construction. As per the testimony of various witnesses, condemnation proceedings caused the owner of the land to prohibit entry upon the land. The chief engineer of the State in charge of the project made an aerial survey before construction began. According to his testimony, because he believed aerial surveys are sometimes off one foot he arbitrarily proceeded to lower the aerial survey one foot and submitted plans to the contractor on such basis.

Subsequently, when entry was permitted on the land, the field crews and field men of the State advised the chief engineer that the actual elevations were practically equal to the original aerial survey and did not warrant his lowering the elevation the one foot. He then phoned a Mr. Brown, engineer and president of the subcontractor performing the excavation and carting, at his home and advised him to pay no attention to the original plans, but that there were stakes placed in the cut area showing the correct elevations and to be so

governed. Mr. Brown denied having received the phone call, even though the chief engineer submitted the phone bill showing that a call had been made to Brown's residence in the evening of the day stated.

The dispute as to the amount of dirt hauled appears to revolve around the veracity of the testimony as to whether the subcontractor had been notified as to the change in the specifications. Whether there was notice or whether proper notes were made in the diary of the engineer, or when or by whom, we feel, has no bearing on the quantity of dirt actually cut and removed. The field men, in their staking of the area, indicated the area elevation which governed the amount of dirt to be excavated and embanked. It was upon such elevations of the field men and crew of the State that the State did pay the general contractor the contract price of **$1.30** per cubic yard of dirt so hauled and there should **be** no further payment due from the State for same.

Claim denied.

(No. 79-CC-1187—Claim dismissed.)

RUTH M. BOE, Administrator of the Estate of Cheryl Boe, Deceased, Claimant, *v.* **THE STATE OF ILLINOIS,** Respondent.

***Opinion filed October* 29,1984.**

LAW OFFICES OF PETER J. FERRACUTI & ASSOCIATES, for Claimant.

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

PRACTICE AND PROCEDURE—*all* possible causes *of* action *must* be exhausted before seeking relief in Court of Claims.

PERSONAL INJURY—*action* dismissed—remedies against *tortfeasor* not exhausted. The Claimant's action seeking to recover for the death of her decedent in an automobile accident, allegedly caused by a defective guardrail on a State highway, was dismissed for failure to exhaust the remedies against the driver of the vehicle, since it was clear that the Claimant knew of that driver's existence and possible liability long before the limitations period expired, and all possible remedies must be exhausted before relief is sought in the Court of Claims.

POCH, J.

This matter came on for hearing before Commissioner John P. Simpson for oral argument on two motions to dismiss by the Respondent. The first motion to dismiss,was based on the. failure of the Claimant to exhaust her remedies pursuant to section 25 of the Court of Claims Act (Ill. Rev. Stat. 1981, ch. 37, par. 439.24—5) and Rule 6 of the Court of Claims Rules. The second motion to dismiss was based on the Claimant's failure to file a legally sufficient notice of claim.

With regards to the first basis for dismissal, to wit: the failure to exhaust all remedies, the following paragraphs of Claimant's amended complaint are germaine:

"3. That on or about December 25, 1978, at or about the hour of 9:35 p.m. thereof, CHERYL BOE, hereinafter referred to as Claimant's Decedent, was a passenger in an automobile being driven by TIMOTHY SMITH in a southbound direction along and upon Interstate Route 55 at or near its intersection with U.S. Route 30 in the County of Will, State of Illinois.

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5. That prior to said date, there was present at said location on the western shoulder of the southbound lanes of Interstate 55, a metal guardrail, which guardrail was supported by vertical metal posts.

6. That approximately one week prior to December 25,1978, said guardrail and post had been damaged so that the north end of said guardrail was not protected by any vertical post and did project outward to the north.

7. That prior to December 25, 1978, the Respondent, State of Illinois, had knowledge and notice that said guardrail had been damaged and that the north end of said guardrail was unprotected by any vertical post and did project outward.

8. That on or about December 25,1978, the automobile in which claimant's decedent was a passenger was caused to strike the north end of said guardrail, as a direct and proximate result of which, the claimant's decedent suffered severe injuries and died."

On July 28, 1983, counsel for Claimant and Respondent took the evidence deposition of Timothy Smith, the driver referred to in paragraph three of Claimant's complaint.

In his deposition, Smith testified that at the time of the deposition he was 22 years old (making him approximately 17 or 18 years old at the time of the accident). He further testified that he was driving the deceased in her car from O'Hare Airport to Ottawa, Illinois, and that it was snowing lightly. As he approached the scene of the accident, he was travelling approximately 40 miles an hour and he lost control of the car.

"A. I remember driving along Interstate 55 and then the car just started to slide and I lost control of it.

Q. Did you strike any objects along Interstate 55?

A. The guardrail, yes." (Smith evidence deposition 6.)

As a result of the accident Miss Boe died and the driver broke 10 ribs, his upper right arm, right clavicle, and the right side of his jaw. Mr. Smith spent 25 days in the hospital.

Mr. Smith testified that there was no snow accumulation, because the cars were blowing the snow away, but that there might have been an ice patch.

"I couldn't say exactly when the accident happened that there wasn't any ice on the road because everything happened so fast and the car just lost control and just started sliding. I would assume there was an ice patch." (Smith evidence deposition 11).

Mr. Smith testified that the car slid off to the left and started sliding down the highway sideways, and that he tried to avoid the guardrail. He said that the car did

not respond and that it just kept sliding into the guard-rail.

Mr. Smith further testified that at the time of the accident he did not own a car and had no insurance. As a result of the foregoing testimony, it became. clear on the face of the record that up until the expiration of the statute of limitations, Claimant had a possible cause of action against Timothy Smith. It is further clear from the answers to interrogatories filed herein by Claimant in November 1979, that the Claimant knew of the existence of Mr. Smith long before the statute of limitations had run.

Approximately three months after the deposition of Smith, Respondent filed its motion to dismiss based on the failure to exhaust remedies.

The position of the parties is well stated in their respective pleadings. In effect Respondent argues that pursuant to section 25 of the Court of Claims Act and Rule 6 of the Court's Rules, claimants must exhaust all possible causes of action before seeking final disposition of a case filed in the Court of Claims. Claimant argues that claimants should be given a certain latitude and discretion in determining whom to sue. From Claimant's point of view, it probably did not seem reasonable to sue an uninsured 18-year-old boy with no assets.

However, this Court in its holdings on this issue does not seem to recognize any discretion on the part of claimants to pick and choose whom they wish to sue. In Lyons *v.* State, 34 Ill. Ct. Cl. 268, the Court held as follows.

"The requirement that Claimant exhaust all available remedies prior to seeking a determination in this Court is clear and definite in its terms. It is apparent to the Court that Claimant had sufficient time to both become aware of his other remedies and to pursue them accordingly. The fact that Claimant can no longer pursue those remedies cannot be a defense to the

exhaustion requirement. If the Court were to waive the exhaustion of remedies requirement merely because Claimant waited until it was too late to avail himself of the other remedies, the requirement would be transformed into an option, to be accepted or ignored according to the whim of all claimants. We believe that the language of section 25 of the Court of Claims Act (Ill. Rev. Stat. 1979, ch. 37, par. 439.24—5) and Rule 6 of the Rules of the Court of Claims quite clearly makes the exhaustion of remedies mandatory rather than opitional." 34 Ill. Ct. Cl. 268, 271-72.

Based on the foregoing, Respondent's motion to dismiss based on the failure to exhaust remedies is granted.

Because the first ground for dismissal is sufficient and dispositive, there is no need to discuss the second ground.

(No. 80-CC-0238—Claim denied.)

OPAL R. SIMPSON, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed February 21, 1985.

JOHN H. SQUIRES, for Claimant.

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

NEGLIGENCE—*State* is **not insurer of Claimant's safety.** A Claimant seeking to recover for injuries sustained in a fall on a walk at a State park must prove by a preponderance of the evidence that a dangerous condition existed, that the State knew of the condition and that the condition caused the fall, since the State is not an insurer of a visitor's safety.

SAME—"*minor*" **defects in walkway are not actionable.** The general rule is that "minor" defects in a walkway are not actionable, but it is within the purview of the trier of fact to determine negligence when the defect is such that a reasonably prudent man should anticipate some danger to persons using the walkway.

STATE PARKS AND RECREATION AREAS—*State park visitor—fall* **on walkway—"minor" defect—claim denied.** A Claimant was denied recovery for the injuries she sustained when she fell on an asphalt pathway in a State

park, since the evidence established that any defect in the walkway was not so unreasonably dangerous as to create liability against the State.

ROE, C.J.

This claim arises out of an accident which occurred on September 3, 1978, at New Salem State Park. Claimant asserts that her injury was caused by the failure of the Illinois Department of Conservation to adequately maintain the walkway in New Salem State Park. The facts are not in dispute.

On July 9, 1982, a hearing was held before Commissioner Robert J. Hillebrand. Claimant subsequently filed a brief, but the Respondent has not done so and the time period has long since passed. Commissioner Hillebrand has duly filed his report which the Court has carefully considered along with the other evidence in the record.

On September 3, 1978, Opal Simpson, Claimant, a retired restaurant and motel owner, and members of her family visited New Salem State Park. Claimant was walking in an easterly direction on an asphalt pathway in the park. The pathway was not level with the adjacent ground, but rather had a drop-off of 1 to 1½ inches along its border. There was no warning device of any kind for this drop-off, nor was there any curbing. As another group of tourists approached from the opposite direction, Claimant stepped off the asphalt, admittedly without looking, and slipped and fell. As a result of her fall, she fractured the fifth metatarsal bone in her right foot.

Richard Welchans, a park ranger, testified that the asphalt path that Claimant complains of is located inside New Salem State Park. The purpose of the path is to allow foot traffic through the park. In Welchans' opinion, warning signs would hinder the authenticity of

the village area of the park. The village is a re-creation of New Salem as it existed in the 1830's. Welchans stated that, while the asphalt is there to allow easier passage through the village, the park is designed to attract the least amount of attention to the asphalt which is inconsistent with the 1830's atmosphere. Welchans testified that, in order to reach the cabins and other sites in the park, it is necessary to leave the asphalt path and to travel on other surfaces and that the park averages over 300 visitors per day and to his knowledge this is the first incident of this kind.

The State is not an insurer of Claimant's safety. To recover damages, Claimant must prove by a preponderance of the evidence that a dangerous or defective condition existed on or around the pathway, that the State knew or should have known of this condition, and that this condition caused Claimant's injuries. (*Perlman v.* State (1979), *33* Ill. Ct. Cl. 28.) The testimony of Richard Welchans makes it clear the State knew of the condition on and around the pathway in question. The issue then is whether the condition was unreasonably dangerous so that the State had a duty to warn of the condition or otherwise protect the public using the pathway.

While the issue is easy to define, the application is more difficult. Here, the drop-off on the side of the pathway measured less than two inches. The general rule in such an instance has been clearly stated to be that, while "minor" defects in a walkway are not actionable, it is within the purview of the trier of fact to determine negligence when the defect is such that a reasonably prudent man should anticipate some danger to persons walking upon the walkway. (*Arvidson v. City of Elmhurst* (1957), 11 Ill.2d 601, 145 N.E.2d 105; Warner *v.*

City of Chicago (1978), *72* Ill.2d 100, 378 N.E.2d 502.) The problem is defining what is a "minor" defect. *Warner v. City of Chicago,* 72 Ill.2d 100,101,378 N.E.2d 502,503.

It is the opinion of this Court, in considering all the testimony and in viewing the photographs, which show in good detail the drop-off in question, that any defect which existed was not so unreasonably dangerous as to create liability against the State. The walkway was in a rustic, almost rural area. There was no breaking in the pavement itself; rather, the ground along the side of the walkway was lower in some places than the walkway surface. Such a condition is not unacceptable or unreasonable in this factual context.

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

(No. 80-CC-0297—Claimant awarded $16,000.00.)

LINDA WEISLO, Claimant, *v.* THE *STATE* OF ILLINOIS, Respondent.

Opinion filed November 7,1984.

GERALD C. BENDER, for Claimant.

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

HIGHWAYS—*pothole—property damage and personal injury—claim allowed.* An award was granted for the property damage and personal injuries sustained when the Claimant's automobile went out of control and struck a utility pole after hitting a pothole in the pavement, since the evidence established that the State was negligent in allowing such a dangerous condition to exist on the highway, that negligence was the

proximate cause of the Claimant's injuries, the State had constructive notice of the condition, and the Claimant was not guilty of contributory negligence.

POCH, J.

This is a claim for personal injury sustained by Claimant, as a result of an automobile accident that occurred on March 11, 1979, on Mannheim Road, just south of Zemke Road in the city of Chicago, Cook County, Illinois.

The evidence clearly showed that the State of Illinois was responsible for the maintenance of the highway at that time. The evidence further showed that the road was in a hazardous condition.

It is Claimant's contention that she was driving her car southward on Mannheim Road near Zemke Road, struck a rough grade and a pothole in the pavement, thereby causing her to lose control of her vehicle, veering off the roadway and striking a utility pole. The car was a total wreck. The accident occurred at approximately 4:30 p.m.

An eyewitness to the accident, Donald Wagner, testified that at the time of the accident, the pothole that Claimant struck was in existence for about a month and that he traveled Mannheim Road daily as a truck driver and learned to slow down and drive on the shoulder of the road to avoid the pothole.

As a result of the accident, Claimant suffered a broken jaw and other injuries to her arm and face. Claimant has a scar across her face approximately 3 inches long. Because of the broken jaw, there is an overlapping portion of scar and a bony pathology which is visible on her face that is a permanent condition and causes much pain in the cold weather. Claimant also has problems eating.

As to her scar, additional surgery to lessen the appearance of the scar would cost approximately $900.00. Even after surgery the scar would not be erased but would be permanent.

At the time of the accident, Claimant's car was worth about $850.00. After the accident, Claimant sold her car for scrap for $35.00.

Respondent's witness, Roman Kostelyna, was employed as the yard technician for the Illinois Department of Transportation at the North Side garage located at Harlem and Irving in Chicago. He testified that the southbound lanes of Mannheim Road fall within the jurisdiction of the North Side garage, that making regular inspections of that section of Mannheim Road was part of his duties and that during the winter months potholes are patched with cold patch, a temporary type of asphalt material with a life expectancy of only a few weeks. Mr. Kostelyna, having viewed Claimant's and Respondent's exhibit of the pothole, described it as a hazard.

Mannheim Road is regarded as a high density route whose heavy high-speed traffic would knock the cold patch out of the ground. The evidence is to the effect that this was a very poorly maintained highway.

Evidence was introduced to the effect that none of the repairs were of a recent date. It is clear that the State had actual, as well as constructive, knowledge of the hazardous condition of the highway.

Claimant, before she can recover, must prove she was free from contributory negligence. It is clear from the record that she was traveling the highway as any motorist has a right to do and that her driving did not in any manner contribute to the accident. She testified that

she hit the pothole, went off the road and struck the utility pole.

From the evidence, we find that the State was negligent in allowing the pothole, a dangerous condition, to exist on the highway and that the State's negligence was a direct and proximate cause of Claimant's injuries, that this dangerous condition existed for a long period of time, giving the State constructive notice of said dangerous and hazardous condition, and that the Claimant was in the exercise of ordinary care and was not guilty of contributory negligence. ***Croughan*** v. ***State,*** 29 Ill. Ct. Cl. **434;** ***Manos*** v. ***State,*** 30 Ill. Ct. Cl. 639.

For her injuries, loss of time and property damages, the Claimant is hereby awarded damages in the sum of sixteen thousand ($16,000.00) dollars.

(No. 80-CC-0439—Claimant awarded $100,000.00.)

AMERICAN BANK OF CERRO GORDO, Guardian of the Estate of Gene Ray Fickes, a minor, and BARBARA KEITH, Claimants, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed July 27, 1984.

DAVID A. DVORAK, for Claimants.

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

AGENCY—abuse of foster child by foster parent—State not liable under agency theory. The State was not liable under an agency theory for the injuries inflicted upon a foster child by the foster parent, since the evidence established that the foster parent was acting contrary to the purpose for which she was employed, and a principal is not liable when the agent abandons the business of the agency and commits an act outside the scope of his authority or employment.

NEGLIGENCE—*complaints against foster parent reasonably investigated.* In an action for the injuries inflicted upon a foster child by the licensed foster parent, the evidence established that the State, through the Department of Children and Family Services, satisfied its affirmative duty to investigate and remedy complaints about the foster parent, thereby relieving the State of liability under the theory that it was negligent in supervising the foster parent.

EVIDENCE—*test of whether statement constitutes admission of agent.* A statement can be considered an admission by an agent, if it is shown that the person making the statement was an agent or employee, that the statement was made about a matter over which the agent or employee had actual or apparent authority, and that the person spoke by virtue of his or her authority as an agent.

NEGLIGENCE—*injuries to foster child—negligent supervision of foster parent not established.* Notwithstanding allegations that the Department of Children and Family Services failed to adequately investigate incidents involving a foster parent, the evidence failed to establish that the Department was negligent in supervising the foster parent who was guilty of physically abusing her foster child.

SAME—foster child physically abused by foster parent—state negligent in licensing foster parent. The Department of Children and Family Services was negligent in licensing a foster parent who later physically abused her foster child, since there was sufficient indication in the reference letters concerning the foster parent to alert the Department to the need for a more detailed investigation of her parenting abilities, and the file showed that there was no further investigation.

SAME—physically abused foster child—mistaken placement not proximate cause. The Department of Children and Family Service's mistake in placing a child younger than two years in a home licensed only for children two years and older was not the proximate cause of the injuries sustained when the foster parent abused the child, but this mistake was an indication of the Department's failure to thoroughly follow its own procedures.

SAME—physical abuse of foster child by foster parent—state negligent in licensing foster parent—muximum award granted. The estate of an injured foster child was granted the maximum award for a case sounding in tort, since the evidence established that the Department of Children and Family Services was guilty of negligence in failing to conduct a thorough investigation before granting a license to the foster parent who abused the child.

SAME—mental distress claim by mother of injured foster child—claim denied. In an action arising from the injuries sustained by a foster child who was physically abused by the foster parent, the claim by the mother of the child for emotional distress was denied, since she did not suffer any "contemporaneous impact," nor was she within the "zone of physical danger."

ROE, C.J.

This claim has been brought by American Bank of Cerro Gordo as guardian of the estate of Gene Ray Fickes, a minor, and by Barbara Keith, the mother of the minor, to recover for injuries inflicted upon the minor by Carrie Reed, a foster parent licensed by the Illinois Department of Children and Family Services (DCFS).

Gene Ray Fickes, the minor, was born October 20, 1977, of Claimant Barbara Keith and Raymond E. Fickes. The child resided in Decatur with his parents, who were not married. Kimberly, Barbara Keith's four-year-old daughter, also resided in the home.

In early 1978, the household was referred by DCFS to the Youth Advocate Program in Decatur because of the need of the family for help in caring for the two children. Barbara Keith and Raymond Fickes had a history of heavy drinking and fighting with each other to the extent that physical injury was inflicted upon one or the other. There is no evidence, however, that either child was ever physically abused. Both parents admitted in their testimony that they suffered from alcoholism.

On May 28, 1978, Barbara Keith contacted the Youth Advocate Program and requested that Gene Ray be placed in a foster home because the parents had been drinking heavily and were afraid they could injure the child. Kimberly had already been taken from the home by Barbara and Raymond to reside with Doris Fickes, Raymond's mother. Eleanor Bridgman, the caseworker for this family, went to the home, took physical custody of the child and placed the child in a foster home for shelter care until DCFS could make a more long-term placement. DCFS then filed proceedings for involuntary surrender, and on May 31 the Circuit Court of Macon County held a shelter care hearing pursuant to section

3—6 of the Juvenile Court Act (Ill. Rev. Stat., ch. 37, par. 703—6). On that date the court found that the child needed immediate protection and should be detained in shelter care. DCFS was appointed temporary guardian with authority to place the child in a "licensed foster home until further order of court." An adjudicatory hearing was set for June 30,1978.

On June 28, 1978, Mrs. Keith was found to be indigent, and Jessica Stricklin was appointed as her counsel in the juvenile proceedings.

On July *24,* 1978, the circuit court placed the minor into custody of Larry and Carrie Reed, who resided in Blue Mound, Illinois. Mr. and Mrs. Reed had been licensed by DCFS on May 29, 1978, to serve as foster parents for children between the ages of two years and 18 years. At the time of the court order, the minor was just nine months old. In fact, the minor had been placed with the Reeds on June 5,1978.

In August 1978 the minor suffered a broken leg. Mrs. Reed reported he had fallen and DCFS found no reason to suspect otherwise.

In the meantime, because of persistent complaints by Mrs. Keith that the child was not being properly cared for by the Reeds, Jessica Stricklin, the child's guardian *ad litem,* filed a petition to return the child to his natural mother, who was now separated from the child's father. On September 14, 1978, the court authorized DCFS to place the child back with his mother, subject to DCFS supervision, and further entered an order of protection against the father.

In October, while the child's return was being processed, the child **was** sick for an extended period of time. Claimants allege that the illnesses were caused by

the negligence of DCFS and Carrie Reed. The child, however, was not taken out of the foster home until November 8, 1978, because of various bureaucratic delays in DCFS proceedings. On November 8, the day before DCFS was scheduled to remove the child, the foster mother, Carrie Reed, seriously injured the child by slamming his head against the floor, causing severe internal head injuries to the child. When the DCFS worker, Adelaide Price, picked up the child the next day, she noticed that the child was not responsive. She immediately took the baby to the DCFS office in Decatur, from where the child was rushed to Decatur Memorial Hospital. At the hospital it was determined the child had been badly abused. Carrie Reed was subsequently arrested for child abuse. She confessed to a series of acts, including choking the baby, sexually molesting the baby, breaking the baby's leg in August and smashing the baby's head on November 8. She pleaded guilty to child abuse and was sentenced. Claimants allege that the State is liable in damages for the injuries suffered by Gene Ray Fickes.

The first theory proposed by the Claimants is that the Court of Claims Act makes the State liable for the torts of its officers, agents or employees.

Section 8(d) of the Court of Claims Act (Ill. Rev. Stat. 1979, ch. 37, par. 439.8(d)) provides:

"The Court of Claims shall have exclusive jurisdiction to hear and determine the following matters . . . (d) All claims against the State for damages in cases sounding in tort, if a like cause of action would lie against a private person or corporation in a civil suit. . ."

The question therefore is whether a private corporation would be liable for similar acts by its agents.

Under the laws of the State of Illinois, a principal is liable for torts which are wilfully, wantonly, or maliciously committed by an agent acting under the

authority or direction of the principal. Where, however, the agent abandons the business of the agency and commits an act outside the scope of his authority or employment in a wanton, wilful, or malicious manner, the principal is not liable therefor. ***Kokenes v. Cities Service Oil*** Co. (1974), *24* Ill. App. 3d 483, 321 N.E.2d 338.

In this case there is no question that Carrie Reed was not acting under the direction of DCFS. In fact, she was acting completely contrary to the purpose for which she was employed. Therefore, the Respondent is not liable for the actions of Carrie Reed under an agency theory.

Claimant's next theory of liability is that the State was negligent in its supervision of Carrie Reed. Section 2 of the Abused and Neglected Child Reporting Act (Ill. Rev. Stat. 1977, ch. *23,* par. **2052)** provides:

> "The Illinois Department of Children and Family Services shall, upon receiving reports made under this Act, protect the best interests of the child, offer protective services in order to prevent any further harm to the child and to other children in the family, stabilize the home environment and preserve family life whenever possible. Recognizing that children can also be abused and neglected while living in public or private residential agencies or institutions meant to serve them, this Act also provides for the reporting and investigation of child abuse and neglect in such instances."

Furthermore, section 5 of the act creating DCFS (Ill. Rev. Stat. 1977, ch. *23,* par. 5005) provides that DCFS shall provide direct child welfare services by

> "**(1)** preventing or remedying or assisting in the solution of problems which may result in the neglect, abuse, or exploitation of children; . . . and **(4)** providing adequate care of children away from their homes, where needed, in foster family homes or day care or other child care facilities."

The State therefore has an affirmative duty to investigate complaints made about foster parents such as Carrie Reed and to supervise the foster home. The State contends that their agents and employees were not negligent in their supervision of this child and that they

took all reasonable precautions to safeguard and supervise the foster home.

Claimants' allegations regarding DCFS' negligent supervision of Carrie Reed are basically twofold. First, the Claimants allege that, although the real mother, the real father, the real grandmother and the child's guardian ***ad litem*** made repeated complaints that the baby was not being properly cared for, DCFS made no attempts to correct the problems. Second, the Claimants allege that an agent of the State admitted to the child's guardian ***ad litem*** that DCFS knew that Carrie Reed had made conflicting statements regarding the child's broken leg, but that DCFS did not make a thorough investigation regarding the discrepancy. We find that neither allegation is sufficiently supported by evidence of negligence.

Testimony by Barbara Keith and Jessica Stricklin substantiates the fact that repeated complaints were made to Standley Moore at DCFS. **As** a matter of fact, Barbara Keith and her mother can be characterized as chronic complainers. Barbara Keith and her mother complained repeatedly that the child was sick, that the child was dirty, that the child's bottles were dirty, that the child "looks like a little animal," that the child "doesn't laugh anymore," that the child was being mistreated, that the child was not receiving proper medical attention, that the foster parents bought the child too many nice things and that the child wasn't wearing the clothes that they had bought but rather he was wearing clothes that the foster parents had bought. Jessica Stricklin's complaints to Standley Moore were in substance just transmittals of Barbara Keith's complaints,. except for the one occasion when **Ms.** Stricklin actually saw the child, at which time the child was apparently ill and was given some medical attention.

Standley Moore's response to these complaints was to send a "homemaker" or helper, Adelaide Price, to help Carrie Reed. Ms. Price's testimony indicates that, while Carrie Reed did have some minor problems in these areas, most of the complaints were greatly exaggerated. Carrie Reed was an adequate mother, at least while Ms. Price was present. Furthermore, **Ms.** Price testified that the baby did receive proper medical attention and that in at least one instance Carrie Reed took the baby to her family doctor after the natural mother had taken the baby to a different doctor, who had prescribed medicine too strong. Ms. Price further stated that, in the many instances in which she gave the baby a bath, she never once saw a bruise or abrasion on the baby's body.

Eleanor Bridgman, a caseworker supervisor with the Youth Advocate Program in Decatur, an agency working with Barbara Keith, corroborated **Ms.** Price's evaluation of Barbara Keith by testifying that she was with Barbara Keith on at least one occasion when Mrs. Keith complained about the baby receiving improper care from the foster mother even though the baby appeared to be clean, adequately dressed, and physically healthy. In light of this testimony it would appear that Standley Moore and DCFS did take reasonable steps to investigate and remedy the complaints.

The next allegation arises through the testimony of Jessica Stricklin, the child's guardian ***ad litem.*** According to Ms. Stricklin, Eleanor Bridgman admitted that **DCFS** knew Carrie Reed had given two different statements concerning the baby's broken leg but that DCFS did not investigate the discrepancy. **Ms.** Bridgman herself was never questioned on this point during her evidence deposition. The State objected to the

evidence on hearsay grounds. The commissioner sustained the objection but allowed an offer of proof. The question is whether the evidence should be allowed as an admission by an agent of the State. Before a statement can constitute an admission by an agent, it must be shown that the person was an agent or employee, that the statement was made about a matter over which the agent or employee had actual or apparent authority, and that the person spoke by virtue of his or her authority as an agent. (*Cornell v. Langford* (1982), 109 Ill. App. 3d 472,440 N.E.2d 985; *Kapelski v. Alton & Southern Railroad* (1976), 36 Ill. App. 3d 37,343 N.E.2d 207.) It is the opinion of this Court that Eleanor Bridgman does not meet these requirements. The testimony of Eleanor Bridgman was that she was a casework supervisor for the pre-teen program in Decatur. As such she was an employee of the State and did handle referrals from DCFS. She was, however, by her own testimony only responsible for situations in which the DCFS thinks the family needs extra help in order to maintain the children *at home.* While Eleanor Bridgman was instrumental in physically removing the child from the real parent's home, nothing in the record indicates that she held *any* authority over the care and supervision of the child once the child was removed from the real parents. Furthermore, nothing in the record indicates that Eleanor Bridgman ever had access to the files regarding the foster care of the child, nor is there anything in the record to indicate that Eleanor Bridgman had any advisory, supervisory, or investigatory powers concerning the foster parents or the protection of the child after the child was placed in the foster home. Eleanor Bridgman had no authority to make any statements regarding either the care provided by the foster parents or the DCFS investigations of that

case. Ms. Stricklin's testimony regarding the admission of Eleanor Bridgman is therefore excluded. Furthermore, the State has produced evidence that it did investigate the first accident and the illnesses and that as part of that report a Dr. Mathias reported to the DCFS that:

> "I examined (Gene Ray Fickes) on 10/30/78. I did not find any evidence of physical or mental abuse to the child. He was alert and cooperative with the examination. He went to his foster mother willingly and without any sign of fear or hesitation.
>
> . . . In summary I have known the foster father, Larry Reed, for 25 years and his wife, Carrie Ellen, for approximately 5 years, and know them to be God fearing Christians and are incapable of any form of child abuse or neglect."

The fact that Dr. Mathias may have been incorrect does not affect the fact that DCFS could reasonably rely on Dr. Mathias' professional judgment. We find that the allegations of negligent supervision are not substantiated by the evidence.

Claimants allege that the State was negligent in hiring Carrie Reed because they should have known she was not fit to be a foster parent, that the State compounded the negligent act by placing Gene Ray Fickes in her home, and that as a proximate result of the State's negligence Gene Ray Fickes suffered severe injuries. We agree with this allegation.

This Court held in ***Schmidt v. State*** (1976), **31** Ill. Ct. Cl. **446,** that the State was liable for the acts of an unqualified doctor hired by the State. In ***Schmidt,*** the agent of the State, under the guise of being a qualified physician, gave a patient an over dose of medication. The unqualified physician was thereafter arrested and convicted of involuntary manslaughter and reckless conduct, and the estate instituted a civil suit against the State for damages. This Court awarded damages based

on the fact that the State was negligent in hiring an unqualified physician.

While it is much easier to ascertain whether a person is qualified to be a physician, this Court has recently allowed damages against the State under the same theory as the one proposed by the Claimants in this case. In *Carr v. State* (1979), 33 Ill. Ct. Cl. 128, this Court sustained an award of $90,000 to a ward of the State who suffered personal injuries as a result of being attacked by his foster father. The foster parent in that case, as in this case, was licensed by DCFS. The Court determined that DCFS had a duty to provide him with an adequately safe and healthy environment. Part of this duty included placing the ward in suitable foster homes under the care of competent foster parents. "Another aspect of this duty is the obligation to make reasonable efforts to determine whether a foster parent is capable and willing to properly care for a ward." *Carr, supra,* at 129.

We believe that the State failed to meet its duty to "make reasonable efforts to determine whether a foster parent is capable and willing to properly care for a ward" in this case. The State argues that its investigation was unreasonably hampered by Carrie Reed and that, because Carrie Reed lied about her past, they could not have reasonably determined her past psychiatric problems. While Carrie Reed did indeed lie to DCFS about her past history by characterizing her college days as happy, when in fact she had undergone psychiatric treatment for severe depression and attempted suicide, the DCFS' own files reflect negligence in the licensing of Carrie Reed.

According to the testimony of Mrs. Lucille Biggs, who is employed in the licensing division of DCFS, the Department requires an applicant to list three character

references. Two of the three character references must then write letters to DCFS on behalf of the applicant. DCFS sends out requests for the references to all three character references listed and two of the three must respond before an applicant can be accepted. In the case of the Reeds one of the three references did not respond, but Rev. Robert C. Clark and Mr. and Mrs. Skelton did respond.

Reverend Clark's letter stated that he had known Larry Reed for about 18 years, and he recommended Larry highly. On the other hand, Rev. Clark stated that he had known Carrie Reed for about five years and that he had "grave reservations" about her abilities. He states:

> ". . . I have grave reservations about (Carrie's) ability to function (as a foster parent). She is a scatter brain from the word go who has extreme difficulty comprehending the reality of a situation. I would characterize her as one who would tell jokes at a funeral. She would not be capable of reading a child's needs nor responding to them in a constructive manner and yet she would glorify to others the way she handles every situation properly. She has so much growing up to do that I see her needing a foster parent rather than being one.
>
> I hate to think that Larry would have to be deprived of children in his home because of his wife but I simply could not recommend them for the placement of children due to her ineptness."

The State argues that one bad reference does not and should not mandate that the applicants be rejected. This may be correct, depending upon the nature and facts. One bad reference need not disqualify an applicant if DCFS is satisfied that the allegations in the recommendation are unfounded. This is not the case here. The record clearly shows that DCFS simply ignored the letter. Lucille Biggs admits that Rev. Clark was never contacted by DCFS despite the overwhelmingly negative comments in his letter.

The State argues that this letter must be balanced against the "positive" letter written by Mr. and Mrs. Skelton. The letter written by the Skeltons must be given

weight. However, the Skeltons' letter does not justify the fact that DCFS ignored Rev. Clark's letter. DCFS is responsible for the protection of the child. It therefore has a duty to thoroughly investigate potentially harmful situations. In this case it simply did not investigate Rev. Clark's allegations.

While the State argues that the letter written by Rev. Clark was only a portion of the total picture, a statement by Standley Moore puts the letter in better perspective. In his testimony Standley Moore stated that you must weigh the credibility of the person writing the character reference. The Court takes note of the fact that Rev. Clark had ample opportunity to observe the Reeds. Many of the Reeds' "charitable acts" listed on their DCFS application were done in conjunction with Rev. Clark's church. The Court also takes note of the nature of Rev. Clark's work and the nature of the letter—that is, this was not a standard reference letter but one that was unusually negative. Standley Moore apparently thought so, too, since in his testimony he stated very simply that he had never seen Rev. Clark's letter before, but that if he had he probably would have removed the child earlier than he did. That statement alone contradicts the State's dismissal of Rev. Clark's letter.

Furthermore, DCFS' only source of information on the applicants' background comes from either the applicants or from the references listed by the applicants. When an agency such as DCFS receives such a negative recommendation from the applicants' own choice of character references, that negative recommendation must be taken seriously. If such a recommendation is not adequately investigated, then the agency will be liable for damages arising out of the dangerous situation it has created.

Even the Skeltons' letter states that the Reeds have previously been unable to adopt children and that "(the Reeds) may have problems but we feel they would be able to handle them as parents." Yet the DCFS file shows no indication that these statements were ever investigated.

Another DCFS memorandum states:

"Mrs. Parr was much less hesitant about her son-in-law than her daughter. She kept adding, when talking about her daughter, 'of course, I'm prejudiced.' So I don't know if she had reservations about her daughter or not. When I pushed her for a decision she would say 'I like to think she would made a good mother.' "

Another DCFS memorandum states that

"A recurring theme we heard about (Carrie) was words like 'kooky' or 'nuts'. We tried to track the meaning of these words down. What the licensing worker and I could determine is that these are affectionate terms for her peppiness and some of her ways that in transactional analysis terms could be said 'the child in her coming out'."

Yet the same memorandum warns that

"we also need to watch if (Carrie) is 'scatterbrained' or if her flitty ways are just some child fun coming out of her."

It is obvious that the licensing department of DCFS had reservations about Mrs. Reed. The State's answer to the question of why these reservations weren't alleviated before the Reeds were granted a license is exemplified by the testimony of Lucille Biggs, an employee of DCFS in the licensing department. At trial the following exchange took place between Claimants' counsel and Lucille Biggs:

"Q. At the time the Reeds were approved for foster care, the department didn't have a lot of foster families available for foster care, did they?

A. The department never has a lot of foster homes.

Q. I assume that had something to do with using the Reeds as a foster home in this case.

A. I can't address myself to the using of the Reeds in this case. During the course of the study in the final decision we did not feel that we had enough information to deny the Reeds a license."

In the opinion of this Court, such an attitude is inconsistent with the minimum standards for licensing foster homes. According to Children and Family Services Regulation 5.12, section 2, subchapter IIB, ***Personal Characteristics*** for ***Foster Parents,*** the "foster parents should be stable, responsible, mature individuals, who can exercise good judgment in caring for children . . ." Furthermore, subchapter VA states:

"The adoptive home study shall be done with sensitivity and professional competence. The study of an adoptive home shall indicate a thorough knowledge of the adoptive couple and the adoptive family unit. There shall be ample evidence that the adoptive family can be reasonably expected to offer an adoptive child full opportunity for his potential individual growth and development."

It is the duty of the DCFS to make a thorough investigation in order to provide ample evidence that the proposed foster parent is in fact capable. Lucille Biggs' testimony indicates that contrary to the statute and regulations, DCFS took the attitude that if it did not have ample evidence of immaturity and instability, it would license the applicant. It is precisely this attitude which led to DCFS' failure to make adequate investigations to uncover Carrie Reed's prior mental health problems. As such, we find that DCFS was negligent in its duty to Gene Ray Fickes, and that the negligence of DCFS was a proximate cause of the injuries of Gene Ray Fickes.

Before turning to the question of damages, it is necessary to address one other theory of liability by Claimants—namely, that Respondent is liable for damages because DCFS violated its own regulations in placing a child younger than two years of age in a home licensed for children two years of age and older. Testimony by Lucille Biggs indicated that such age requirements were only to indicate the previous parental skills of the foster parent and not to indicate reservations

about the character or mental stability of the parent. This being true, we find that such a mistake was not the proximate cause of Claimants' injuries. The Court does take note of the fact, however, that this was another indication of the lack of following thorough procedures by DCFS.

Dr. Campion, a licensed psychologist engaged in the practice of clinical psychology, testified that traumatic injury to a child of Gene Ray Fickes' age can have severe impact on the child's development. Signs of bedwetting, violence, aggression, hyperactivity, anger and severe social difficulties manifest themselves. This effect can last indefinitely without treatment, and even treatment is not always successful.

Dr. Campion examined Gene Ray Fickes and determined that his behavior was abnormal. He had some head-banging behavior which indicates stress in a child. He also had indications of hyperactivity 'and aggressive and violent behavior. The child had difficulty in social situations and in sharing and receiving love. He also states that the child was beginning to show signs of what can be termed psychopathic behavior and, unless treatment is successful, Gene Ray could have permanent emotional problems. Dr. Campion felt that, based on the child's background, he would need at least $20,000 worth of therapy and the longer the child waited, the less likelihood there was of success. Given the nature of the injuries, including the child's pain and suffering, and given the possibility of a long and extended therapy with permanent emotional scars, we find that an award in the amount of $100,000.00, the maximum amount that can be awarded by this Court in a case sounding in tort, should be granted in this case. This amount should be placed in trust for the minor with the American Bank of

Cerro Gordo, guardian of the minor, for the benefit of Gene Ray Fickes.

Claimant Barbara Keith has also requested an award for damages for her severe emotional distress resulting from the various acts of alleged negligence and liability which caused the serious injuries to her son. However, there is no evidence whatsoever that Barbara Keith is entitled to damages for mental distress, since she did not herself suffer any "contemporaneous impact" (*Carlinville National Bank v. Rhoads* (1978), 63 Ill. App. 3d 502, 380 N.E.2d 63; *Bullard v. Barnes* (1983), 112 Ill. App. 3d 384, 445 N.E.2d 485) nor was she within the "zone of physical danger," as recently defined by the Illinois Supreme Court (*Rickey v. Chicago Transit Authority* (1983), 98 Ill. 2d 546, 457 N.E.2d 1). Therefore we find that the claim of Barbara Keith must be denied.

For the reasons set forth hereinabove, it is hereby ordered that the sum of $100,000.00 be, and hereby is, awarded, in full and final satisfaction of this cause of action, to the American Bank of Cerro Gordo, guardian of Gene Ray Fickes, for the benefit of Gene Ray Fickes, a minor.

(No. 80-CC-0928—Claimant awarded $17,500.00.)

ELIZABETH PARATO, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Order filed December 13, 1984.

CHARLES J. KOLKER, for Claimant.

REED, ARMSTRONG, GORMAN & COFFEY, P.C. (JOHN L. GILBERT, of counsel), for Respondent.

EMPLOYMENT—teaching position—untimely notice *of* nonrenewal—stipulation—award granted. Based on the stipulation of the parties, an award was granted for the loss of earnings suffered when the Claimant was not given a timely notice of the nonrenewal of employment in her position as a teacher in a school of **nursing.**

ROE, C.J.

This cause comes before the Court on the various pleadings including the amended complaint of Claimant and the stipulation filed by Respondent and Claimant. The Court having reviewed the entire matter and being fully advised in the premises finds the following:

1. Claimant filed her complaint in this Court on or about December **1,1979.**

2. On September **21, 1981,** the claim was removed from general continuance status because a companion claim in the Circuit Court of Jackson County was dismissed. The claim was restored to active status and assigned to a commissioner for hearing.

3. On or about March **11, 1982,** Claimant filed an amended complaint in this matter which was allowed by the commissioner.

4. On or about March **30, 1982,** Respondent filed a motion to dismiss the amended complaint. Said motion was heard by the Court on November **3,1982.**

5. On February 22, **1983,** the Court ruled on the motion to dismiss, dismissing Counts III and IV of the amended complaint and deciding that the Court was without jurisdiction to award reinstatement and certain other relief requested by Claimant.

6. The Respondents stipulated that allegations contained in Count II with respect to untimely notice of nonrenewal of employment were substantially true and Claimant's claim in regard thereto was reasonable to the

extent of one year's salary, *i.e.*, $17,500.00. The allegations were:

(a) That the Claimant, Elizabeth Parato, was in a teaching position in the School of Nursing at SIU at Edwardsville, Illinois, for the academic years of 1975-76,1976-77,and 1977-78.

(b) That pursuant to the statutes of the Board of Trustees of SIU-E Claimant was to have been given notice of termination at least twelve (12) months prior to the expiration of her last academic year of teaching if the defendant was going to terminate her employment, pursuant to article VIII, section 6—B—7(c), of aforesaid statutes:

(c) That Claimant was not notified of her termination for the academic year of 1978-79 until December 15, 1977, which was beyond the termination notice date as aforesaid;

(d) That Claimant fully performed her previous contractual obligations and was willing and ready to perform for the academic year for which was terminated but for defendant's failure to allow her to perform;

(e) That as a result of not being allowed to teach for the academic year in question, Claimant suffered a loss of salary, to which amount there has been a stipulation by both parties and that such stipulation sets forth the breach of Claimant's contract by Defendant which directly caused such loss, as set forth hereinabove and as set forth in Count II of Claimant's amended complaint.

7. The parties stipulated that the claim is reasonable to the extent of and in the amount of $17,500.00.

8. Reinstatement is not a remedy available to be granted in cases' such as this. ***Gendel v. State,*** No. 78-CC-1063.

9. The award of damages for loss of earnings is an appropriate remedy, especially when the parties stipulate thereto. ***(American National Bank & Trust*** Co. ***v. State, 32*** Ill. Ct. Cl. 186. See also order from Court of Claims in this case dated February **22,** 1983.)

It is hereby ordered, based upon the allegations of the complaint and the aforementioned stipulation that Claimant be, and hereby is, awarded the sum of

$17,500.00 as and for full and final settlement of the claim of Claimant.

(No. 80-CC-0950—Claimant awarded $5,000.00.)

VALERIE DANIELS, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed December 14,1984.

RICHMAN & EVINS, for Claimant.

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

HIGHWAYS—ice on highway—accident—award grunted. A Claimant who sustained personal injuries and property damage when her automobile went off an expressway when chunks of ice were encountered on the roadway was granted an award, since the evidence established that the Claimant was proceeding with due care and caution for her own safety, and that the State was negligent in failing to properly clear the highway of the ice.

ROE, C.J.

Claimant brought this claim seeking to recover for personal injuries and property damage arising out of an automobile accident which occurred during the winter of 1979. The case proceeded to hearing, briefs were filed, and the commissioner has filed his report with the Court. The case is now before us for decision.

The Claimant testified that on the date of the occurrence, January 3,1979, she left her home in Justice, Illinois, at approximately 7:00 a.m. She entered the Stevenson Expressway at LaGrange Road and proceeded in an easterly direction. Despite the fact that there had been a heavy snowfall some three days prior

to the date of the accident, the expressway was generally clear. She testified that traffic was light and that she was proceeding at a speed of approximately 35 m.p.h. as she approached the area of the Damen Avenue exit ramp. At that time she was driving in the lefthand lane of traffic when she encountered chunks of ice on the roadway which caused her car to skid to the right, crossing through all lanes of traffic and onto and over the guardrail on the righthand side of the roadway. Her car dropped to the pavement below, a distance of approximately 20 or 30 feet. The police were called to the scene and Claimant was taken by ambulance to Mercy Hospital. She remained at Mercy Hospital for six days during which time tests were performed and she was treated for headaches. She was treated by Doctors Voris and Parameswar during her stay at the hospital and after her release. She last saw these doctors in February 1979, and she received no further medical attention until September 1980, at which time she saw a Dr. Brahem because she was having pain in both knees. She had never experienced this type of pain prior to the accident.

The Claimant testified that she still has problems with her knee which aches when the weather changes or when she is required to stand up for an extended period of time. The only treatment she is taking at the present time is exercise of the legs and use of aspirin.

The Claimant testified the Mercy Hospital bill of $1,707.25 was paid by her insurance company with the exception of a charge to her of $8.50. In addition, she had medical expenses of approximately $650, all of which were paid by her private insurance. She further stated that at the time of the accident, she was employed by the Social Security Administration; that she returned

to work in February 1979, and that she was paid her normal wages by use of "accumulated sick leave." The Claimant also testified that her car was a total loss and that she paid the sum of $250 as deductible collision insurance.

Mr. Chlebicki testified that he was the supervisor of the Stevenson Expressway and'that the normal procedure following a heavy snowfall is to clean up the expressway until it is "Code 1," which means that the main lanes and the shoulders are free of snow and ice. He testified that in excess of 10 inches of snow fell on December 31, 1978; that the winds were high and gusting and that clean up of the expressway was hindered by the wind and severe cold.

Mr. Chlebicki testified that the elevation of the expressway in the vicinity of the accident made it difficult to clear. The difficulty occurs because the wind produces cooling effects on both sides of the roadway and the elevation of the structure prevents the Department of Transportation from dumping great loads of snow on the trucking company below it. Mr. Chlebicki brought with him certain records of the Department of Transportation relating to cleanup operation on the Stevenson Expressway during the period from December 31, 1978, through January 3, 1979. The records fail to indicate that any work was done by the Department at or near the scene of the accident following the snowfall and prior to the time of the occurrence.

Based upon the testimony of the witnesses and the documents offered in evidence, we find that the Claimant was proceeding with due care and caution for her own safety and that the Respondent was negligent in

failing to properly clear the Stevenson Expressway at or near the Damen overpass.

Based upon the pain and suffering which the Claimant was caused by the occurrence and considering the fact that she had little or no out-of-pocket expense, we hereby award her the sum of $5,000.00.

(No. 80-CC-0994—Claimant awarded $100,000.00.)

RICHARD H. PETERSON, Administrator of the Estate of Claude E. Tuggle, Deceased, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed July 27, 1984.

PHELPS, CARMODY & KASTEN, for Claimant.

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

HIGHWAYS—*duty* to maintain shoulder. Court of Claims has held that even though the State must use reasonable care in maintaining the shoulder of the highway, there is no basis for holding that a difference of three to four inches in the levels of the road and shoulder constitute a dangerous condition per se.

EVIDENCE—*highway* standards admitted—no objection by State. Evidence of national highway safety standards to the effect that all parts of a shoulder that touch the edge of the pavement should be flush with the pavement were properly admitted for consideration by the trier of fact in an action for injuries sustained in an automobile accident allegedly caused by a negligently maintained shoulder, since the State did not present any argument or evidence suggesting that the standards were not applicable in Illinois.

COMPARATIVE NEGLIGENCE—*comparative* negligence applies to tort cases in Court of Claims. The doctrine of comparative negligence applies to cases sounding in tort in the Court of Claims, since the legislature has directed that the Court of Claims allow injured parties to recover in tort against the State the same as such parties could recover in tort against a party in the Illinois courts of general jurisdiction.

SAME—*full potential award must be determined before applying comparative negligence.* In tort actions before the Court of Claims, there is a statutory limit to the allowable recovery, and in applying the doctrine of comparative negligence, the full potential award must be determined before making any reductions based on comparative negligence.

DAMAGES—*wrongful death action—measure 'of damages.* The measure of damages in a wrongful death action are the benefits of pecuniary value the decedent might have reasonably been expected to contribute to his widow and children.

HIGHWAYS—automobile accident—negligent maintenance of shoulder—comparatiue negligence—award granted. The maximum award was granted to the administrator of decedent's estate in the wrongful death claim arising from an automobile accident which was partially caused by the State's negligent maintenance of the highway shoulder, since the total damages were $500,000, and deceased was 60% negligent, thereby establishing the Claimant's right to the maximum award of $100,000.

DAMAGES—wrongful death—maximum award—funeral claim denied. A Claimant's separate request for the funeral bill incurred for the deceased was denied, since the maximum award had already been granted, and the statute places a maximum limit on awards for wrongful death that applies to claims in the aggregate, not separately.

ROE, C.J.

'This is an action for wrongful death against the State of Illinois. The complaint alleges that Claude Tuggle, the decedent, was killed because the State of Illinois either negligently failed to maintain the shoulder along Illinois Route 4 or negligently failed to warn the decedent of the dangerous shoulder. The Claimant is the administrator of the estate of the decedent.

On May 1, 1979, decedent was driving north on Illinois Route 4 toward Carlinville, Illinois. At a point approximately four miles south of Carlinville, there is a curve sweeping to the driver's left. On the right side of the road there was a pickup truck parked along the shoulder. According to the only two eyewitnesses to the accident, Beulah Gansz and Robert Maurer, as decedent approached a construction area, his car went off onto the shoulder on the right but appeared to be totally under control. As he approached the truck parked in his

path, decedent tried to bring his car back onto the highway but in doing so lost control of his car. The right front wheel came back onto the highway, and the car seemed to hop onto the highway and then spin in a counterclockwise direction for approximately 100 feet before it hit an approaching car driven by Robert Maurer in the southbound lane. Tuggle died as a result of this collision.

Duane Dunlap, a consulting highway engineer, testified that the facts surrounding this accident are consistent with a phenomenon known as tire nibbling. Tire nibbling occurs when there is a drop-off along the shoulder of a highway and the tires on a car are forced to "climb" the drop-off in order to get back onto the highway. As a tire climbs the drop-off, the tire is exerting a force against the drop-off and the drop-off is exerting a holding force against the tire. As the front tire reaches the top of the drop-off, it is still exerting an inward force while the rear tire is still having a holding force exerted against it. The result is that the car will spin in a counterclockwise direction.

The State of Illinois elicited testimony from its own witnesses that the drop-off in this area was between one and two inches deep at the accident site. However, several witnesses testifying for Claimant testified that the drop-off was between three to six inches along the accident site.

While the State of Illinois has not filed a brief in defense of this claim, the Court is nonetheless aware that in ***Lee v. State*** (1964), 25 Ill. Ct. Cl. 29, this Court determined "while the State must use reasonable care in maintaining the shoulder of the highway, there is no basis to hold that a difference of three to four inches in the levels of the road and shoulder constitute a

dangerous condition ***per se.***" The Court is satisfied, however, that Claimant in this case has provided a basis for distinguishing ***Lee*** from the case at hand.

In ***Lee,*** the accident occurred in 1962. No evidence was ever presented to establish the proper design and maintenance standards for highways as they existed in 1962. In the case at hand, however, Claimant's witness Dunlap, a consulting engineer well versed in the area of highway safety and design, testified that the maintenance of the shoulders along Illinois Route **4** deviated from acceptable highway safety standards as those standard existed at the time of the accident.

According to Dunlap, the American Association of State Highway and Transportation Officials (AASHTO), of which the State of Illinois and the Department of Transportation are members, formulates highway safety standards on a national basis. Over the years AASHTO has issued several sets of policies or standards in the manual entitled ***Highway Design and Operational Practices Related*** to ***Highway Safety*** (1974). With regard to the maintenance of highway shoulders, the proper standard is that all parts of the shoulder that touch the edge of the pavement should be kept flush with the pavement. Respondent has presented no evidence or argument to suggest that these standards are not applicable to the State of Illinois in the situation at hand. As such the standard presented by the Claimant is admissable as evidence that may be considered by the trier of fact to be the proper standard of care. ***(American State Bank v. County of Woodford*** (1978), ***55*** Ill. App. 3d 123, 371 N.E.2d 232.) Deviation from this standard may then be further considered as supporting a failure to exercise due care on the part of Respondent.

Dunlap testified that proper highway standards

dictate there should be no drop-off on the side of the highway and that tire nibbling can occur with as little as one-half inch of drop-off, but that the probability of the phenomenon increases in proportion to the depth of the drop-off. Given the fact that the events surrounding the accident are consistent with the phenomenon known as tire nibbling, and given the testimony that indicated that there was a three- to six-inch drop-off along the shoulder, we believe that more likely than not the accident was at least in part proximately caused by the fact that decedent tried to bring his car back onto the road at a point which had a drop-off contrary to recognized safety standards. It is further undisputed that there were no signs warning the decedent of the dangerous condition.

On the other hand, while Respondent's negligence is established, it is further established that decedent was not exercising reasonable care for his own safety and was thus guilty of contributory negligence. There was no reason that decedent could not have been aware of the road construction and of the oncoming traffic. There is no evidence that his view of the entire area surrounding the scene of the accident was in any way impaired. He had ample opportunity to slow or stop his vehicle rather than drive off the roadway onto the shoulder if either the construction or the oncoming traffic presented a potential problem in regard to passing the scene of the accident in his own lane. ***Parkinson v.*** State (1976), **31 Ill.** Ct. **Cl. 98.**

All negligence cases tried in the circuit courts of Illinois on or after June 8, **1981,** are to apply the rule of comparative negligence in the place of the old rule whereby contributory negligence completely bars recovery. (***Alvis v. Ribar*** (1981), 85 Ill. **2d 1, 421** N.E.2d

886.) The policy reasons for replacing the old contributory negligence rule are adequately explained in *Alvis*. The harshness of the rule has been lamented by this Court. ***Parkinson*** v. State, ***supra,*** **103,104.**

Section **4** of article 13 of the Illinois Constitution of 1970 abolished sovereign immunity in Illinois, except as the State legislature "may provide by law." The Immunity Act was then enacted by the legislature to provide that the State "shall not be made a defendant or party in any court" except as provided in the Court of Claims Act (Ill. Rev. Stat. 1979, ch. 127, par. 801). Section 8(d) of the Court of Claims Act authorizes exclusive jurisdiction in the Court of Claims to hear "all claims against the State for damages in cases sounding in tort, if a like cause of action would lie against a private person or corporation, in a civil suit. . . ." (Ill. Rev. Stat. 1979, ch. 37, par. 439.8(d).) The "like cause of action" provides a legislative directive that this Court allow an injured party to recover in tort against the State the same as such person could recover in tort against a party in the Illinois courts of general jurisdiction. The only legislative restriction is that an award for damages in tort in a case such as this shall not exceed $100,000.00. If this court were to bar a claim in tort because of contributory negligence when the same injured party could recover in a civil action in circuit court because of the application of comparative negligence, then the statutory directive will not have been followed. We therefore find that the doctrine of comparative negligence as adopted by the Supreme Court of Illinois in **Alvis** v. ***Ribar*** is to be applied in cases sounding in tort in the Court of Claims.

Alvis adopted what is known as the doctrine of comparative negligence in its pure form. By this is meant that the Claimant's total damages are simply reduced by

the percentage of fault attributable to him. Because such reduction is used, it is necessary to determine the effect of the statutory $100,000.00 limit on the determination of damages. Claimant argues that his potential damages exceed $100,000.00 and that the award should first be made as to total damages without regard to the statutory limitation, that this total award should then be reduced by the percentage of decedent's negligence (if any), and that the damages then resulting from the comparative negligence formula are the only damages subject to the $100,000.00 limitation. The Court has considered similar issues in the past and has held consistently that any reductions or setoffs must apply to and be deducted from the statutory limit and not the total potential award where the total award exceeds the limit. (Williams *v.* State (1965), 25 Ill. Ct. Cl. 249.) The reason for this is there can be but one satisfaction for any injury, and therefore other recoveries must be deducted from the amount the State would otherwise be actually required to pay.

In the case of comparative negligence, however, we are not dealing with a situation where Claimant has already received some other satisfaction. Rather, the damages are being reduced by virtue of Claimant's negligence. Hence, the total amount of possible recovery against the State cannot even be determined until the deduction resulting from Claimant's negligence is first determined. The Court therefore finds that Williams is not applicable as to the issue of reduction and that the full potential award should first be determined before any reduction is made for Claimant's negligence.

Decedent was 28 years old when he died. He left a widow and two children, a daughter, age seven, and a

son, age three. He had been a minister since 1977 for the Assembly of God churches. The family lived in Kewanee, Illinois, where he was an assistant pastor. At the time of his death, decedent was en route to the State headquarters of the Assembly 'of God churches near Carlinville.

Decedent's widow testified that decedent was a good provider and spent 'very little on himself. His health was good; he did not drink intoxicants. His income at the time of death was $562.50 per month plus additional allowances and benefits of over $400 per month.

Fred Gottheil, a professor of economics at the University of Illinois, testified that decedent's work life expectancy on the date of death was 34.1 years and that his full life expectancy was **43.7** years. Professor Gottheil found the present cash value of decedent's lost earnings to be $235,749.33.

Decedent's funeral bill was $2,409.50.

The measure of damages in a wrongful death claim is the benefits of pecuniary value, including money, goods and services decedent might have reasonably been expected to contribute to his widow and children. The factors to be considered are: what decedent customarily contributed in the past; what he earned and what he was likely to have earned in the future; what he spent for customary personal expenses; what instruction, moral training and superintendence of education he might reasonably have expected to give his children had he lived; his age; his health; his habits of industry, sobriety and thrift; and his occupation. (Illinois Pattern Instruction **31.04.)** Based upon all these factors, the Court finds that the total damages are $500,000.00.

As to the amount of negligence on the part of the decedent, the Court finds it to be 60%. The net damages not attributable to decedent's negligence are therefore $200,000.00. The Court finds that the damages which should therefore be awarded to Claimant on the claim for wrongful death are $100,000.00, the statutory limit.

Claimant also has brought a separate claim for the funeral bill of $2,409.50. (*Eggimann v.* Wise (1964), 56 Ill. App. 2d 385, 206 N.E.2d 472.) However, the statute provides that the award "shall not exceed the sum of $100,000.00 to or for the benefit of any claimant." (Ill. Rev. Stat. 1979, ch. 37, par. 439.8(d).) Since the administrator is the only Claimant both for the injuries under the wrongful death claim and for the funeral expenses, the limitation clearly applies to the claims in the aggregate, not separately. (*Bovey v.* State (1955), 22 Ill. Ct. Cl. 95.) Therefore, the Claimant is not entitled under the Act to anything over the single award of $100,000.00.

Based on the foregoing it is hereby ordered that the Claimant, Richard H. Peterson, administrator of the estate of Claude E. Tuggle, be, and hereby is, awarded the sum of $100,000.00.

(No. 80-CC-1366—Claimant awarded $2,148.33.)

JOSEPH B. KELLEY and PREFERRED RISK INSURANCE COMPANY, Claimants, *v.* THE STATE OF ILLINOIS, Respondent.

Order filed February 15,1985.

HEYL, ROYSTER, VOELKER & ALLEN, for Claimants.

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

NEGLIGENCE—*automobile accident—State truck driver negligent—award granted.* **An award was granted to a Claimant and his insurance company for the personal injury and property damage which occurred when the State truck the Claimant was following pulled to the right and then turned left in front of the Claimant, since there was no indication of any contributory negligence on the part of the Claimant, and the negligence of the State driver was the proximate cause of the accident.**

HOLDERMAN, J.

Claimant in this case filed a claim in tort for personal injury and property damage due to an accident which occurred on March **1, 1978,** between Claimant and Dean Floore, an employee of the State of Illinois.

Claimant Joseph B. Kelley was operating his vehicle in a northerly direction on Illinois State Route **54,** at or near its intersection with County Road 7.25E, in or near Barclay, Sangamon County, Illinois. Claimant's wife and grandson were passengers in his car.

Respondent's employee, Dean Floore, was the operator of a **1972** International Loadstar 1700 truck and was operating the vehicle in a northerly direction ahead of Claimant at the location above set forth.

From the testimony of the witnesses, Respondent pulled his truck off the right side of the road to make a left hand turn at the intersection. Claimant testified he thought Respondent was going to stop while off the right side of the road and when Respondent swerved back onto the road, Claimant pulled his vehicle to the left hand side of the road trying to avoid an accident. A collision followed, causing personal injuries and collision damage to Claimant's automobile.

It appears from the record that Claimant did everything possible ,to avoid an accident and was responsible for there being a limited amount of damage rather than an extremely bad accident.

The following expenses were incurred: medical expenses for Joseph B. Kelley in the amount of $516.00; $1,136.08 for automobile repair; **$39.15** for an appraisal fee; **$25.00** for towing charges; **$32.10** for medical expenses of Howard J. Watkins (one of the passengers) and **$400.00** for additional transportation.

This Court has previously held that while the State is not an insurer against all accidents occurring on its highways, it is responsible when the State is negligent and that negligence is the proximate cause of Claimant's injury and Claimant was free from contributory negligence. 30 Ill. Ct. Cl. **410.**

In the present case, there is not any indication of contributory negligence on the part of Claimant. This Court finds that negligence of Respondent was the proximate cause of the injuries complained of.

Award is hereby entered in favor of Claimants in the amount of **$2,148.33.**

***(Nos.* 80-CC-1451, 80-CC-1543 cons.—Claim dismissed.)**

ROBERT OAKES and **JUDITH OAKES, Claimants,** *v.* **THE STATE OF ILLINOIS,** Respondent.

Opinion filed September 21, 1984.

PETER F. FERRACUTI, for Claimants.

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

NEGLIGENCE—*burden of proof on Claimant.* **In a negligence action based on the maintenance of a highway, the Claimant must prove by a preponderance of the evidence that the State was negligent, that the**

negligence was the proximate cause of Claimant's injury, and that the Claimant was free of contributory negligence.

HIGHWAYS—*motorcycle* accident—holes in pavement not proven—claim denied. Claimants failed to sustain their burden of proving that the accident which occurred when their motorcycle allegedly hit holes in the pavement and went out of control was caused by the negligence of the State, since the State's records showed that the section of highway in question was repaired two days prior to the accident, and there was testimony that there were rough spots on the pavement, but there was no testimony as to holes in the pavement.

HOLDERMAN, J.

Claimants in this cause, husband and wife, have filed suit against the State of Illinois €orinjuries sustained on July 4, 1979, at or about the hour of 8:00 p.m. Claimant Robert Oakes was driving a motorcycle in a northerly direction along and upon County Highway 3, approximately two miles south of Sheridan, between Route 52 and Sheridan, Illinois, in La Salle County, Illinois.

Claimants allege that the motorcycle driven by Claimant Robert Oakes struck a large hole, or a series of holes, in the northbound lane on the road that was known as Bernard curve, which is a portion of the Sheridan spur. The Claimants allege that the holes caused Claimants' motorcycle to go out of control and veer into a southbound lane striking an automobile operated by David Dorrick.

Both Claimants sustained rather severe injuries as a result of the accident. Specifically, Claimants allege that it was negligence on the part of the State that led to the accident and to the ensuing lawsuit and that the State of Illinois:

"A. Carelessly and negligently permitted a large hole to exist on the surface of said highway, despite having knowledge of the existence of said hole in sufficient time to correct said hazard;

B. Carelessly and negligently failed to warn the public, including the Claimants, of the existence of holes or uneven surface of said highway

despite having knowledge or notice of said defects and failed to post said warning;

C. Carelessly and negligently failed to construct, maintain or repair the aforesaid portion of the Sheridan Spur;

D. Carelessly and negligently failed to properly inspect the aforesaid portion of the Sheridan Spur so as to ascertain the existence of the hazard."

As a result of the accident, Claimants state they sustained very serious injuries, requiring multiple surgeries and a tremendous amount of lost time from both of their occupations.

Respondent takes the position that the Claimants have failed to demonstrate by a preponderance of the evidence that Respondent negligently maintained the highway in question. The record shows that repairs had been made in that area no later than two days before the accident happened.

Brockman v. State (1975), **31** Ill. Ct. Cl. **53;** lays down the following rules relative to what is necessary for a Claimant to prove before an award can be made:

"Negligence—due care. The State is not an insurer of the condition of highways under its control but does have a duty to the public to use reasonable care in maintaining roadways.

Same—burden of proof. The Claimant bears the burden of proving by a preponderance of the evidence that the State is negligent; that the State's negligence proximately caused Claimant's injury; and that Claimant is free of contributory negligence.

Same—evidence—Where design of a highway is in conformity with standards in the industry at the time it was constructed; and where the State employed two persons to check drains along county roads during working day, the State is not guilty of negligent design and maintenance of a highway."

Respondent also cites ***Laine v. State*** (1977), ***32*** Ill. Ct. Cl. 10, which states that "in order for Claimant to recover, he must prove that the State was negligent, that such negligence was the proximate cause of the injury, and that Claimant was in the exercise of due care for his own safety." Respondent further cites ***Moldenhauer v.***

State (1978), **32** Ill. Ct. Cl. **514,** where the Court laid down the rule that "in a negligence action, Claimant bears the burden of proving by a preponderance of the evidence that State was negligent, such negligence was the proximate cause of the accident, and that Claimant was not contributorily negligent" and that "Claimant must show Respondent had, or should have had, knowledge of alleged defects before recovery can be had in negligence action."

Claimant, in his complaint, alleges that the accident was caused primarily because the motorcycle driven by Claimant Robert Oakes struck a hole in the pavement. The commissioner's decision emphasizes the fact that there is not any testimony in the record from Claimant or any other witnesses indicating there was a hole in the pavement. Testimony does refer to some rough spots but not to any holes.

It is interesting to note that the record of Respondent shows repairs were made two days prior to the accident, which is strong evidence that the State was alert in trying to maintain a serviceable highway. The record shows this road was built in **1932,** some **47** years before the accident occurred.

The record is completely silent as to any knowledge that the State may have had if, in fact, there were holes in the pavement. This; in the opinion of the Court, indicates there were not any holes and even if there were, there was no evidence in the record indicating the State had knowledge of such defects.

It is the Court's opinion that the Claimants have failed in their burden of proof and this case is dismissed.

(*No.* 80-CC-1623—Claimant awarded $3,750.00.)

HARRY ROSSETT, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed March 11, 1985.

KUGLER, DE LEO & D'ARCO, LTD., for Claimant.

NEIL F. HARTIGAN, Attorney General (H. ALFRED RYAN, Assistant Attorney General, of counsel), for Respondent.

NEGLIGENCE—duty to business invitee. The State owes a duty of reasonable care to business invitees for the conditions existing on its premises; however, the State is not an insurer of the premises over which it has control, and in order for liability to attach, the State must have actual or constructive notice of the conditions causing the injury.

SAME—***business invitee—state building—fall on crowded stairs—comparative negligence—award granted.*** The State was guilty of negligence in allowing State employees to use the steps of the entrance of a State building as a spot to eat their lunch, but the Claimant was also negligent in attempting to use the steps under such circumstances; therefore, the Claimant was found to be 85% negligent with regard to the injuries he sustained when he fell while attempting to go down the steps, and an appropriate award was granted.

ROE, C.J.

The Claimant, Harry Rossett, brought this claim for damages against the Respondent for personal injuries he suffered from falling down stairs located at the Capitol Building in Springfield, Illinois, on June 6, 1978. The claim was assigned to a commissioner. A hearing was held. Both parties submitted briefs and the matter is now before us for decision.

According to the Claimant's testimony the facts are as follows:

On June 6, 1978, the Claimant, a paint salesman with about 50 years' experience, was in Springfield for the opening of bids furnished to the Respondent on paint for State buildings. About noon that day he left the

State Office Building and proceeded to and through the Capitol Building intending to return to the State House Inn where he was staying. The Claimant exited the Capitol on the north side and encountered a set of steps. He testified that it was "the most beautiful balmy day (he had) ever witnessed" and the steps were crowded with people who were eating. It was so crowded, he testified, that there were no paths open to walk through down the stairs and the people had to move just so he could get out the door. Railings were obstructed from view by the many people loitering about. As he pushed through the people to go down the steps, he stepped on a foreign substance, and fell forward very fast to the bottom of the stairs. He was taken by ambulance to Memorial Hospital.

The case proceeds under a negligence tort theory, the elements of which are well defined by case law. The duty of care that is owed to the Claimant depends upon his status at the time of the injury. The Claimant was clearly a business invitee, as he was on the premises to sell paint to the State of Illinois. As such, the State owed a duty of reasonable care to the Claimant for conditions existing on the premises. (*Kumiga v. State* (1966), 26 Ill. Ct. Cl. 77/431; *White v. State* (1966), 26 Ill. Ct. Cl. 77.) However, the State is not an insurer of the premises over which it has control and in order for liability to attach it must have actual or constructive notice of the condition causing the injury complained of. *Kriesal v. State* (1978), 32 Ill. Ct. Cl. 101.

We think that the State allowed a dangerous condition to exist under the facts in this case by allowing a crowd so large to block the doorway, to block the vision and use of the handrails, and to prevent safe access to passage from the exit down the stairs, and all

the while eating during the noon hour. Due to the size of the crowd and the time of day, we think that the State should have known the conditions to be dangerous and that a fall was foreseeable. However, we also find that there was a great amount of negligence on the part of the Claimant in encountering these conditions and failing to exercise due care for his own safety and well being.

Under the doctrine of comparative negligence, which was adopted prior to this case going to trial, we find that the Claimant was 85% negligent and the Respondent was 15% negligent. Damages, for expenses, pain, suffering, disability, and lost wages and benefits are found to be $25,000.00. Therefore, the Respondent is liable to the extent of $3,750.00.

It is hereby ordered that the Claimant be, and hereby is, awarded the sum of $3,750.00

(No. 81-CC-0531—Claimant awarded $5,199.00.)

ARDEN SHORE ASSOCIATION, **Claimant,** *v.* THE STATE OF ILLINOIS, Respondent.

Opinion* filed August *22,1984.

BOODEL, SEARS, SUGRUE, GIAMBALVO & CROWLEY, for Claimant.

NEIL F. HARTIGAN, Attorney General (MARY MULHERN, Assistant Attorney General, of counsel), for Respondent.

CONTRACTS—*services to ward of DCFS—award granted.* **An award was granted to the Claimant for the residential and special education treatment provided for a ward of the Department of Children and Family Services initiated under a contract between the Claimant and the Department, since the evidence established that the Claimant fulfilled its obligations under**

contract by providing services, and the Department resorted to the service appeal system to terminate funding for the child being treated, but failed to give Claimant notice of those procedures.

HOLDERMAN, J.

This matter comes before the Court relative to a deduction in the amount of **$5,496.50** made by Respondent for services rendered by Claimant from March through July **7, 1977.** This matter was tried upon a basic statement of facts between the parties hereto which was **13** pages in length.

Claimant alleges the above set forth amount was for services rendered in **1977** for which the Department of Children and Family Services (hereinafter called **DCFS)** paid in **1977,** and then unilaterally deducted in **1979** from other payments due Claimant.

Claimant is a nonprofit charitable organization that provides residential treatment and special education to socially and emotionally disturbed children between the ages of **11** and **17.** It accepts children in two ways, private placement, usually from the family, at which time private funds pay for the child's stay at Arden Shore, and placement from Respondent, DCFS, for which public funds pay for services.

In **1976,** pursuant to a contract, Claimant was to provide services to children that DCFS placed with it, and DCFS was to pay $42.50 per day for the child's services.

The present case involves a young man named William Samuel Gerhardt. In the summer of **1976,** the patient was confined to a psychiatric hospital. He was **13** years old. This patient had numerous behavioral problems, had run away from the house, was a truant, and had done some auto theft, drug abuse, and was very resistant to authority.

On July **1,** 1976, the patient's parents had placed him with Arden Shore. Although they were supposed to pay $12 per day, by September of 1976 they were in substantial arrearages and the patient was not making very much progress.

In September of 1976, DCFS agreed to pay Arden Shore for its treatment of the patient.

The sole question before the Court is whether the Claimant should be paid this $5,496.50 by DCFS for services they rendered, or should the DCFS be allowed to unilaterally deduct that amount for other services that were rendered in May of 1979.

We have to look at the facts to understand how this situation developed when the patient's parents and DCFS agreed to have DCFS fund the patient's stay at Arden Shore. They agreed, DCFS and the parents, that this would last until January 31, 1977, approximately four months.

Claimant was not informed of this agreement, as neither DCFS nor the parents told them. The first information they had relative to the agreement was in May **of** 1982 when it was included in the statement **of** facts upon which this claim is predicated.

As far as Claimant was concerned, this was a typical placement by DCFS, pursuant to its contract with DCFS, which contract provides that when DCFS places a child with Claimant, it is to submit a Form 903 within 10 working days of placement and to complete a service plan agreement which includes an individualized goal sort of plan for the child and also to identify the child's caseworker at DCFS.

In October of 1976, DCFS sent this Form 903 to Claimant but it did not complete the service plan

agreement nor did it give any goals for the child or identify the child's caseworker.

Howard Harris, a group leader at Arden Shore, is an employee of Claimant. Claimant made a series of telephone calls to DCFS and wrote a letter in December of 1976 requesting the name of the caseworker who was to be assigned to the patient. There was never any response to the letter or telephone call and they were never informed what the goals were supposed to be.

According to the contract, Claimant was to send DCFS progress reports on the patient. Progress reports were not sent to DCFS because Claimant did not know what goals they were supposed to be dealing with nor did they know who to send them to because they were never informed by DCFS.

In March of 1977, Howard Harris, at the request of the patient's parents, wrote a letter to DCFS, advising them of the patient's projected release date which at that time had been moved to June of 1977. During the same month, the DCFS processed a Form 903 to stop payment, which meant they were going to cut off funding. It was never received by Claimant and the first they saw the Form 903 was in May of 1979, **26** months after it had been prepared.

On April **28,** 1977, DCFS held a formal service appeal hearing on the patient, basically to consider whether they were to continue funding of the patient at Arden Shore. Claimant never received a notice of this meeting even though the rules provided that a notice be sent. This meeting was one of the key points in this case, it being Claimant's contention they were not apprised of the type of meeting that was to be held. Mr. Harris, representing the patient's parents, appeared at the meeting and the only reason he attended was that he had

been informed by the patient's parents that it was going to be an informal meeting to discuss the patient's funding. This was one of the points stipulated to in the statement of facts.

There is some debate as to whether or not Mr. Harris was told it was going to be an informal meeting or if he assumed that, although no formal notice was ever given Claimant. Mr. Harris' position is that he thought he was going to support the parents and their son and that they needed support at that time.

It is Claimant's further contention that they were not apprised as to what this meeting was going to be about and they assumed it was going to be an informal meeting, sitting around and discussing the program, or **lack** of **a program, concerning the patient. Claimant's** representative did not have any idea it was going to be a formal service appeal hearing and he didn't know anything about funding since he is a group leader and has no knowledge where funds come from.

Claimant contends that if it had been notified of the hearing, he would have gotten together progress reports regarding the patient's development. It is apparent the patient was having very serious disciplinary problems, such as vomiting on members of the staff on purpose, being disruptive, and threatening other students.

There is some dispute as to whether or not it was indicated at this meeting that Arden Shore was letting the patient's payments "slide" until this hearing. Mr. Harris states that he never indicated that and, furthermore, he didn't have any knowledge or authority over funding for students at Arden Shore.

Claimant emphasizes its position that failure to send

a formal notice was a breach of contract between the parties.

The State continued to pay Claimant during this time and Claimant stated it would not throw the patient out on the street even if DCFS cut off his funding. Claimant states that if it had been advised by Respondent that there would be no further funding, it would have tried to secure the funds from some other source. Claimant emphasizes that in cases of this kind they have to secure the source of the funds in advance of providing services.

This settles down to the question of the amount of money paid from March 1, 1977, to July 8, 1977. At this point, the question arises as to why there was no deduction for the month of February. Oral argument indicated the State had voluntarily agreed with the parents to fund for that extra month so that is why there is no dispute over the same.

Claimant's position is that this is a matter of contractual claim and that the contract was broken when Claimant did not receive any notice of the hearing that resulted in a determination of the claim. It is Claimant's further contention that they performed the services they agreed to perform and, two years after they performed said services, the State with no explanation or warning, deducted the money from other payments due Claimant, and that is why this claim was filed.

It is Respondent's position that approximately two months after the child arrived at Arden Shore, his parents signed an agreement with DCFS turning over custody of their son to DCFS. This is the agreement Claimant says it did not know was in existence until after the suit was filed. Respondent's position is that some

three months after the patient was sent to Arden Shore, Arden Shore was getting paid $42.50 per day by the State. The record discloses that DCFS entered into an agreement in July of 1976 with the parents of the boy and from that time on, DCFS became the financial source of payment to Claimant. Respondent acknowledges it did not send written notice to Arden Shore of the service appeal hearing where they were going to consider whether to continue funding the patient.

The Commissioner, in his report, stated the issues are as follows:

1. Whether the State is liable for the value of services rendered to a child who is not within the legal custody of the State.
2. Whether the State is liable for the value of services rendered to a child when Claimant's contract rights are in direct conflict with a Department regulation promulgated pursuant to statutory authority.
3. Whether the State is estopped from raising a legal defense to the claim or seeking recoupment of funds improperly paid.

The DCFS acquired legal temporary custody and financial responsibility, pursuant to the voluntary agreement entered into with the parents of William Samuel Gerhardt, whereby DCFS assumed custody until January 31, 1977. The agreement stated that custody terminated after six months. After DCFS acquired temporary custody of the child, Respondent agreed to pay Claimant $42.50 per day. Claimant rendered services to the patient from October of 1976 to July 8,1977, and sent Respondent monthly vouchers for these services, which Respondent paid. In May of 1979, nearly two years after the child was discharged by

Claimant, Respondent deducted $5,490.50 from its payment to Claimant.

It is Respondent's contention that the April 28, 1977, meeting was a formal service appeal hearing, Claimant insists it had no knowledge this meeting was to be a formal service appeal hearing and it received no proper notice from Respondent. It was the result of this meeting that Respondent decided not to continue funding for the child.

There is no question but that Claimant has fulfilled its obligation under the contract or that the services it is seeking to recover were received by the patient. Article 16 of the contract between the parties states that: "The parties agree to abide by the decisions made as a result of a hearing under the Department's (i.e., Respondent) service grievance procedure attached as Exhibit E." However, article 16 also states that: "The Agency (i.e., Claimant) shall have the right to notice, the right to be present, and the right to present evidence at a service grievance hearing." The contract provides that notice is to be sent as follows: Arden Shore Association, Box 278, Lake Bluff, Illinois, 60044. Furthermore, section 6 of the Respondent's service grievance procedure, attached as exhibit E to the contract, provides that Respondent's director shall notify the applicant or recipient of the final decision by certified mail.

In this case, there is no dispute that Respondent not only failed to notify Claimant that a service appeal hearing was going to be held on April 28, 1977, it also failed to notify Claimant of the final decision until November of 1979—two years after the hearing and two years after Claimant continued to render services to the child.

When Respondent opted to take advantage of the

service appeal system to not continue funding the child, it became obligated to give Claimant notice of the final decision. Respondent's failure to observe any of these obligations now prevents it from binding Claimant to the decision made as a result of the hearing.

The commissioner's report also sets forth the question of estoppel. It is the Court's opinion that the breach of contract, by failure to give proper notice to Claimant, was such a sufficient breach that no other basis for an award for Claimant is necessary.

It is the Court's opinion that Claimant be awarded the sum of **$5,199.00,** which is the amount claimed less **$297.50,** or **$42.50** per day for the seven days in July not covered by the contract.

An award is hereby entered in favor of Claimant in the amount of **$5,199.00.**

(No. **81-CC-0857—Claimant awarded $300.00.**)

PATRICIA SHANNON, Claimant, *v.* **THE STATE OF ILLINOIS,** Respondent.

Opinion filed October 29,1984.

EDWARD R. VRDOLYAK (WILLIAM J. MCGANN, of counsel), for Claimant.

NEIL F. HARTIGAN, Attorney General (LYNN W. SCHOCK, Assistant Attorney General, of counsel), for Respondent.

HIGHWAYS—*potholes—State had constructive notice—award granted based on comparative negligence.* **The Claimant was granted an award for the total loss of her automobile as the result of hitting a pothole on a State highway and then crashing into a culvert, but the award was reduced under the doctrine of comparative negligence due to her failure to avoid the**

pothole, since the evidence established that the State had constructive notice of the potholes in the section of highway involved, and Claimant could possibly have straddled the pothole if she had been in sufficient control of her car.

POCH, J.

Claimant seeks recovery for property damages arising out of an accident on November **5,1979.**

The incident complained of occurred at about 8:00 a.m. on November **5, 1979,** while Claimant was driving her 1968 Chevrolet Malibu northbound on Burnham Avenue in the Village of Lynwood, Illinois. Claimant testified that when she turned on to Burnham Avenue, the road was full of potholes. As she started to hit the potholes, she reduced the speed of her car to between 30 and 40 miles per hour. At the scene of the accident she hit a pothole, which Claimant stated was approximately 1½ to two feet wide and from three to four inches deep, losing control of the car, and after traveling about 10 yards, hit a culvert off the road. The car, for which she paid $500 about six months before the accident, was a total wreck.

Claimant testified that she was familiar with this location, having travelled over the road about 40 times during a period of two or three years prior to the accident and that the road was in poor condition.

Claimant, on cross-examination, testified that she saw the potholes and reduced the speed of the car but could not avoid the potholes. She further stated that oncoming traffic prevented her from going into the southbound lane and that it was too close to the gravel shoulder to straddle. However, from an examination of the photograph it appears that Claimant could have straddled it if she had seen it in time and had reduced her speed.

Respondent introduced in evidence an Illinois Department of Transportation memorandum, dated September 12,1980, taken 10 months after the accident. Said memorandum noted the Department had no record of a pothole at the location of the accident, nor any knowledge of any previous accidents at the scene of the accident, and that the Department had no record of repairing any potholes at the scene.

The police report taken at the time of accident did not indicate any road defects.

From the record there is no proof that Respondent had actual notice of the pothole, but from the condition of the road it had constructive notice.

It would appear that the failure of the State to maintain Burnham Avenue was a proximate cause of the accident, but Claimant's failure to have her car sufficiently under control so as to straddle the pothole or otherwise avoid it was an equal proximate cause of the accident.

From the evidence before the Court, Claimant, under the doctrine of comparative negligence is entitled to an award. *Alvis v. Ribar* (1981), 85 Ill. 2d 1.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of three hundred ($300.00) dollars.

(No. 81-CC-0874—Claimants awarded $2,500.00.)

PATRICK J. CAROLAN and JUDITH A. STUEWE, Claimants, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed July *16,1984.*

Order on motion to dismiss filed October 1, 1984.

DAVID P. DUFF, for Claimants.

NEIL F. HARTIGAN, Attorney General (JOHN J. PERCONTI, Assistant Attorney General, of counsel), for Respondent.

STIPULATIONS—*bump* **on highway—personal injury—award granted. Pursuant to the joint stipulation of the parties, the Claimants were granted an award for the personal injuries sustained as a result of an automobile accident which occurred after the car struck a bump on a State highway, but the claim for interest on the award was denied in the absence of a statute subjecting the State to interest on such an award.**

POCH, J.

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

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

On August 17, 1980, Claimants were involved in an automobile accident after striking a bump on the 1-290 expressway at a point between First and Ninth Avenues, Maywood, Illinois.

It is hereby ordered that the Claimants, Patrick J. Carolan and Judith A. Stuewe, be and hereby are awarded the sum of twenty-five hundred dollars and no cents ($2,500.00), in full satisfaction of this claim.

ORDER ON MOTION TO DISMISS

HOLDERMAN, J.

This matter coming on to b'e heard on the motion of the Respondent to dismiss the claim herein and it appearing to the Court that Claimant has received due notice and the Court being fully advised in the premises:

Finds that the State of Illinois is not liable for the payment of interest in the absence of a statute subjecting

it to such liability. No such statute exists for the payment of interest on tort claims.

It is hereby ,ordered that the motion of the Respondent be, and the same is, hereby granted and the claim herein is.dismissed with prejudice.

(No. 81-CC-1042—Claim denied.)

DEANE FRYE, INC., Claimant, ***v.*** **THE STATE OF ILLINOIS,** Respondent.

Opinion filed October 22,1984.

DWIGHT L. SHOEMAKER, for Claimant.

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

LAPSED ***APPROPRIATIONS—there is no authority for payment when appropriation is insufficient to pay additional claim.*** When there are no funds appropriated for a project sufficient to pay for the full amount of the additional claim for completing the project, there is no legal authority for payment of the additional claim.

Comers-additional ***work—appropriation exhausted—claim denied.*** The Claimant's action for the additional work required to complete the work at a State-owned building was denied, since the appropriation had been exhausted, there was no extraordinary affirmative conduct by the State and its employees which would estop the State from denying the claim, and the Claimant knew the additional work exceeded the written contract amount, but failed to follow the proper procedures necessary to protect its claim.

ROE, C.J.

This claim was brought by Deane Frye, Inc., against the State of Illinois for $2,750.00. Claimant contends'the money is due for additional work performed at a State-owned building, and which was necessitated by certain conditions in and around the building not contemplated by the parties in the written contract.

The written contract entered into on November 20, 1979, called for payment of $20,500.00 to Claimant as the cost for the entire project. In April of 1980 it was discovered by Claimant that unforeseen circumstances concerning the building and other matters required modifications of the work contemplated by the written contract.

The Claimant proceeded to perform additional work which it valued at $4,250.00. Respondent paid $1,500.00 to Claimant which exhausted the appropriation for the project. A hearing was held on January 18, 1983, all briefs and the report of the commissioner are filed, and the matter now comes on for the Court's decision.

There was much time devoted by the parties at the hearing and in the briefs to the questions of whether the additional work was necessary and whether it was done pursuant to proper authority from the Respondent. The Court agrees with the arguments advanced by the Respondent on the latter question.

It is uncontroverted that the $4,250.00 claim for the additional work exceeded the contract limit, and that after the payment of the $1,500.00 on that claim there remained no funds left in the project appropriation. Since there were no funds appropriated for the project sufficient to pay the full amount of the additional claim, there is no legal authority for its payment. Ill. Const. 1970, art. VIII, sec. 2(b); Ill. Rev. Stat., ch. 127, par. 166.

For the reasons discussed in Respondent's brief, Claimant's reliance on the doctrines of ratification and equitable estoppel is misplaced and cannot operate to defeat the clear intent expressed in the Constitution and by the General Assembly. The facts in this case, even when considered in a light most favorable to Claimant,

do not demonstrate the kind of extraordinary affirmative conduct by Respondent and its employees which is necessary to estop the State in a case such as this where the project appropriation has been exhausted. ***Brokaw Hospital v. State*** (1982), 35 Ill. Ct. Cl. 231.

The Claimant's estoppel argument must also fail for the reason that Claimant knew that the additional claim was in excess of the written contract amount, and as the State has demonstrated, Claimant did not follow proper procedures necessary to protect its claim. See ***Brokaw, supra.***

For the foregoing reasons, it is the opinion of the Court that this claim be, and hereby is, denied.

(No. 81-CC-1138—Claimant awarded $4,878.09)

WILMER AGLES, d/b/a **Agles Bus** Co., Claimant, *v.* **THE STATE OF ILLINOIS, Respondent.**

Opinion filed October 19,1983.

Order filed September 17,1984.

Order filed December 13,1984.

HARRY J. STERLING, for Claimant.

REED, ARMSTRONG, GORMAN & COFFEY (JOHN GILBERT, of counsel), for Respondent.

CONTRACTS—***when mistaken party's interpretation of contract is binding.*** When there is a mistake in a material fact with respect to a contract, and one of the parties knew or should have known of the ambiguity, but failed to disclose it to the other party, the party failing to disclose the ambiguity is bound by **the** mistaken party's interpretation of the contract.

SAME—implied contracts with State disfavored. Implied contracts with State entities are disfavored under Illinois State law, but oral and implied contracts entered into by State entities have been sanctioned when the services provided were of an emergency nature.

AGENCY—*actual authority necessary to bind State.* In most situations, the State cannot be bound by agents with apparent authority, rather than actual authority.

CONTRACTS—*apparent authority may be binding in emergency..* In an emergency situation, the State may be bound by a contract entered into by one with apparent authority, and under certain circumstances, when a State entity induces an individual to perform services for the State's benefit and the State accepts those services without following the legal technicalities, the Court of Claims may grant an award for compensation.

SAME—bus service for state university—emergency situation—award granted. An award was granted to the bus company which provided bus service to the students at a State university during a time when the company which originally contracted to provide the service defaulted because of its financial condition, since the State employees who made arrangements for transportation with Claimant under the emergency caused by the default of the original contractor created a situation under which the State was bound to render compensation for the services provided, even though the required legal formalities were not followed in obtaining the Claimant's services.

ROE, C.J.

Claimant, Wilmer Agles, the sole proprietor of Agles Bus Company, brings this claim to recover for the value of bus services provided by Claimant to Southern Illinois University at Edwardsville (SIUE).

The factual situation surrounding the dispute between Claimant and SIUE is complicated because of the addition of third-party intermediaries not involved as parties to the suit. The three intermediaries are the R & G Transit Company (R & G), the Bank of Edwardsville, and the Internal Revenue Service (IRS).

There are basically three business agreements among all the parties concerned prior to May 1980. First, SIUE needed bus service to provide its students with transportation during the school year, so a contract for service was let for bids according to usual procedures. The contract was acquired by R & G. According to the contract R & G would service certain bus runs for SIUE in return for a definite total contract sum, payable in installments over the term of the contract.

The second business arrangement was between R & G and the Bank of Edwardsville. In order to fulfill its contract with SIUE, R & G needed money to finance busses. R & G therefore borrowed money from the Bank of Edwardsville, which took a security interest in the payments due to R & G from SIUE under the bus contract. This lien provided that the monthly payments received from SIUE would be sent directly to the Bank of Edwardsville. The Bank of Edwardsville would deduct its loan payments and then deposit the balance of the money in R & G's bank account.,

The third business arrangement was between Agles and R & G. Agles occasionally did subcontract work for R & G. Agles would provide bus service for R & G on several of the SIUE runs and be paid a flat fee of 91 cents per mile for each run. There was, however, no written contract between Agles and R & G. R & G would contract with Agles on a need basis—*i.e.*, when a bus broke down R & G would call Agles and ask them to perform a run. Agles could either accept or decline. Apparently this method of substitution is common among bus companies, especially in instances of mechanical breakdowns; and this arrangement was particularly convenient for R & G, since Agles had in the past held the SIUE contract and was familiar with the runs. It was also convenient since R & G frequently needed help. This arrangement was known to and acquiesced in by SIUE. Harry Lutz, director of auxiliary services at SIUE, testified that he frequently called R & G to correct some difficulty and was told that Agles was handling the run on that particular day. Mr. Lutz then dealt directly with Agles. According to Mr. Lutz' testimony, it did not matter who provided the service as long as the service was provided.

These arrangements worked smoothly until May of 1980, when R & G fell approximatrely $900.00 behind in its payments to Agles. At this point Agles refused to provide any more bus services for R & G. This refusal directely affected SIUE, since Agles was by now being called upon by R & G to provide regular runs for the financially ailing R & G. After several days without bus service, Harry Lutz called Agles to find out what the problem was. Agles informed Mr. Lutz that R & G was $900.00 behind in its payments and that because of nonpayment Agles would not furnish any more busses to R & G for the SIUE runs. Frances Hynes, the secretary for Agles, testified that Mr. Lutz then asked whether Agles would provide bus service if SIUE guaranteed the payments. Mr. Lutz, on the other hand, testified that he asked whether Agles would be more receptive to helping R & G with the bus .service if Agles had reasonable assurance of payment, though it is apparent from Lutz' testimony that he did not recall the exact wording of the conversation. In either case it was clear that Agles would not provide bus services to either R & G or SIUE unless the $900.00 was paid. Mr. Lutz therefore instructed Ms. Hynes to send the bill to John Hunter at the Bank of Edwardsville. Ms. Hynes, following Mr. Lutz' instructions, sent the bill addressed as follows: "R & G Transit, care of the Bank of Edwardsville, John Hunter". After a second billing, Agles received a Bank of Edwardsville check, paying the bill in full.

Thereafter, Mr. Lutz called again and requested service of Agles. Ms. Hynes replied that now they would be happy to service the SIUE runs. Acting on this request, Agles provided bus service from May 14 through June 6,1980, and billed SIUE through the Bank of Edwardsville in the same manner as previously done,

although nothing more was paid to Agles. The total bill reached $4,878.09 and constitutes this claim.

After waiting 30 days until the bill became past due, Frances Hynes then called Mr. Hunter at the Bank of Edwardsville to inquire into payment of the bill. Mr. Hunter told Ms. Hynes that the bill was not paid because there was no money in the account, and he suggested that she call Mr. Lutz. Mr. Lutz explained that the reason there was no money in the account was that the account was R & G's account and that the IRS had placed on the account a lien which had to be satisfied before all other claims. Therefore, instead of the monies passing through the R & G account and going to Agles, SIUE had honored the lien and paid the money over to the IRS. After the original $900.00 had been paid to Agles, Lutz had instructed the bank to determine whether R & G had any money in its account. If there was money in the account, the bank would then call R & G and inquire if the bill should be paid. If R & G authorized the transfer, then the money would be disbursed on a check issued by the Bank of Edwardsville. R & G had authorized the first transfer of funds, but, since the IRS levy had depleted the R & G account, there were no longer any funds which R & G could authorize to pay the subsequent billings, and the system broke down.

There is no question that under normal business conditions an enforceable contract existed between Agles and SIUE. Harry Lutz was in charge of transportation for the campus. He had on previous instances dealt directly with Agles Bus Company. It is apparent from all the testimony that, if there was a transportation problem at SIUE, Harry Lutz was the person to contact. In every aspect Harry Lutz had at the very least apparent authority to contract for bus services. Lutz

contracted a subcontractor, Agles, and gave assurance that the overdue bills of the contractor, R & G, would be paid. Payment was then made by check issued, not by R & G, but rather by. a third party, the Bank of Edwardsville. Lutz then requested that Agles provide bus service for SIUE. Agles provided the service, and SIUE accepted the bus service. SIUE argues that its actions were proper since its agent was simply renewing the subcontractor's agreement between Agles and R & G. This argument is not persuasive. There is nothing in the record which indicates that SIUE was given any authority to bargain for R & G, and Harry Lutz was dealing directly with Agles on his own, not with Agles through R & G or at the request of R & G. Lutz therefore requested services from Agles. Agles provided these services directly to SIUE, but SIUE chose to make payments via R & G's account without advising Agles of this payment procedure. Unfortunately for both parties, this method of payment was interrupted by the IRS. While SIUE may argue that Agles' method of billing indicated that Agles accepted the subcontractor's agreement, Agles' method of billing was in fact following the request of 'SIUE for the convenience of SIUE and not as an acceptance of a subcontractor's role. It is probable that Agles believed he was being paid directly by SIUE and that he was being paid from funds once but no longer earmarked for R & G, especially considering SIUE's failure to fully disclose its method of payment. If there is a mistake in material fact with respect to a contract, and one of the parties knew or should have known of the ambiguity but did not disclose the ambiguity to the other party, the party that fails to disclose is bound by the mistaken party's interpretation. ***(Stone v.*** Those ***Certain Underwriters At*** **Lloyds, *London*** (1980), 81 Ill. App. 3d 333, 401 N.E.2d 622).

Since all of the other terms of the contract could easily be implied from the previous dealings and, since Agles did in fact perform to those specifications, and since SIUE did in fact accept those services, a valid contract arose between Agles and SIUE.

Respondent, however, argues that the contract is not enforceable on several grounds because of the fact that SIUE is not a private party but rather an entity of the State government. The first theory in support of this argument proposed is alternatively one of estoppel or invalidity of an implied contract. Respondent's position is that, since Agles had done business with SIUE before, Agles knew that the usual procedure involved in dealing with a State entity is to secure a written contract which has been let for bids and processed through the purchasing department. Therefore, Agles should have known that this was not the proper procedure for contracting with SIUE. It is also argued that Agles had knowledge of the fact that implied contracts with State entities are disfavored under Illinois State law. Both points would have merit under normal circumstances. The circumstances in this situation are not, however, normal circumstances. A review of the facts indicates that SIUE was placed in what can be termed an emergency situation. Bus service for students is a necessary service to an institution such as SIUE. In a situation such as the one at hand, the normal rules of contracting with the university would require too much time. That such circumstances necessitate special rules is well recognized by this court, which has on several occasions sanctioned both oral and implied contracts entered into by State entities when the services provided were of an emergency nature. ***Nile Marriot Inc. v. State*** (1973), ***28*** Ill. Ct. Cl. **351; *Elevator Manufacturing*** Co. *of* ***America v. State*** (1959), ***23*** Ill. Ct. Cl. 98;

Patenberg & Patenberg v. Department of Public Works & Buildings (1969), **27** Ill. Ct. Cl. **1.**

The policy reasons behind these rulings are as strong as they are obvious. The Court of Claims recognizes that expenditures are not always foreseeable and that emergency situations do arise. If State entities are to be in a position where they can handle emergency situations, they must not be burdened with a rule which routinely disallows claims for reimbursement. If this were the situation, clearly no businessman would provide emergency services for the State. This could lead to an extremely dangerous position in case of emergencies, a position which would be contrary to public policy.

The second argument Respondent makes is that, even if this were an emergency.situation, Harry Lutz did not have the authority necessary to make a contract with Agles. Lutz denies that he had the requisite authority. This point has some merit and must be carefully examined.

While neither side in this case fully discusses the ability of a person with apparent authority to contract, it is a point of serious consequence when dealing with State entities. Clearly the State cannot be bound by agents with apparent authority rather than actual authority in most situations. Such a policy could be disastrous to the State's budget. On the other hand, it is not clear either from the briefs of counsel or from case law whether a university employee is to be treated in the same manner as a normal State employee. ***People* ex *rel. Board of Trustees of University of Illinois v. Barrett*** (1943), **382** Ill. 2d **321, 46** N.E.2d **951,** suggests that university employees should be treated as normal ***corporate*** employees. ***Hoffman v. Yack*** (1972), **57** Ill.

App. 3d 744,373 N.E.2d 486, on the other hand, suggests that university employees should be treated as normal ***State*** employees. While the Court finds it is not necessary to decide this issue at this time, it is necessary to point out that, even if the second view is the correct view and actual authority would be necessary because of budgetary considerations, the policy argument behind the budgetary considerations is not threatened by the factual situation in this case. In the case at hand the budget committee had already ,allocated funds to provide bus service in this instance. Those funds were paid to R & G and later claimed by the **IRS.** However, if **SIUE** mistakenly paid over funds to R & G for services that were not rendered by R & G, then **SIUE** has an adequate remedy for the recovery of that sum from R & G. Even if that remedy is now illusory, it should be pointed out that the problem here should not have been allowed to develop this far. This is not a situation where a State official has spent funds that were not appropriated. Clearly the funds were appropriated to provide bus service.

This court has previously held that, under certain circumstances when a State entity induces an individual to perform services for its benefit and when it accepts those services with knowledge of the failure to conform to the legal technicalities, the Court of Claims may grant an award for compensation. ***(Kent v. State*** (1978), 32 Ill. Ct. Cl. 471; ***Volland v. State*** (1939), 10 Ill. Ct. Cl. 715.) Furthermore, in emergency situations the State is bound by the contracts entered into by those with apparent authority in such situations, since it is obvious that the only actual authority is in the hands of the purchasing departments rather than in the hands of the individuals who authorize the work. ***Nile Marriot Znc. v. State*** (1973), 28 Ill. Ct. Cl. 351; ***Elevator Manufacturing*** Co. ***of***

America v. State (1959), 23 Ill. Ct. Cl. 98; *Patenberg & Patenberg v. Department of Public Works & Buildings* (1964), 27 Ill. Ct. Cl. 1.

For the reasons stated above, the Claimant is hereby awarded $4,878.09.

ORDER

ROE, C.J.

This cause comes on to be heard on the Court's own motion, and the Court being advised;

On February 14, 1984, a supplementary order was filed in this matter ordering the Respondent to provide the Office of the Clerk of the Court of Claims certain information within 30 days. Said time has come and gone and nothing has been filed.

The information ordered to be produced related to payment of an award made by this Court nearly one year ago. Specifically, we want a description of the fund out of which this claim would have been paid had it not been filed here and contested, including the name of the fund, its number, and if a nonappropriated account, then a brief description of how the fund operates.

The Court does not desire to issue subpoenas to obtain this information but will do so if necessary. We will grant, and it is hereby ordered that the Respondent be and hereby is given, an additional 14 days within which to supply the information.

ORDER

ROE, C.J.

This matter is before the Court following the Respondent's filing of a response to our Order of September 17,1984.

On October 19, 1983, we rendered an opinion awarding the Claimant $4,878.09. In order to facilitate payment we ordered the Respondent to provide us with the name of the account out of which this payment should have been paid, the account number, and, if a nonappropriated account, then a short description of how the account operated. The following information was provided. The account is entitled Transportation Service Cash and is numbered 06-84-7-93454. It is a local account funded by fees.

Ordinarily awards made by this Court are paid with funds appropriated for that purpose by the General Assembly. This is because most claims are made against funds previously appropriated by the General Assembly or arise out of transactions for which the General Assembly makes appropriations. In the case at bar, but for the breach of the contract, the payments would have been made out of the above described local account. Nothing in the record shows that the General Assembly has any direct control or oversight as to that account. It seems to us that the Respondent university is capable of and should pay the judgment we rendered directly out of that account forthwith.

Accordingly, it is hereby ordered that the Respondent pay the aforesaid judgment as soon as is reasonably practical.

(No. 81-CC-1182—Claim denied.)

CHICAGO CHILD CARE SOCIETY, Claimant, *v.* **THE STATE OF ILLINOIS, DEPARTMENT OF CHILDREN AND FAMILY SERVICES,** Respondent.

Opinion filed August 22, 1984.

MANDEL, LIPTON & STEVENSON, LTD., for Claimant.

NEIL F. HARTIGAN, Attorney General (MARY MULHERN, Assistant Attorney General, of counsel), for Respondent.

ESTOPPEL—estoppel defined. Estoppel is the reliance by a party on the word or conduct of another to the extent that the party changes his position or suffers harm, and it arises when a party, by his conduct induces another to believe certain facts, and the other relies and acts thereon, and as a reasonable consequence, is misled to his injury.

CONTRACTS—*claim* for child's care denied. The evidence established that the Claimant knew that the Department of Children and Family Services was proceeding under the Juvenile Court Act with regard to the custody and placement of the child placed in one of the Claimant's boarding houses, and therefore the referral of the child was subject to Court approval, which was never obtained, consequently there was no theory upon which the Claimant could recover for the services provided for the child.

HOLDERMAN, J.

This case involves the expenditures for services given to the child of a 14-year-old mother, Djuna Shaw. The child, David Shaw, was born on February 14, 1978, at Cook County Hospital. On February 14, 1978, Djuna Shaw signed an agreement requesting Claimant to place her baby in one of Claimant's boarding homes. Because of a serious medical condition, the child was kept at the hospital until February 28, 1978, at which time Claimant accepted custody and moved him to one of its foster homes.

On March 31, 1978, the mother appeared before Judge Harry Comerford of the Cook County Circuit Court, County Division, and executed a final and

irrevocable surrender for purposes of adoption, granting all custody and parental rights over her child to Claimant.

David was not gaining weight properly, and on April 12, 1978, Claimant hospitalized him at Mercy Hospital. He suffered from a disease which made it impossible for him to gain weight, so at the time of his hospitalization, he weighed less than when he was born. His condition ruled out adoption as an immediate option, and since Claimant had a voluntary consent from only one parent for that purpose, it "initiated planning for David as a dependent child."

The question of who was to pay for the hospital and medical expenses of the child was the subject of the entire hearing. The Court calls attention to the fact that the commissioner's hearing report consisted of 34 well-written pages.

Claimant takes the position that it had entered into an oral contract with Respondent to take and care for the child and that the medical expenses that were incurred during the time of determination as to who would be responsible for the care of the child would be paid by Respondent.

Respondent takes the position there was never any valid contract entered into, that it never had custody of the child, and that custody at all times remained with Claimant.

The record consists largely of conversations between Claimant and the Department of Children and Family Services (hereafter called DCFS). To say the least, the evidence is quite contradictory. Telephone communications at some length were introduced into

the record, Claimant trying to establish its conclusion that an oral contract was entered into, and Respondent using evidence to the contrary.

In the final consideration of this case, two Illinois statutes must be considered: The Juvenile Court Act (Ill. Rev. Stat. **1977,** ch. **37,** pars. **701-1** through **708-4),** and the Department of Children and Family Services Act (Ill. Rev. Stat. **1977,** ch. 23, pars. **5001** through **5040).** Certain rules and regulations of the DCFS must also be considered.

Claimant also claims that under the doctrine of estoppel its claim should be allowed. A recent Second District Illinois Appellate case defines estoppel as follows:

"Estoppel refers to reliance by one party on the word or conduct of another so that the party changes his position and subsequently suffers harm. ***(Veno*** Co. ***u. Stoner*** (1982), 108 Ill. App. 3d **51,** 55, 438 N.E.2d 933). It arises whenever one by his conduct, affirmative or negative, intentionally or through culpable negligence, induces another to believe and have confidence in certain material facts, and the latter having the right to do so, relies and acts thereon, and is as a reasonable and inevitable consequence, misled, to his injury." ***(Allstate Insurance Co. v. Horn*** (1974), 24 Ill. App. 3d 583, 588, 321 N.E.2d 285.) Estoppel must be proven by clear unequivocal evidence." Wilson ***v. Illinois Benedictine College*** (1983), 112 Ill. App. 3d 932, 939,445 N.E.2d 901,908.

The record does not establish any set of facts on which an estoppel might be based. A preponderance of the evidence is that from the earliest date forward, Claimant knew DCFS was taking the juvenile court route rather than the voluntary placement agreement route, and that therefore the referral was subject to Court approval, which was never obtained.

The Court, having read the record, exhibits and briefs, does not find any theory upon which Claimant can recover

Claimant's claim for an award is hereby denied and said cause is dismissed.

(Nos. 81-CC-1512, 82-CC-0448 cons.—Claimant awarded $7,398.99.)

FLORENCE CRITTENTON PEORIA HOME, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed *May 9, 1985.*

HEYL, ROYSTER, VOELKER & ALLEN, for Claimant.

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

CONTRACTS—*post-natal* care *through DCFS—claim allowed.* The Claimant was granted an award as compensation for the afterbirth care provided to young women who were referred to Claimant through the direct purchase and reverse purchase systems of the Department of Children and Family Services, since the evidence established that the Department was aware that Claimant provided afterbirth care to the women involved, but never notified Claimant of the forms necessary to submit a claim for the services.

RAUCCI, J.

This case arises from a claim against the Department of Children & Family Services for services rendered by Claimant in the prebirth and afterbirth care of young pregnant women and the care of temporary State wards during 1980 and 1981. The Respondent contends the services were unauthorized. The Claimant seeks recovery for services rendered to 19 young women during the period January 1980 through March 1981. Most of the services were for afterbirth care, although some were prebirth, and one for care of a State ward. The amount of recovery requested is not in issue.

During the period of July 1980 through March 1981,

the Claimant rendered services to each of the 19 women. Each was referred to the Claimant through the usual direct purchase or reverse purchase intake system and the Respondent paid the Claimant all or at least part of the prebrith care or daily fees due upon the services rendered to these women. In one case, the Respondent paid for some aftercare. Two cases did not involve any aftercare. The Claimant submitted vouchers for payment of its services in all of these cases as required by the Respondent.

The record discloses that the intake of clients by the Claimant under the contracts with the Respondent can occur in one of two ways. Under a direct purchase of services, the Respondent initiaties placement of the client and the purchase of services from the Claimant. Under a reverse purchase system, the client comes to a private agency, the private agency refers the client to the Claimant and the private agency initiates the request for the purchase of care from the Respondent. All but two women involved in this case represent reverse purchase cases. The private agency is responsible for performing the necessary paper work to make the placement, using a Respondent's form called "a referral for purchase of care for an unwed mother". This is the form with which the Respondent approves or disapproves the initial purchase of services. The Respondent shows its approval by sending the private agency a Form PRO-212. With respect to each of the reverse purchase agreements in this case, the Respondent did approve the purchase of care request with a Form PRO-212. On the "referral for purchase of care for an unwed mother" form, there has been a statement since 1980 which reads,

"Any assistance for living arrangements will be terminated the day of delivery unless a new CFS 940-1 is submitted and approved."

In the afterbirth care cases involved here, a new CFS

940-1 was never sent to the Respondent by the private agency. The Claimant itself has no responsibility for paper work with the Respondent except to send it vouchers for payment. State forms can only be sent in through licensed welfare agencies, which do not include the Claimant. The Claimant does not have the responsibility for these forms nor does it have the requested forms in its possession.

The Claimant was never informed by either the Respondent nor by the private agencies that the Respondent would not pay for afterbirth care services for the women involved in this claim. It appears through testimony that the Claimant was informed by the private agencies that the Respondent would be paying for the care. Further testimony by the Respondent's witnesses showed that the Respondent was aware that the Claimant provided afterbirth care to women, that they never notified the Claimant about the necessity of the CFS 940-1 form, that these forms were never sent to the Claimant for completion, that the Claimant was not responsible for filing the forms, and the Respondent did not expect the Claimant to file said forms.

The record supports the Claimant's position.

It is therefore ordered that Claimant is awarded $7,398.99 in full and complete satisfaction of these two consolidated claims.

(No. 81-CC-1748—Claimant awarded $9,476.73.)

DAVID UMBAUGH, Claimant, *v.* **BOARD OF TRUSTEES OF SOUTHERN ILLINOIS UNIVERSITY,** Respondent.

Opinion filed September 7,1984.

Order filed March 11,1985.

THOMAS GUMBEL and **BARBARA C. GUMBEL,** for Claimant.

NEIL F. HARTIGAN, Attorney General (**RONALD D. LOWERY,** of Reed, Armstrong, Gorman & Coffey, and **SHARI RHODE,** of Southern Illinois University, of counsel), for Respondent.

EMPLOYMENT—*wrongfully* ***discharged employee has duty to mitigate damages.*** The damages awarded to a wrongfully discharged employee will be reduced by the amount of money he earns or could have earned through the exercise of reasonable diligence in seeking employment, since the employee has a duty to mitigate his damages by seeking similar employment.

DAMAGES—wrongful discharge from employment—limit on damages. When a contract for employment has a provision for termination upon a certain period of notice, the damages for wrongful termination of employment are limited to the nearest date at which the employer could rightfully exercise the privilege of termination.

EMPLOYMENT—***wrongfully discharged employee need not always accept reemployment.*** Illinois courts have held that a reemployment situation is an exception to the general rule of mitigation of damages in cases of wrongful discharge, and a wrongfully discharged employee need not always accept an offer of reemployment and be precluded from seeking damages, especially if the offer of reemployment constitutes a disadvantageous renegotiation of the original contract.

SAME—wrongfully terminated college instructor—award granted. A college lecturer who was wrongfully discharged from his position with a State university was granted damages in the amount of six months' salary, even though the university made an offer of reemployment, since the lecturer was not given the contractually required six-months' written notice, he did attempt to find other employment to mitigate his damages, and the offer of reemployment constituted a dramatic change in duties which substantially changed the original contract.

DAMAGES—breach of contract—immediate payment if award is less than $2,500. The Court of Claims Act authorized the Court of Claims to direct immediate payment of certain claims, and in cases of breach of

contract claims, the Court is authorized to direct the immediate payment of claims where the award is less than $2,500.

SAME—wrongful discharge from employment—damages reduced by unemployment compensation receiued. Where a wrongfully discharged lecturer at a State university received unemployment compensation during the period for which he was entitled to damages, the damage award was made payable to the lecturer and the Department of Employment Security.

ROE, C.J.

This case arises out of a breach of contract action filed by the Claimant, David Umbaugh, against the Board of Trustees of Southern Illinois University, alleging that the University did not give Claimant proper notice prior to termination as required by his employment contract.

The Respondent, Southern Illinois University, argues that, while it did not give the Claimant six months' written notice as required by his employment contract, it did give him six months' "constructive" notice or, in the alternative, that the Claimant failed to mitigate his damages.

Claimant was employed as a visiting lecturer at Southern Illinois University at Edwardsville from September 1, 1977, through June 30, 1978, and again from July 1, 1978, through May 31, 1979. The Claimant was also given a contract for employment for the summer of 1979. It is upon this latter contract that Respondent bases its argument concerning constructive notice. According to the terms of all Claimant's contracts, Claimant was hired to teach and serve as tutor to students in biology and chemistry. The contracts stated in part:

"A lecturer is a faculty member in a temporary or non-regular rank and shall normally be appointed for no longer than one academic year. The appointment may be renewed annually but if there is uncertainty about reappointment following his second or subsequent year of employment, he shall be given written notice no less than *six* months preceding the termination of his appointment."

Respondent does not dispute that this section is applicable to the Claimant nor does Respondent dispute the fact that the Plaintiff was not given six months' written notice.

Respondent argues that, although Claimant was never notified in writing that his position was being terminated, the Claimant by his own admission knew that his position "might be terminated" as early as April or May of 1979. Respondent also points out that during discussions with university officials Dr. Jason and Dr. Morgan in April and May of 1979, Claimant had argued that it was not fair to leave him uncertain about his summer employment, especially if funding for the university did not allow Respondent to rehire Claimant in the fall. Since Claimant was as a result given a two-month summer contract, Respondent argues that it is reasonable that Claimant knew that, when he accepted the two-month summer contract, he would not be reappointed in the fall of 1979 and that the two-month contract was either in settlement of his six-months' notice requirement or the beginning of the six-months' notice period.

Testimony by the Claimant strongly indicates that he never made any settlement agreement with university officials concerning the two-month summer appointment and that he only believed he "might" be terminated. There has been no contradictory testimony indicating that the Claimant was ever directly told he would be terminated or that the two-month appointment was in return for waiving the six months' notice requirement. While Dr. Jason. testified such was his understanding, neither he nor any other university official admitted to specifically informing Claimant that he was being terminated or that the two-month

appointment was in settlement of the six-months' notice requirement. Furthermore, the record indicates that on July 7, 1979, Claimant was sent a letter by Dr. Jason stating that Dr. Jason was recommending Claimant for a $100.00 per month raise for fiscal year 1979. This letter is clearly inconsistent with Respondent's argument that Claimant should have known he was being terminated.

Given these facts, it is apparent to the Court that Respondent has created a situation which is clearly inconsistent with both the specific language and the intent of the contract. Respondent has admitted it wrote the contract. Included is a clause which states unambiguously that the Claimant is entitled to six-months' written notice. The clear intent of this clause is to provide protection for Claimant so that he would know definitely whether he was to be included in the future employment plans of the university. Respondent's failure to strictly adhere to the terms of the contract created a situation which the contract was designed to prevent. The Court therefore finds that Respondent has breached the contract.

A wrongfully discharged employee must act to mitigate his damages by seeking similar employment, and his damages will be reduced by those sums which he earns or could have earned through the exercise of reasonable diligence in seeking employment. ***(Schwarxe v. Solo Cup Co.*** (1983), **112** Ill. App. 3d 632,445 N.E.2d 872.) Furthermore,where a contract for employment contains provisions for termination upon a certain period of notice, damages for wrongful termination of employment are limited to the nearest date at which the employer could rightfully exercise this privilege. ***United Protection Workers of America Local No. 2 v. Ford Motor*** Co. (7th Cir. 1955), **223** F.2d 49.

Given the terms of the contract, Respondent could have rightfully discharged the Claimant six months after he was given written notice. Since all of the testimony indicates that the Claimant was never given any written notice, Claimant was denied the six-month period of employment during which he could search for another job. Claimant, however, is limited to damages incurred during that six-month period from the date of termination. According to all testimony, this period would include the six months from August of 1979 to January of 1980.

It is uncontested that Claimant was unemployed during this entire period. The question, therefore, is whether Claimant used reasonable diligence in mitigating his damages. Claimant has introduced an exhaustive list of places to which he applied for jobs during this period without success. Respondent does not directly attack the authenticity of the Claimant's application but rather argues that'it offered Claimant a contract for employment at the university for four months beginning in January of 1980. Respondent argues that this contract should be applied as against four months' damages. The Court disagrees.

Claimant was unemployed for the months of August 1979 through December 1979 before the Respondent offered him a .job. Claimant could not recover the lost wages for these five months without forfeiting his right to work elsewhere from January of 1980 to March 1980. Those five months of earnings were, therefore, lost to him forever. The month of January, however, must be considered separately from the first five months.

Respondent offered Claimant a four-month contract for January of 1980 through March of 1980.

Respondent is therefore correct in alleging that Claimant did not mitigate his damages for the month of January. However, Illinois courts have held that a reemployment situation is an exception to the general rule of mitigation of damages, and depending upon the substance of the offer and circumstances under which the offer is made, wrongfully discharged employees need not always accept the offer or be precluded from seeking damages. (Schwarxe *v.* Solo ***Cup Co.*** (1983), **112** Ill. App. 3d **632, 445** N.E.2d 872.) Dr. Emil Jason testified that the salary for the four-month contract was the same as the Claimant's previous contract. Claimant testified, however, that salary was never discussed, that he was given one day to accept the position, that there was no course curriculum, that there was no student list, that there were no textbooks, that there were no lab instruments, that he had never taught a laboratory course, and that in general the duties were unlike those which he had previously performed. Respondent did not dispute any fact except the salary.

Illinois courts have recognized that equal salary alone is not enough to force an employee to accept an offer of reemployment if the new contract constitutes a disadvantageous renegotiation of the original contract. (***Schwarze v.*** Solo ***Cup, id,*** at 876.) It is the opinion of the Court that the dramatic change in duties of the proffered contract substantially changed the terms of the original contract. Had Claimant accepted the contract at such a late date with so little organization, Claimant likely would have been forced to expend a great deal more effort to teach a substandard course, thereby damaging his reputation. The Court therefore finds that Claimant was not obligated to accept the contract.

It is agreed that Claimant was earning **$1400.00** per

month. He is entitled to damages in the amount of six months' salary. It is also agreed that the Claimant is entitled to 16 11/12 vacation days. The Court computed this figure to equal $1076.73 in wages. For the reasons stated herein, the Claimant is hereby awarded the sum of $9,476.73.

ORDER

ROE, C.J.

This matter is before the Court on the Court's own motion and the Court being fully advised;

This is a claim for breach of an employment contract against the Respondent's Board of Trustees of Southern Illinois University (Edwardsville). On September 7, 1984, the Court rendered an opinion in favor of the Claimant awarding him $9,476.73.

Section 24 of the Court of Claims Act (Ill. Rev. Stat. 1983, ch. 37, par. 439.24) provides the authorization for the Court to direct immediate payment of certain claims. With respect to breach of contract claims, the Court is only authorized to direct immediate payment where the award made is less than $2,500.00. If an award in such a case exceeds that amount it is customary for the Court to advise the legislature of the claim and seek an appropriation to fund the award. In appropriating funds for awards, it is the intention to make the money payable out of the fund from which the debt would have been paid had it not come to the Court of Claims.

In the case at bar the Claimant would have been paid entirely with Federal funds. These funds expired or otherwise became unavailable on June 30,1980. Nothing in the record indicates that the Respondent made any provision to retain or reserve any of these funds for the

contingency of this claim. Therefore it will not be possible for an appropriation to be made for the award out of the funds from which the Claimant would have been paid but for the breach of the contract.

The award in this case is in excess of $2,500.00. It will have to be presented to the legislature for payment. It is our recommendation, in cases such as this, where a breach of employment contract is involved, that the claim be paid out of the Respondent's general revenue fund.

We further note that the Claimant testified to having received unemployment compensation from September 1979 to February 1980. The award for back wages was made for the six-month period of time from August of 1979 to January 1980. Pursuant to section 900D of the Unemployment Insurance Act (Ill. Rev. Stat., ch. 48, par. 490D) any award herein should be made payable to the Claimant and to the Director of the Department of Employment Security.

(No. 81-CC-1839—Claimant awarded $7,500.00.)

MELVIN WILLIAMSON and MARY LISA CHRISTIAN, Claimants, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed* July *11,1984.

VITELL, GREENFIELD, JOHNSON, GOLDSTEIN & GUBBINS, LTD., for Claimant.

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

STIPULATIONS—*automobile accident—state highway—award granted.*

Based on the joint stipulation of the parties, an award was granted to the

Claimant for damages arising from an automobile accident on a State highway, since both parties entered into the stipulation with full knowledge of the facts and law relating to the claim and feel that the award agreed upon is fair and reasonable, and granting such an award would be in the best interests of all concerned.

ROE, C.J.

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

1. That the instant claim arose from an automobile accident on the Stevenson Expressway in Chicago, on February 19,1979.

2. That Claimant Melvin Williamson was the driver of the vehicle in question, and Claimant Mary Lisa Christian was the passenger.

3. That contemporaneous with the filing of the instant stipulation, Claimant Mary Lisa Christian has filed a motion for voluntary dismissal of her claim.

4. That said motion leaves Melvin Williamson as the sole Claimant in the instant claim.

5. That after careful consideration of the issues and facts pertaining to the instant claim, as well as the potential time, preparation and expense of litigation and its possible outcome, the parties have agreed to settle the claim for the sum of $7,500.00.

6. That this amount is offered by Respondent and accepted by Claimant as full, complete and final satisfaction of the instant claim or any other claim arising out of the accident in question.

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

8. That both parties waive hearing, the submissionn of evidence and the filing of briefs.

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

Although the Court is not bound by a stipulation such as this, it is also not desirous of interposing a controversy where none appears to exist. As long as the stipulation appears reasonable and fair, we see no reason to question its validity or to force the parties to take the time and expense of proving facts which are not in dispute.

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

Claimant is hereby awarded the amount of $7,500.00 (seven thousand five hundred dollars and no cents).

(No. 81-CC-1998—Claimant awarded $6,925.00.)

JERRY BAUER, M.D., S.C., Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Order on motion for summary judgment filed May 23, 1983.

Opinion filed December 10, 1984.

EPTON, MULLIN, SEGAL & DRUTH, LTD. (JEFFREY SANCHEZ, of counsel), for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

CONTRACTS—medical seruices—ward of DCFS—award granted. A surgeon was granted an award for the emergency medical services provided to a child who was in the care, custody and control of the Department of Children and Family Services, notwithstanding the Department's attempt to unilaterally and retroactively apply rules imposing a limitation on the otherwise reasonable compensation, since the Department would not be allowed to assert such a defense, and the compensation sought was lower than the Claimant's usual and customary fee for the same services.

ORDER ON MOTION FOR SUMMARY. JUDGMENT

ROE, C.J.

This cause coming on to be heard on the Claimant's motion for summary judgment, due notice having been given, and the Court being fully advised in the premises:

We have reviewed the record in this matter and find that, as to $579.00 of the total amount claimed, there are no genuine issues of material fact and Claimant is entitled to judgment as a matter of law. As for the balance of the claim, there at least appear to be genuine issues of law **present.**

It is hereby ordered that this matter be set for oral argument before the Court; it is further ordered that Claimant be, and hereby is, awarded the sum of $579.00, payment of which is not to be withheld pending the oral argument.

OPINION

ROE, C.J.

This is a claim by a physician for payment for medical services provided a minor child, which minor child was in the care, custody, and control of the Illinois Department of Children & Family Services. The parties stipulated to the facts, filed cross-motions for summary judgment and memoranda in support thereof, and the Court has heard oral arguments.

The facts stipulated are as follows:

1. At all times relevant hereto, the Illinois Department of Children & Family Services (hereinafter the Department) had care, custody and control of the minor child, Kristopher Ivy.

2. Claimant, Jerry Bauer, M.D., a licensed physician and neurosurgeon, provided medical service to Kristopher Ivy during the period of June 16, 1980, through January 19, 1981. His initial services, namely operation and follow up, were rendered on an emergency basis. His services were later authorized by the Department.

3. Claimant performed a series of surgical procedures (summarized in an exhibit attached to this stipulation) on Kristopher Ivy during the period of June 16, 1980, through January 19, 1981, for which he billed the Department a total of $7,670.00.

4. Claimant is affiliated with the University of Illinois Hospital where he teaches and cares for patients, not under the Illinois Department of Public Aid, or the custody of the Department, and he had no knowledge that the patient was under the care or custody of the Department when he first began to perform surgery and otherwise perform services for the patient.

5. The fee schedule Claimant used to bill the Department for the services provided to Kristopher Ivy is comparable to the fee schedule used by the University of Illinois Hospital which was attached to the stipulation as an exhibit.

6. The fee billed to the Department for the services provided to Kristopher Ivy is lower than Claimant's usual and customary fee for the same services.

7. The Department has made payments to the

Claimant which total **$745.00** for the medical services he provided to Kristopher Ivy.

8. The IDPA-MAP pricing index authorizes a total fee for the surgical procedures and related services here at issue of $1,324.00.

By Order of this Court dated May 23, **1983,** we awarded the Claimant **$579.00,** that amount having been found to be undisputedly owed. Thus the amount in controversy has been reduced to **$6,346.00.**

Having reviewed the record and considered the arguments, we find the issue to be whether or not the State can, in the absence of law or contract, unilaterally and retroactively impose a limitation on which is undeniably reasonable compensation for medical services rendered, and largely services of an emergency nature at that. No other defense was offered by the Respondent to limit the compensation due the Claimant other than urging us to apply rules which took effect after the services were rendered. This we will not allow.

As for the compensation sought, the only evidence is that the Claimant is affiliated with the University of Illinois Hospital where he teaches and treats patients, that his fee schedule is comparable to that used by said hospital, and that the amount billed was lower than Claimant's usual and customary fee for the same services.

It is hereby ordered that the Claimant be, and hereby is, awarded the sum of **$6,346.00.**

(No. **81-CC-2188—Claimant awarded $1,000.00.)**

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

Opinion filed September 18, 1984.

DAVID SPEARS, pro *se*, for Claimant.

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

PRISONERS AND INMATES—*injured* inmate—kitchen work—award granted. An inmate was granted an award for the injuries he sustained when he cut his finger while cleaning a meat slicer in the correctional center's kitchen, since the evidence established that the State's agents were negligent in failing to instruct the inmate on how to clean the slicer before ordering him to clean the slicer.

POCH, J.

This claim arises from personal injuries suffered by Claimant while he was an inmate at the Graham Correctional Center in Hillsboro, Illinois.

At the hearing before Commissioner Robert J. Hillenbrand on July 13, 1982, Claimant testified that on March 10, 1981, he was an inmate at the Graham Correctional Center, and at the time of the accident he was doing cleanup work in the kitchen. His general duty was a pot washer. At about 6:45 p.m., as he finished his duties, the supervisor noticed that the meat slicer had not been cleaned by the cooks. Claimant was ordered by the supervisor to perform this task. Claimant further testified that he was not instructed by the supervisor as to how to clean the meat slicer prior to the time he began the work. The meat slicer was partially disassembled but not entirely, as it should have been.

While Claimant was cleaning the meat slicer, he cut his finger on a sharp blade and he was taken to the hospital where he received medical treatment for his

finger. Claimant had not suffered permanent injury to his finger, but does feel some pain from time to time. Medical expenses were paid by Respondent.

William Wright testified for the Respondent that he was a food supervisor on duty at the time of the incident but was not in the vicinity at the time the Claimant was told to clean the slicer. Therefore he could not testify as to whether the Claimant was instructed as to how to clean the slicer. He did testify that the policy is to show the inmates how to use the equipment and clean it when they are not familiar with it.

The Respondent introduced into evidence the accident report filed by William E. Beard, the food supervisor on duty at the time of the accident. The report stated that Claimant volunteered to clean the meat slicer and that Claimant was warned that the meat slicer was very sharp.

The Respondent also introduced into evidence the internal memorandum of Kenneth McGinnis, warden at Graham Correctional Center. It states that Claimant told food supervisor Beard that he was familiar with the cleaning of the meat slicer.

An examination of Beard's actual statement, however, indicates that while Beard said he warned Claimant that the machine was sharp, Beard never stated that he gave any instructions to the Claimant. Furthermore, the statement does not indicate that the Claimant told the supervisor that he was familiar with the cleaning aspects of the meat slicer.

Claimant has, in the opinion of the Court, proven that he was not instructed as to how to clean the meat slicer. Such omission on the part of the Respondent amounts to negligence.

The Court finds from the evidence that the State through its agents was negligent and that Claimant is entitled to an award.

An award is, therefore, entered in favor of Claimant in the amount of one thousand ($1,000.00) dollars.

(No. 81-CC-2344—Claimant awarded $17,151.98.)

PUBLIC ELECTRIC CONSTRUCTION COMPANY, INC., Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed June 10, 1985.

GOTTLIEB & SCHWARTZ (AUDREY HOLZER RUBIN, of counsel), for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

Coma— summary judgment for Claimant on liability—Claimant must still prove damages. The Claimant still had the burden of proving damages where summary judgment was entered against the State on a contract claim based on a delay of 341 days due to the fault of the State.

SAME—construction delay caused by State—award granted. In an action for damages caused by the State's unreasonable delays in connection with construction work on a school project, summary judgment was entered for the Claimant as to liability, and an award was made based on Claimant's proof of damages for fixed expenses, additional labor costs and additional material costs resulting from the delay of 341 days caused by the State.

POCH, J.

This is a claim brought by Public Electric Construction Company, Inc., an Illinois corporation, against the State of Illinois, Capital Development Board, for damages alleged to have resulted from unreasonable construction delays in connection with electrical work

performed by Claimant for Respondent at the Gompers Elementary School, Chicago, Illinois, in **1979-80.**

On January 18, **1979,** Claimant entered into a contract with Respondent to perform electrical work at Gompers Elementary School for the sum of two hundred thirty one thousand three hundred twenty four **($231,324.00)** dollars with the work to be completed on or before January 18, **1980.** The work was actually completed on May 5,1981.

Procedurally, this Court granted Claimant's motion for summary judgment as to liability only on November 8, **1983,** and further barred Respondent from defending this case for failure to comply with discovery orders on February **2,1984.** On May **24, 1984,** this case came to be heard before Commissioner John P. Simpson, solely on the issue of damages. The Respondent did not call witnesses, question Claimant's witnesses, introduce exhibits or argue the matter before the commissioner.

It is uncontroverted that there was a delay of 341 days due to the fault of the State of Illinois. The Claimant is seeking costs which were incurred over and above the contract price as a direct result of the State's delay.

Notwithstanding the fact that a summary judgment has been entered in favor of the Claimant as to liability, the Claimant still had the burden of proving its damages. These damages fell into three **(3)** basic categories: fixed expenses, additional labor costs, and additional material costs.

The evidence adduced at trial regarding Claimant's damages in the area of fixed expenses was speculative except that evidence regarding the telephone bill. Claimant introduced telephone bills for the period of

January 22,1980, through March 21,1981, totaling thirty two and 48/100 ($32.48) dollars.

In the area of labor, Claimant established that due to a new union contract, all of the hours paid after May 1, 1980, were paid at a rate which was $2.50 higher than the rate that covered the original period of the contract with the State of Illinois. Claimant had to pay 3,521 hours at this increased rate for damages totaling eight thousand eight hundred two and 50/100 ($8,802.50) dollars. With regard to materials, Claimant clearly proved that the cost of fixtures increased by four thousand six hundred twenty nine ($4,629.00) dollars and the cost of wire increased by three thousand six hundred eighty eight ($3,688.00) dollars due to the delay in the completion of this project.

Therefore, an award is hereby made to Public Electric Construction Company, Inc., in the sum of seventeen thousand one hundred fifty one and 98/100 ($17,151.98) dollars.

(No. 82-CC-0336—Claimants awarded $3,640.00.)

LEO S. DUGOSH and THERESE DUGOSH, Claimants, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed February 28,1985.

JOHN C. HEDRICH, for Claimants.

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

CONTRACTS—*promise defined.* **A promise is an undertaking, however expressed, either that something shall happen, or that something shall not happen, in the future.**

DRAINAGE—promise to maintain drainage is covenant running with land. A promise or covenant to maintain drainage running from one landowner to another is a covenant running with the land that runs to the successors in title of both the dominant and servient land.

SAME—drainage not maintained—crop damage—award granted. An award was granted for the crop damages suffered by the Claimants due to the State's failure, as successor to the United States government, to maintain drainage through a canal which was constructed over Claimants' property through condemnation proceedings, since Claimants lost use of part of their cropland due to blocked drains, and the United States' covenant to maintain the drainage of Claimants' remaining cropland after construction of the canal was a covenant running with the land, and that obligation passed to the State when it took title to the canal.

ROE, C.J.

This is a claim for crop loss allegedly resulting from the failure of the State of Illinois to maintain drainage under and through the Illinois-Mississippi Canal.

A hearing was held where evidence was received from testimony of witnesses and exhibits. Inspection of the site was made by the commissioner in the company of the parties and their attorneys. The parties have filed their briefs and the commissioner has duly filed his report.

In 1894, the United States of America had condemned certain farmland in Bureau County for the construction of the Illinois-Mississippi Canal. The canal was 80 feet wide at the waterline and seven feet deep.

The pertinent part of the condemnation petition filed in U.S. District Court for the Northern District of Illinois alleged:

"That the United States will properly connect the tile drains now laid in said lands wherever the same are cut by said canal, carry the same under said canal and give the same a proper outlet on the south side thereof; so that after the completion of said canal, said lands will be as thoroughly drained as they are at the present time."

Claimants' land, then owned by a predecessor in title, was part of the land condemned. The natural

drainage of the land was south toward the canal by means of a natural drainage ditch which drained approximately two square miles of farmland with the water ultimately flowing into a creek known as Bureau Creek. The canal blocked this drainage. To correct this, so that Claimants' land would continue to drain properly, the United States laid two 48-inch drainage tubes under the canal at a point where the natural drainage ditch would empty into the tubes, thereby carrying the surface water under the canal. These tubes were officially called Culvert #4. The United States obtained an easement from the property owner on the south side of the canal to construct a ditch carrying this water from the mouth of the tubes on the south side of the canal, south into Bureau Creek. In addition, the United States laid 1900 feet of 10-inch tile along the north side of the canal to drain into the two tubes.

The property specifically involved in this claim is a partially tillable 21-acre field bought by Claimants in 1966 and bordering on the north bank of the canal. In 1967, Claimants notified the Department of the Army Corps of Engineers that the tubes and the ditch south of the canal were plugged and the Corps of Engineers did the necessary remedial work in 1968 to restore the drainage.

The State of Illinois took title to the canal from the United States government in 1970. In early 1972, the culverts under the canal again began to fill. The State of Illinois was notified that the drainage structures were blocked and not providing proper drainage. An award was made to the Claimants in Dugosh *v. State* (1976), 31 Ill. Ct. C1.493, for damages to their property during the years 1973 and 1974. A further award was made to Claimants in *Dugosh v. State* (1981), *34* Ill. Ct. Cl. 117,

for damage to their property during the years 1975,1976 and 1977. The present claim is for damage because of flooding of Claimants' field for the years 1978, 1979, 1980 and 1981.

The issue presented is whether the State of Illinois connected the tile drains in the Claimants' land, carried them under the Illinois-Mississippi Canal and gave them a proper outlet on the south side thereof, so that the Claimants' lands were as thoroughly drained as they were before the canal was constructed.

The Respondent contends that the site in question is in a flood plain and the land would be flooded during certain times of the year, even if the canal was not there. They further contend that the 10-inch field drain tile ran some water all year long.

The Claimants assert that although much of the land in the area was flooded by heavy spring rains, the land was farmable during the crop season. They contend that drainage was not proper because the outlet of the 10-inch field drainage tile was covered by mud which inhibited water flow, Culvert #4 was completely blocked, and a 48-inch tube installed by the State of Illinois was half full of dirt and debris.

The statement in the condemnation proceedings in the U.S. District Court, that the United States would properly connect tile drains wherever the same were cut by the canal and carry them under the canal and give them a proper outlet on the south side thereof, so that after the completion of the canal the lands would be as thoroughly drained as they were at the present time, is a promise to the landowner. A promise is an undertaking, however expressed, either that something shall happen, or that something shall not happen, in the future.

(American Law Institute, Restatement of Contracts, section 2.) A promise or covenant to maintain tile and drainage running from one landowner to another is a covenant running with the land that runs to the successors in title of both the dominant and servient land. ***Sterling Hydraulic*** Co. ***v. Williams*** (1872), ***66*** Ill. **393;** ***Dorsey v. St. Louis*** **A.** ***& T.H.R.*** Co. (1871), **58** Ill. **65.**

The State of Illinois succeeded to the United States government's duty to maintain drainage through the canal. The right to drainage ran to the successive owners of the dominant land. We find that the drainage was not maintained so that crops could be grown on a portion of the Claimants' field during the normal crop production time of the year.

The record indicates that Claimants lost the use of approximately seven acres of cropland during the years **1978** through **1981,** both inclusive, and no more than seven acres. Accordingly, the Claimants are entitled to receive an award of **$3,640.00** for the years **1978** through **1981,** said award being arrived at by unrebutted testimony that the fair rental value for the years **1978** and **1979** was in the amount of **$125** per acre, and for the years **1980** and **1981** was in the amount of **$135** per acre.

It is hereby ordered that Claimants be, and hereby are, awarded the sum of $3,640.00.

(No. 82-CC-0349—Claim denied.)

AL BARNES, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed December 10, 1984.

LYNN CHIPPERFIELD and MICHAEL B. SMALLWOOD, for Claimant.

NEIL F. HARTIGAN, Attorney General (JOHN L. GILBERT, Special Assistant Attorney General, of counsel), for Respondent.

STATUTE OF LIMITATIONS—*limit on tort claims.* All claims sounding in tort must be filed within two years after they first accrue.

EMPLOYMENT—*tort claim—employment relationship—two-year statute of limitations applies.* Claimant's allegations that the State wilfully, maliciously and negligently failed to advise him as to the proper classification for his civil service position constituted a claim sounding in tort arising out of a contractual relationship of employment, and the action was governed by the two-year limitations period.

STATUTE OF LIMITATIONS—*when tort action accrues.* The limitations period commences to run on a tort action arising out of a contractual relationship of employment at the time the breach of duty first occurs.

SAME—purpose of statute of limitations. A statute of limitations is intended to require litigation to be brought at a time which would permit facts to be provided with some certainty and before they become obscure by reason of lapse of time.

EMPLOYMENT—*negligent advice as to civil service classification—claim not timely filed—dismissed.* A claim alleging that the State negligently failed to advise the Claimant as to the proper classification of his civil service position with a State university was dismissed on the ground that the claim was not filed within the two-year limitations period, notwithstanding Claimant's contentions the claim was a continuing one and the damages were not immediately ascertainable, since the action accrued when he failed to receive an increase in pay six months after he was hired, but the action was not filed until more than 10 years later.

ROE, C.J.

This matter comes before the Court on Respondents' motion to dismiss Counts I and II of Claimant's amended complaint. Although Claimant presents several issues for review, we need only to determine whether this claim is barred by the applicable statute of

limitations. The resolution of that issue is dispositive of this claim. Therefore, we find it unnecessary to address the additional issues raised.

On August 21, 1981, Claimant, Al Barnes, filed a complaint against Respondents, Southern Illinois University at Edwardsville (SIE-E) and A. R. Howard, alleging Claimant suffered great monetary loss because he was wrongfully classified for a civil service position. An amended two-count complaint seeking damages for a breach of contract was filed on April 15,1983. Count I seeks recovery for monetary damages. Count II seeks recovery for punitive damages. The amended complaint seeks recovery under section 8(b) of the Court of Claims Act. Ill. Rev. Stat. 1983, ch. 37, par. 439.8(b).

Claimant alleges the following: that he became an employee of SIE-E, pursuant to the request and hiring of A. R. Howard on January 1, 1969, and continued until August 31, 1981; that he was paid well below the compensation generally paid for his type of work as "a manager of sports publicity", in violation of "An Act to create the State Universities Civil Service System" (Ill. Rev. Stat., ch. 24½, par. 38b3), which provides for equal pay for equal work generally paid in the locality, thus resulting in loss of wages to Claimant of $117,345.00.

Claimant further alleges that during this entire period he performed the duties of a manager of sports publicity pursuant to the instructions of SIU-E and Howard and made numerous inquiries of "defendant Howard and many SIU-E employees and representatives" as to his correct classification; that they refused to give him a proper examination to place him in the aforesaid category of manager of sports publicity; that on one occasion after his employment commenced in 1969, representatives in the particular department

advised him that such position did not exist; that Respondent, Howard, informed him at the time of commencement of his employment, that in approximately six months, his compensation would be raised to the common guild scale in the area, which raise he never did receive; that the conduct of Respondents constituted an attempt to defraud Claimant of his rightful classification within the Civil Service System of the State and was "willful, malicious and culpably negligent." Based upon the aforesaid averments, Claimant seeks punitive damages of *$500,000.00* in Count II of the amended complaint. ***The issue to be decided is when Claimant's cause of action accrued.*** (Emphasis supplied.)

The record does not disclose in what capacity A. R. Howard serves the University, nor the approximate dates Claimant made his "numerous inquiries" or to whom they were made, when, where and how, and such other information which would disclose all facts that would be pertinent.

In its motion to dismiss, Respondents argue that Counts I and 11, on their face, clearly sound in tort as contemplated under section 8(d) of the Court of Claims Act (Ill. Rev. Stat. 1983, ch. 37, par. 439.8(d)), notwithstanding Claimant's allegation that said counts are brought in contract. Respondents further argue that the claim was not timely filed and is forever barred from prosecution, having not been filed within the time limit set forth in section 22(g) of the Court of Claims Act (Ill. Rev. Stat. 1983, ch. 37, ,par. 439.22(g)). This statute requires all claims to be filed within two years after they first accrue. Further, Respondents argue that on the face of the complaint, the claim first accrued on January 1, 1969. Respondents argue that since Claimant pleads that "from time to time, he made numerous inquiries of the

Respondent", he was aware that his claim first accrued on January 1, 1969, and accordingly, failed to file a timely claim. Respondents further contend that, assuming ***arguendo,*** without admission, recovery is sought under section 8(b) of the Court of Claims Act (Ill. Rev. Stat. 1983, ch. 37, par. 439.8(b)) in contract, this claim would still be barred under section 22(a) of the Court of Claims Act (Ill. Rev. Stat. 1983, ch. 37, par. 439.22(a)), having been filed more than five years after it first accrued on January 1,1969.

Claimant, in his objections to the motion to dismiss, complains of a continuing injustice which began on January 1, 1969, and ended with his leaving his employment on August 31, 1981, contending that his claim is a continuing claim and as such that the statute of limitations is not a defense, citing ***Benvenuiti v. State, 25*** Ill. Ct. Cl. 207; ***City of Chicago v. State,*** **4** Ill. Ct. Cl. ***345.*** Further, Claimant argues that in light of the fact this action was filed immediately after the continuing injustices came to an end, and it is irrelevant for the purposes of limitations whether the claim sounds in contract under section 8(b) (five-year limitation) or in tort under section 8(d) (two-year limitation) of the Court of Claims Act (Ill. Rev. Stat. 1983, ch. 37, pars. 439.8(b),(d)).

We have carefully examined the pleadings and record as they relate to the issue to be determined by this Court and find as follows:

The Claimant's pleadings are replete with allegations that Respondents'. conduct was wilful, malicious and culpably negligent, as well as Respondents' failure to advise Claimant as to information relative to his position. Obviously, the aforesaid earmarks this claim as one in tort arising out of a contractual relationship of

employment which would be governed by the two-year limit for filing a claim from the time it first accrues. Ill. Rev. Stat. 1983, ch. 37, par. 439.22(g).

A brief outline of recent Illinois decisions with regard to when a cause of action accrues so as to mark the beginning of the limitations period is warranted. The rule is that in a tort action arising out of a contractual relationship, the statute of limitations commences to run at the time the breach of duty first occurs. ***(Sabath v. Morris Handler Co.,*** 102 Ill. App. 2d 218, 243 N.E.2d 723; ***Aetna Life & Casualty Co. v. Lubiunco,*** 43 Ill. App. 3d 765, 357 N.E.2d 621.) From the facts alleged by Claimant in the case at bar, the Respondents' breach of duty occurred no later than six months from January 1, 1969, when he did not receive his increase as stated by Respondent Howard, which, although not clear from the record, could have been the terms of employment. If not at that date, certainly it can be concluded that at the dates of the numerous inquiries made by Claimant with regard to his classification, his dissatisfaction was apparent, and in his mind, there was a breach of duty on the part of Respondents.

Further, there can be no denying the fact that the breach was a serious one inasmuch as the resultant underpayment of compensation was a substantial amount of 75 percent of his promised pay as related to his actual compensation received. (Exhibit "A" of amended complaint.) There can be no denying the fact that Claimant's substantial underpayment received by him in his second or third paycheck gave him an immediate cause of action.

We do not agree with Claimant's contention that his claim is a continuing one and that the cases decided by this Court ***(Benvenuiti v. State, supra; City of Chicago v.***

State, supru) support his contention. The cases so cited involved contracts for the construction of public works projects and the furnishing of utilities to a municipality, in which cases this Court held that because of the very nature of the contract there had to be a completion of the contract before the statute would toll, and such rule was specifically applicable in cases of public works projects and in furnishing of utilities to municipalities on a contract basis, to be considered as a whole.

The Claimant's contention that his claim is a continuing one is untenable, because, if otherwise, a statute of limitations might never commence to run and actions could be filed 15 or 20 years from the date a claim first accrues. The need and purpose for such statutes was well stated in ***Isham v. Cudlip***, 33 Ill. App. 2d 254,179 N.E.2d 25:

"The purpose of the statute of limitations is to require litigation to be brought at a time which would permit facts to be provided with some certainty and before they become obscure by reason of lapse of time."

From the foregoing facts it **is** apparent that Claimant was well aware that his rights were wrongfully invaded as early as 1969, and he should have exhausted all of his administrative remedies and filed his claim in 1969 when his cause of action first accrued. (Ill. Rev. Stat., ch. 37, par. 439.24-5.) Normally, a cause of action accrues when the party entitled thereto could first institute an action and the statute of limitations begins to run from that time. (***Meyers v. Green,*** 5 Ill. App. 3d 316, 284 N.E.2d 349; ***Koxasa v. Guardian Elec.,*** 99 Ill. App. 3d 669,425 N.E.2d 113; ***Davis v. Munie,*** 235 Ill. 620, 85 N.E. 943.) The mere fact that the extent of damages is not immediately ascertainable does not postpone the accrual of the claim. ***Austin v. House of Vision,*** 101 Ill. App. 2d 251,243 N.E.2d 297.

Count II is dismissed as punitive damages are not recoverable under a contract action.

For all of the foregoing reasons, it is the finding of this Court that since the claim was not filed within the period provided for by statute, the Respondents' motion to dismiss is in order, and the claim is hereby denied.

(No. 82-CC-0524—Claim denied.)

AETNA CASUALTY & SURETY Co. and AR-MER ENTERPRISES, INC., Claimants, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed February 14,1984.

Order on petition for rehearing filed July9,1984.

CASEY & CASEY (ESTEBAN F. SANCHEZ and EDWARD F. CASEY, of counsel), for Claimants.

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

HIGHWAYS—***defect in highway—State must have notice.*** In order to recover for damages caused by a defect in a highway, the Claimant must show that the defect was substantial enough and existed long enough that reasonable persons would conclude that immediate repairs should be made or that warning signs should be posted, and the State must be shown to have either actual or constructive notice of the defect.

SAME—hole in bridge—covered with steel plate—plate unsecured—accident—State not negligent—claim denied. Claimant suffered damages to his truck when he struck a hole in a bridge, but he was denied recovery where the evidence established that the State had previously covered the hole with a steel plate and placed "bump" signs and kerosene pots at each end of the bridge to slow the traffic, and the State did not have sufficient notice that the plate had become dislodged, notwithstanding Claimant's contention that the State was negligent in not securing the plate with anchor bolts.

POCH, J.

This claim arises out of an accident that occurred on September 16,1980.

At about 2:00 a.m. on September 16, 1980, Jerry Kirby was driving Claimant's 1973 Peterbilt truck along Route 71 in a northbound direction. Two hours later, about 4:00 a.m., Mr. Kirby was traveling south on that same highway when he came upon a hole 2½ or 3 feet square on a bridge. The hole was completely through the bridge. Because Mr. Kirby had Claimant's truck in the northbound lane while going over the bridge he was unable to avoid the hole, and sustained damages to Claimant's truck in the amount of three thousand five hundred ninety five and 40/100 ($3,595.40) dollars.

When driving over this road at 2:00 a.m., Mr. Kirby did not notice any signs before the bridge or a metal plate on the bridge. Mr. Kirby testified that when he investigated after the accident he found the plate was off the highway altogether.

An Illinois Department of Transportation maintenance crew had performed temporary repairs on the site of the accident on September 13, 1980. The crew placed a steel plate weighing approximately 1,500 pounds on the hole and secured it with cold patch mix. Testimony showed that the crew had placed two "bump" signs and kerosene pots at either end of the bridge to slow traffic.

Claimant asserts that the Department was negligent when it failed to secure the steel plate with anchor bolts.

Mr. Roger Cosgrove, a civil engineer with the Department, testified that there are three acceptable methods available to secure such plates. He stated that securing the plate with cold patch mix is an acceptable method. From the record the Court was unable to find that a different method would have been more effective.

The testimony indicates that the steel plate was

dislodged sometime between 2:00 a.m. and 4:00 a.m., which was the time of the accident.

In ***Stege v. State*** **(1971), 27** Ill. Ct. Cl. 399, the Court held that for recovery to be possible it must be shown that the defect was substantial enough and must have existed for such a length of time that reasonable persons would conclude that immediate repairs should be made or, in the alternative, that warning signs be posted. The State must have either actual or constructive notice of the defect.

From the testimony it is clear that the State did not have sufficient notice of the defect.

Based upon careful examination of the entire record in this cause, we hold that Claimant failed to prove by a preponderance of the evidence that the Respondent was negligent.

It is hereby ordered that this claim be, and hereby is, denied.

ORDER ON PETITION FOR REHEARING

Poch, J.

This cause comes to be heard on the petition for rehearing filed by Claimant seeking rehearing from the decision of this Court of February **14, 1984,** due notice being given and the Respondent having filed an answer to the Claimant's petition for rehearing, and the Court being fully advised, hereby:

Finds that the petition for rehearing filed by Claimant does not state with any merit any alleged errors overlooked by the Court. Pursuant to Rule **22** of this Court, there is no legal or factual reason to reverse or

modify this Court's opinion of February 14, 1984, dismissing the claim.

It is hereby ordered:

That the petition for rehearing filed by Claimant, be, and the same is hereby denied.

(No. 82-CC-0621—Claim denied.)

ROOSEVELT MCCOY, JR., ANNETTE GRIFFIN and WILLIE LOGAN, Claimants, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed February 27, 1985.

RONALD M. GONSKY, LTD., for Claimants.

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

NEGLIGENCE—elements of negligence action. In an action based on negligence, the Claimants must show by a preponderance of the evidence that the defendant owed the Claimants a duty, that the duty was breached by a negligent act or omission, and that the breach proximately caused a compensable injury.

PERSONAL *INJURY—Claimants truck State wrecker clearing accident on expressway—Claimant at fault—claim denied.* The Claimant was entirely at fault when he drove his automobile through a safety zone marked by flares and collided with a State tow truck which was working to clear away accident on expressway, and the claim for the resulting injuries sustained by Claimant and his passengers was denied, since he crossed into the area the State was trying to clear, notwithstanding the ample warning given by the emergency lights on the tow truck and other vehicles at the scene.

HOLDERMAN, J.

On October 18, 1980, between 10:30 p.m. and 11:00 p.m. Claimant Roosevelt McCoy, Jr., drove his automobile through a safety zone marked by flares and

collided with Respondent's tow truck. Claimants Willie Logan and Annette Griffin were passengers in the McCoy automobile at the time of the incident. Claimants McCoy and Logan seek damages from the State of Illinois and allege that Robert Hanson, the State driver, negligently backed the Respondent's tow truck into Claimant McCoy's car.

Robert Hanson, who had served in the emergency traffic patrol of Chicago for 11 years, observed a four-car accident in the right-hand lane of the Dan Ryan Expressway. The wreckage was about 50 feet north of the end of the far right-hand lane of the Dan Ryan. That lane becomes the exit ramp from the Dan Ryan to the Eisenhower Expressway.

Hanson placed his tow truck immediately behind the last of the four cars in the accident. He was then approached by one of the drivers who had been involved in the accident and was told there were injured drivers and passengers. Hanson then immediately called for help on his radio.

Hanson then marked the accident area with flares to warn the approaching public of the accident. He then set several flares, one for every other white lane-marking line, along the length of the accident scene. These flares were placed along the left boundary of the right lane for five or six car lengths. Before Hanson marked the area with flares, he tried to ascertain whether he could provide first aid to any of the accident victims. The flares Hanson set usually burn for 20 minutes.

Also at the scene of the accident was a police car, an ambulance and another tow truck. At no time did any of these vehicles or the tow truck of Respondent block the exit ramp to the Eisenhower Expressway.

In addition to the line of flares which marked the scene of the accident, Hanson turned on all of the tow truck‘s emergency lights, which were tow revolving yellow lights, four high-intensity rear flashers, a red flasher and two roof top, high intensity flashers also alternating. The flashing blue lights of the police car were also turned on, as well as the flashing lights of the paramedics’ vehicle.

Hanson then started removing the vehicles from the right lane of the expressway after he checked with the paramedics, who were assisting with the victim lying alongside the third car, to see if he could tow the third car. He was backing his tow truck toward the third car when he looked through the rear window to be certain where the paramedics were working. He was approximately two car lengths from the third car in the right lane and was backing his truck at approximately two miles per hour when Claimant McCoy’s car left the center lane of the northbound Dan Ryan lanes and crossed between the tow truck and the third car. The left rear of the tow truck, which was perpendicular to the Claimant’s car, hit the car’s left rear quarter panel.

It appears therefore that the oncoming traffic was given ample warning by the emergency lights of the tow truck, the police car and the ambulance, all of which were visible for a very considerable distance. Despite this, the Claimant’s car crossed into the area where the State was endeavoring to clear out the disabled cars so that normal traffic could resume.

There is some question raised by Claimant McCoy’s testimony that he thought the flares were out, but even if they were, the flashing lights on three, and possibly four, vehicles at the scene should have given ample warning to the traveling public that there were problems ahead.

The evidence regarding the flashing lights is completely uncontradicted and Claimant McCoy admitted that the flashing lights on the lead tow truck were operating.

This case proceeds under the tort of negligence, whose elements are well defined by case law. Claimants must show by a preponderance of the evidence that Respondent owed Claimant a duty, and that duty was breached by a negligent act or omission which proximately caused a compensable injury. 89 Ill. App. 3d 865,409 N.E.2d 336.

At no time was the exit from the Dan Ryan to the Eisenhower Expressway blocked. Testimony indicates that McCoy's automobile suddenly traversed the safety zone to gain access to the westbound Eisenhower exit ramp. This was when the accident between the tow truck and the Claimant's car occurred.

It is the Court's opinion that Respondent was in no way negligent in attempting to clear away the wreckage of the accident and that the entire fault lay with the Claimant driver.

Award denied.

(No. 82-CC-0669—Claimants awarded $1,000.00.)

FRANK LINDEN and PATRICIA LINDEN, Individually, and as Special Administrators of the Estate of Mary K. Linden, Deceased, Claimants, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion *filed March 25,1985.*

FOSS, SCHUMAN & DRAKE, for Claimants.

NEIL F. HARTIGAN, Attorney General (JOHN J.

PERCONTI, Assistant Attorney General, of counsel), for Respondent.

STIPULATION—*wrongful death action—automobile collision—stipulation—award granted.* **An award was granted for the wrongful death of Claimants' decedent in an automobile collision where the parties entered *into* a joint stipulation in settlement of the claim.**

ROE, C.J.

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

Finds:

That this is a wrongful death action brought pursuant to section 8(d) of the Court of Claims Act (Ill. Rev. Stat. 1983, ch. 37, par. 439.8(d)).

On December 25,1980, Claimants' decedent, Mary K. Linden, was fatally injured in an automobile collision while driving northbound on U.S. Highway 14, approximately 7/10 of a mile north of Illinois Highway 68 in Barrington Township, Illinois.

The parties hereto have agreed to a settlement of this claim, and Respondent agrees to an entry of an award in favor of Claimants in the amount of one thousand dollars and no cents ($1,000.00) in full satisfaction of this claim.

It is hereby ordered that the Claimants, Frank Linden and Patricia Linden, individually, and as special administrators of the estate of Mary K. Linden, deceased, be and hereby are awarded the sum of one thousand dollars and no cents ($1,000.00), in full satisfaction of this claim.

(No. 82-CC-0910—Claim denied.)

JUNIOR B. BERANEK, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Order on motion to dismiss filed June 11, 1982.

Order on motion for rehearing filed July 26, 1982.

Opinion filed December 14, 1984.

JUNIOR B. BERANEK, pro *se*, for Claimant.

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

STATE EMPLOYEES' BACK SALARY CLAIMS—*claim for retroactiue pay not proven—remedies not exhausted—claim denied.* **The Claimant's action seeking to recover certain back wages based on arbitration and bargaining awards and agreements was denied, since Claimant failed to prove by the preponderance of the evidence that he was entitled to an award, and, in addition, he failed to exhaust his remedies under the Personnel Code and collective bargaining agreement.**

ORDER ON MOTION TO DISMISS

ROE, C.J.

This cause coming before this Court on the Respondent's motion to dismiss and the Court being fully advised in the premises finds that these are claims for additional compensation based upon an arbitrator's decision. This Court further finds that the Personnel Code provides for the promulgation of the grievance procedure, with appeal from that grievance procedure to be heard by the Civil Service Commission. The Claimant, having utilized an arbitrator rather than the Civil Service Commission as provided by law, has failed to exhaust his remedies as required by section 25 of the Court of Claims Act (Ill. Rev. Stat. **1983,** ch. **37,** par. **439.24-5),** and Rule **6** of this Court, and therefore, in accordance with Rule **9** of this Court, these claims are dismissed.

ORDER ON MOTION FOR REHEARING

ROE, C.J.

This cause coming on to be heard on the Claimant's motion for hearing, it appearing that due notice has been given, and the Court being fully advised in the premises;

On June 11,1982, this claim was dismissed by order of the Court. The motion at bar was filed June 17, 1982. Therefore, we construe this motion to be a request for a rehearing. Rule 22 of the Rules of the Court of Claims provides that petitions for rehearing briefly state the points supposed to have been overlooked or misapprehended by the Court, with authorities and suggestions concisely stated in support of the points. In support of his motion Claimant did not address the basis of our order.

It is hereby ordered that this claim be, and hereby is, denied.

OPINION

ROE, C.J.

Claimant, an employee of the Respondent's Department of Rehabilitation at the Illinois School for the Deaf in Jacksonville, Illinois, brought this claim seeking back wages. He alleged in his complaint that he demanded payment of certain back wages from his employer and the Respondent's former department of personnel and his demand was refused.

This matter came on for hearing on March 18,1983, after the Court had sustained two motions to dismiss. At the Claimant's request, however, a hearing was granted based upon the Claimant's representations that he could better present his case by way of testimony.

The claim arises from the Claimant's interpretation of certain arbitration and bargaining awards and agreements which are commonly referred to as the Sol Elkin award of May 18, 1981, together with a memorandum of understanding dated September 21, 1981. The Claimant contends that under the arbitration award and memorandum of understanding dated September 21, 1981, he should be given retroactive pay of $849.30 for the 1980-1981 school year and $207.70 for the 1982 school year.

The central issue throughout the case centers on the authority of a Mr. Walther, the union representative, and a Mr. Vallone, management's representative, on both the documents described above. In addition to the case at bar, the Claimant filed a grievance based on these documents. The grievance was withdrawn by Mr. Walther at the 4A grievance level proceeding—pre-arbitration. Claimant testified that Mr. Walther had no authority to withdraw this grievance and had been expressly told by him not to file a withdrawal.

As part of its defense the Respondent presented testimony from Carol Hibma, the labor relations administrator with the Department of Rehabilitation Services. At the time of the Elkin decision she was the labor relations administrator of the department of personnel. She testified that she was familiar with the decision, the agreements, and procedures and that the Claimant had been paid in full pursuant thereto.

Having reviewed the testimony and evidence, we find that the Claimant has failed to prove by the preponderance of the evidence that he is entitled to an award. Further, we find that he has failed to exhaust his remedies as required by section 25 of the Court of Claims Act (Ill. Rev. Stat. 1979, ch. 37, par. 439.24-5) and

Rule 6 of the Rules of the Court of Claims. To hold otherwise would allow a dissatisfied union member to disavow the authority of his union representative and circumvent the Personnel Code and collective bargaining agreements and to come here for resolution of a grievance. This case clearly presents the need for the aforementioned section 25 and Rule 6.

Claim denied.

(No. 82-CC-1407—Claim dismissed.)

STRATFORD HOMES, Claimant, *v.* **THE STATE OF ILLINOIS, Respondent.**

Opinion filed September 10, 1984.

ALAN E. GRISCHKE, for Claimant.

NEIL F. HARTIGAN, Attorney General (LYNN W. SCHOCK and MARY MULHERN, Assistant Attorneys General, of counsel), for Respondent.

CONTRACTORS—*purpose of* ***Bond Act.*** The Bond Act is intended to protect subcontractors and materialmen working on public construction projects within the State from a general contractor's default because the use of mechanic's liens against a public project is prohibited, but the Act will not be extended to cover sales of commodities, since that would unduly burden commerce by increasing the time and other costs of doing business.

CONTRACTS—*modular* ***classroom units are commodities, not construction projects.*** The Claimant which supplied modular classroom units to the State through the supplier which contracted with the State was dealing with the sale of a commodity, not a construction project, since, because the units are already constructed before being brought to the site, they are not considered permanent buildings.

SAME—*State* ***not liable for fading to obtain bond from party contracting to supply modular classrooms.*** The Claimant was not entitled to an award for the damages suffered when it was not paid for the modular classrooms supplied to the State through a third party which had a contract with the State, but which went bankrupt, since the State was not required to obtain

a bond from the third party where the contract involved the purchase of a commodity such as modular classrooms, and even if it was required to obtain a bond, the State could not be sued for negligence in failing to obtain a bond.

HOLDERMAN, J.

On October 1, 1980, Lincoln Land Special Education, a State agency acting on behalf of the Department of Corrections, entered into a contract with Classroom Distributors of Tomah, Wisconsin, to purchase a mobile modular classroom unit. On March 3, 1981, Classroom ordered a unit for the Lincoln Land contract from Claimant Stratford Homes. Claimant transported the unit to the Joliet Correctional Center and installed the unit on the premises. Lincoln Land made payments on the unit to Classroom's assignee, the Bank of Tomah, as per contract, and the unit has been paid for in full. Classroom, however, failed to pay Stratford for its work on the unit. Classroom has filed for Chapter 11 bankruptcy relief. Stratford claims the State of Illinois, Department of Corrections, should pay for Classroom's default because the State failed to obtain a bond from Classroom which would have protected Stratford from this situation.

It is Respondent's contention that there are two issues to be decided in this case:

1. Whether the sale and installation of a mobile classroom unit constitutes a "public work" within the meaning of the Bond Act; and

2. Whether the State is liable to a supplier, not in privity of contract with the State and who has not been paid by the State's promisor, for not requiring its promisor, who has fully performed and been paid in full by the State, to post a bond.

The Bond Act was intended to protect subcontrac-

tors and materialmen working on major public construction projects within the State from a general contractor's default because the use of a mechanic's lien against a public work is prohibited. ***(Board of Education Northfield Township H.S. Dist. 225 v. Pacific National Fire Insurance Co.*** (1958), **19** Ill. App. 2d **290, 153** N.E.2d **498.)** To extend the Act to cover sales of commodities would unduly burden commerce by increasing the time and other costs of doing business.

It is Respondent's contention that this transaction was a purchase and sale of a commodity and therefore not a construction project. In support of its contention, Respondent sets forth that all State construction projects are required to go through the Capital Development Board (CDB). Respondent points out that not one of the **10** classroom units purchased went through CDB. This argument is based primarily on the fact that the modular classroom units are not considered construction projects because they are already put together before being brought to the site, and they are not considered permanent construction because they are used temporarily until permanent buildings meeting the Board of Education code can be built. It is Respondent's further contention that if Stratford believed its relationship with Classroom was that of a subcontractor to a general contractor involved in a construction project, then Stratford was obliged to protect itself before doing work for Classroom by checking to see if Classroom had posted a bond. Stratford either negligently failed to look out for its own interests, or Stratford assumed the risk, based on a satisfactory four-year business relationship with Classroom, that Classroom would pay for materials and labor supplied by Stratford. Respondent points out that if Stratford was neither negligent nor assumed the

risk, then it must also have regarded Classroom's order as one for a commodity and Classroom's contract with Lincoln Land as a commodity purchase.

'The language of the Bond Act precludes a suit against the State on a negligence theory for failing to obtain a bond for a public works project. Section 2 of the Bond Act expressly states:

"that this Act shall not be taken to in any way make the State, or the political subdivision thereof entering into such contract (for public work), as the case may be, liable to such subcontractor materialman or laborer to any greater extent than it was liable under the law as it stood before the adoption of this Act." Ill. Rev. Stat. 1981, ch. 29, par. 16.

In ***Emulsicoat, Inc. v. City of Hoopeston*** (1981), 99 Ill. App. 3d 835, 425 N.E.2d 1349, in a carefully considered opinion, the Illinois appellate court for the first time interpreted section 2 of the Bond Act. The ***Emulsicoat*** court clearly states that the Bond Act and the Immunity Act preserved the State's immunity where the State fails to require a bond as well as where a bond is procured. ***Emulsicoat, Znc. v. City of Hoopeston*** (1981), 99 Ill. App. 3d 835,838,425 N.E.2d 1349,1352.

The facts of ***Emulsicoat*** are stronger but nevertheless analogous to those of this case. The plaintiff subcontractor furnished labor and materials to a general contractor who had a construction contract with the defendant municipality. The plaintiff claimed the municipality negligently failed to obtain a contractor's bond as required by section 1 of the Bond Act (Ill. Rev. Stat., ch. 29, par. 15). The ***Emulsicoat*** plaintiff, unlike the Claimant in this case, undeniably was a subcontractor who had performed work on what was undisputedly a public construction project and was thus clearly an intended beneficiary of the Bond Act. Nevertheless, the appellate court denied the plaintiff relief against the municipality because the municipality's failure to obtain

a bond was not a breach of the statute and did not cast liability upon the municipality. The legislature intended that governmental immunity be retained and so it included the limitation on liability provision in section 2 to make its intent clear.

It is the Court's opinion that the opinion in the *Emulsicoat* case, cited above, must determine the decision of the Court. The Court therefore must deny an award and this cause is dismissed.

(No. 82-CC-1455—Claimant awarded $26,985.40.)

LITTLE CITY FOUNDATION, Claimant, *v.* ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondent.

Order granting* summary *judgment filed* July *2,1984.

JOHN GEORGE, for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

CONTRACTS—*service* ***contract with*** *DCFS—provision* ***for rate changes*** **was *binding—award granted.*** Summary judgment was granted for Claimant in its action to recover under a contract for provision of services to the Department of Children and Family Services containing an addendum allowing changes in rates pursuant to rate appeals, since Claimant performed all the terms and obligations under the contract, the State failed to show any genuine issue of material fact between the parties, and the clause providing for rate increases was binding.

HOLDERMAN, J

This matter is before this Court on the motion of Claimant, Little City Foundation, for summary judgment in its favor and against the Respondent, Illinois Department of Children & Family Services, all parties

represented by counsel, and the Court being fully advised in the premises,

This Court finds that:

1. On or about June 30, 1980, Claimant and Respondent entered into a valid and binding "Purchase of Service Contract" to be effective July 1, 1980, and terminate June 30, 1981.

2. Attached to and a part of the contract was a valid and binding "Contract Addendum" which in its pertinent part provided:

"2. The Illinois Department of Children and Family Services and the Contractor will abide by the conditions of any changes in rate made by D.M.H.D.D.pursuant to granted rate appeals."

3. Claimant has fully performed all terms and obligations under said contract.

4. The Illinois Department of Mental Health and Developmental Disabilities, on September 25, 1981, granted the Claimant a rate increase of $2.60 (6.2%) increase over the current rate being given to the Claimant.

5. The rate increase granted on September 25,1981, was binding upon the Claimant and Respondent pursuant to the contract entered into on or about June 30, 1980.

6. The rate increase of $2.60 awarded by the Illinois Department of Mental Health and Developmental Disabilities, when multiplied by the number of children being serviced under the contract between the Claimant and Respondent, and that figure multiplied by 365 days in fiscal year 1981, shows that there is a total due Claimant from Respondent pursuant to the contract of $26,985.40 after allowing all just credits.

7. Respondent has failed to show any genuine issue of material fact existing between the Claimant and the Respondent.

8. Claimant is entitled to summary judgment in its favor under law.

It **is** hereby ordered that:

1. Claimant's motion for summary judgment in its favor and against the Respondent is granted.

2. Judgment is entered for the Claimant and against the Respondent in the amount of **$26,985.40.**

(Nos. 82-CC-1829, 83-CC-1937—Claim denied.)

COMMONWEALTH EDISON COMPANY, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Order filed December 14,1984.

JAMES G. POSKOZIM, for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

CONTRACTS—*gross charges for electricity constituted penalty—claim denied.* **The Claimant's action seeking payment of gross charges for electricity constituted a penalty against the State, and was therefore not recoverable, since the State is not liable for interest or penalties absent a statutory provision for such liability.**

ROE, C.J.

This matter coming to be heard on the motion of the Respondent for summary judgment in favor of the Respondent and against the Claimant and the objection thereto filed by the Claimant, due notice having been given and the Court being fully advised;

Finds that the Claimant, Commonwealth Edison, is before the Court seeking payment of gross charges for electricity which were billed to a State agency but not paid. This Court has previously determined that such gross charges are actually a penalty assessed against the State agency. As such, they are not recoverable from the State because it is not liable for the payment of interest or penalties, in the absence of a statute subjecting it to such liability. Illinois Power Co. *v.* State (1975), 30 Ill. Ct. Cl. 506.

It is hereby ordered that the motion of the Respondent be, and the same is, hereby granted and the claim is hereby denied.

(No. 82-CC-2208—Claim dismissed.)

EASTERN CYCLONE INDUSTRIES INC., f/k/a ECI AIR-FLYTE CORP., Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed July 26, 1984.

Order on Court's motion filed February 21, 1985.

JAMES S. BARBER and GARY L. STARKMAN, of ARVEY, HODES, COSTELLO & BURMAN, for Claimant.

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

AGENCY—*party dealing with agent of State is bound to know extent of agent's authority.*

SUMMARY JUDGMENTS—*contract—laundry equipment—extras—genuine issue of material fact—summary judgment denied.* **The Claimant was not entitled to summary judgment in its action to collect for changes in the**

installation of laundry equipment purchased for a State university hospital, since a genuine issue of material fact existed as to Claimant's rights when it proceeded to perform the changes without duly executed change orders as provided in the written contract.

CONTRACTS—*installation of laundry equipment—State hospital—change orders—insufficient funds—claim denied.* Where insufficient funds remained to pay the Claimant for changes made in the installation of laundry equipment at a State university hospital, the claim would have to be denied even though there may have been sufficient funds available when the work on the changes was completed, since making an award under such circumstances would constitute making a deficiency appropriation and a usurpation of the legislative prerogative.

LAPSED APPROPRIATIONS—*installation of laundry equipment—extras not required by law—claim denied.* The extra work done by the Claimant in installing laundry equipment in a State university hospital did not constitute an expenditure expressly required by law for purposes of having an award made notwithstanding the lack of remaining funds to pay the claim, since this exception to the rule precluding awards where the sum appropriated has been exhausted is to be cautiously applied, and the circumstances under which Claimant completed the extra work without obtaining the required change orders did not justify the application of the exception.

FRAUD—elements of action for fraud. In order to state a cause of action for fraud, the Claimant must show by clear and convincing evidence that the allegedly fraudulent statement was material; false; known to be false, believed to be false or made in culpable ignorance of its truth or falsity; relied upon by the victim justifiably; made for the purpose of inducing reliance; and that the reliance caused the victim pecuniary loss.

SAME—installation of laundry equipment—extras—alleged fraudulent misrepresentation as to payment not proven. The Claimant failed to prove all the elements of fraudulent representation necessary to obtain summary judgment on its claim for the extra work performed in the course of installing laundry equipment at a State university hospital, since the State's statement concerning the present lack of funds to pay for the work was not made to induce Claimant's reliance, Claimant did not rely on the statement and Claimant's harm was suffered before the statement was made.

NEGLIGENCE—elements of action for negligent misrepresentation. An action for negligent misrepresentation will be sustained if the Claimant can show by a preponderance of the evidence that a party in the course of business supplies information for the guidance of others in a business transaction and he fails to exercise the care and competence which the recipient of the information is justified in expecting and harm is suffered, and the Claimant need not show *scienter* as required in an action for fraudulent misrepresentation.

SAME—installation of laundry equipment—extras—negligent misrepresentation not proven. The Claimant was not entitled to summary judgment on its claim for the extra work performed in the course of installing laundry equipment at a State university hospital based on the State's alleged

negligent misrepresentation as to payments for the work, since Claimant did not demonstrate any reliance on the statement and Claimant's harm was suffered before the statement was made.

ROE, C.J.

The Claimant, Eastern Cyclone Industries, brought this claim seeking damages for breach of contract, fraud, and tortious misrepresentation. The facts, as stipulated by the parties, are essentially as follows.

The Claimant is in the business of installing pneumatic conveyors and laundry equipment. On May 16, 1977, the parties contracted for the sale and installation of a pneumatic laundry conveyor and chute system for soiled linen and trash at the University of Illinois Replacement Hospital ("the hospital") in Chicago, Illinois. The contract was numbered 7-1487-4 by the Respondent. The Claimant installed the laundry conveyor and chute system and has been paid in toto for that portion of its work.

On July 17, 1978, the Respondent's construction management company, Morse/UBM Joint Venture, asked the Claimant to "proceed with construction" of revisions to the pneumatic'linen and trash lines in the basement of the hospital ("relocation work"). The Claimant agreed to do the relocation work for $13,200.00. About a year later the user agency, the University of Illinois, also asked for the Claimant to sell to it and install a Model 140 Linen Collector and the Claimant did furnish and install it at the hospital.

On March 5,1980, the Claimant submitted a request for proposal and change order on the linen collector for a $34,000.00 contract sum increase. By July 8, 1980, all recommendation and approval signatures had been obtained on the change order except for the final signature of the Respondent (CDB approval) in

Springfield, Illinois. Because of the amount of the change order, CDB approval was required. Robert Pierce, the CDB's manager of its northern regional office, sent the change order to D. Springer, the CDB's Change Order Administrator in Springfield on July 8, 1980. On or about July 15, 1980, Mr. Springer returned the change order to Mr. Pierce unsigned because a drawing had not been submitted with it, even though the user agency, the construction manager, the architect, the engineer and/or the Respondent had a drawing on hand at the time which showed the work related to the change order.

In September of 1980, the Claimant completed the relocation work and by November of 1980 the installation of the linen collector had been completed.

During September and November of 1980 there were sufficient unobligated funds to approve and pay the Claimant the $34,000.00 for the linen collector and the $13,200.00 for the relocation work.

It was not until December 29,1980, that the change order for the linen collector was resubmitted to the CDB's Springfield office with the drawing for final approval. A week later 'the Claimant submitted the change order for the relocation work. Sometime in January of 1981, the change order for relocation work had been approved by the user agency's Ken Belford and had been recommended for approval by both the project's architect and construction manager. One Brian O'Connor's signature was stipulated to be the final signature necessary prior to submittal of the change order to the CDB's Springfield office. Mr. O'Connor never signed the change order and it was never submitted for reasons that the parties agree are unknown.

In January of 1981 there were still ample unobligated appropriated funds in the hospital project construction account to approve and pay the Claimant for the work performed pursuant to both change orders.

On June 4, 1981, the Claimant submitted to the Respondent a contractor's affidavit and sworn statement for $47,200.00 for payment for the work covered by both change orders.

At the end of fiscal year 1981 there was $59,571.32 of unobligated funds on hand in the construction account for the hospital project.

On July 29, 1981, the CDB wrote to the Claimant that:

"All appropriate parties have authorized your final payment. However, your change orders Nos. PC-1 and PC-2 (the Relocation Work and Linen Collector, respectively) have yet to be approved due to lack of funds remaining for this project. We regret any inconvenience or hardship this may cause your firm and intend to approve your contract changes as funds become available. Until that time, we can pay you the current balance remaining in your account.

"Should you find the delay in the change order approval unacceptable, your recourse is in the Court of Claims." (Parenthetical explanation added by the stipulation.)

In conclusion, the stipulation states that all problems have been corrected under warranty and the Respondent represented that the amount of released funds which currently are unobligated in the hospital project are $1,807.47.

The Claimant in its complaint and amendment thereto has raised three theories of recovery including breach of contract, fraud, and tortious misrepresentation. The claim is before the Court on the Claimant's motion for summary judgment. Based on the record before us we are unable to say that the Claimant is entitled to judgment as a matter of law.

Essentially, the argument that the contract was

breached by the Respondent is simply that the Claimant performed its part of the agreement for the changes and that the Respondent did not pay the Claimant. The Respondent seeks to deny the existence of the agreement. The Respondent cited Section 7-01 of Article 7 of the general conditions of the contract which Respondent stated provided as follows:

"GENERAL. CDB may, at any time, without notice to the sureties, order changes in the contract time or in work germane to the Contract. The Contractor may initiate requests for changes. Upon issuance of a change order, the Contractor shall promptly proceed with the work as changed. No work shall be changed without written approval of CDB."

The Respondent argues there was no written approval by a person who had authority and it is well-settled law that when dealing with an agent of the State, one is bound to know the extent of his authority, citing Wilder Mobile Homes, Znc. *v. State* (1979), 33 Ill. Ct. Cl. 227. Further, Respondent argues that undue delay in approval of the change orders, if any, is no excuse for the Claimant to have proceeded on its own without approval.

A careful and thorough examination of the entire record in this matter reveals no such language in Article 7 of the contract nor is there even an Article 7. The copy of the contract amended to the complaint and elsewhere in the record contains only two pages consisting of four Articles. The Claimant did not comment on this argument. A genuine issue of material fact is thus presented and thus we are unable to find that the Claimant is entitled to judgment as a matter of law as to this issue.

Aside from the merits of the breach issue on the contract is the Respondent's interposition of the insufficiency or lack of funds defense. At this time it is abundantly clear to this Court that there are now insufficient funds remaining with which to pay this

claim. Regardless of the merits of the Claimant's theory of recovery based on breach of contract we are constrained by law to deny recovery on that basis.

Section 30 of "an Act in relation to State Finance" (Ill. Rev. Stat. 1981, ch. 127, par. 166) provides as follows:

"No officer, institution, department, board or commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law."

Even if there were sufficient funds to cover the costs of the change orders when they were negotiated (even if never finally approved), there are now insufficient funds to pay claims arising from this project. Claimant cited ***Schutte and Koerting*** Co. ***v. State*** (1957), 22 Ill. Ct. Cl. 591, as authority to pay this claim. ***Schutte, supra,*** was overruled in ***Hall v. State,*** 78-CC-0895, decided December 27,1979, reported at 33 Ill. Ct. C1.364, but as an unpublished opinion. There, that Court stated:

"However, in ***Schutte,*** (supra), rather than to deny all claims outright, this Court took one step beyond their holding in ***Board of School Inspectors of the City of Peoria v. State,*** (supra) and held that where sufficient funds were available at the time the contract was entered into, the Court would honor the contract even though the contract was not paid before the funds available were totally expended.

The Court went on in the ***Schutte,*** (supra), case to hold that any contract entered into, after the appropriation had become totally obligated, would be denied.

It is important in applying the principle set out in ***Schutte*** (supra) to distinguish between the balance of the appropriation left unobligated and the balance of the appropriation actually remaining on hand. To allow a claim, simply because the amount actually being held on the date the obligation is incurred equals or exceeds the obligation, could lead to overspending by the agency and deficiency appropriating by this Court.

This approach also could not guarantee that invoice vouchers prepared after the funds are fully obligated would not be processed and paid leaving no funds for obligations incurred at an earlier date. For this reason, we repudiate that portion of ***Schutte and Koerting Co., Et Al. v. State of Illinois, 22*** Ill. Ct. Cl. 591, case which allows awards simply because the line item appropriation was not shown on the books of the agency as being fully obligated on the date the 'debt' was incurred . . . .

It is inherent in the administration of State government that expenditures should not exceed appropriations previously made with the possible exception set forth in the case of Fergus *v. Brady,* (supra) where the expenditure is strictly prescribed by the legislature and the spending agency is compelled by circumstances and law to obligate the State. This appears to be a permissible (and expeditious) delegation of authority by the Legislature.

Without strict and well enforced guidelines, the spending of State officials could become rampant."

Under the holding in ***Hall, supra,*** this claim cannot be paid because there are now insufficient funds remaining to pay the claim. The fact that there may have been sufficient unobligated funds remaining when the work was begun or partially sufficient unobligated funds available when the work was completed is not relevant at this time. For us to make an award on the breach of contract theory under this set of facts could only be described as making a deficiency appropriation and a usurpation of the legislative prerogative.

Citing ***State Employees Retirement System v. State*** (1970), **32** Ill. Ct. Cl. **158,** Claimant argues that, even where the payment would exceed the sum appropriated, this Court can make an award where the obligation is expressly required by law. This exception to the rule is extremely narrow and must be cautiously applied. In ***Fergus v. Brady*** (1927), **277** Ill. **272,115 N.E. 393,** a case often cited in opinions of this Court, the Illinois Supreme Court stated at page **279:**

"That authority is express 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. An express authority is one given in direct terms, definitely and explicitly, and not left to inference or to implication, as distinguished from authority which is general, implied or not directly stated or given. An example of such express authority is found in one of the deficiency appropriations to the Southern Illinois Penitentiary which had been paid, and serves only as an illustration. The authorities in control of the penitentiary are required by law to receive, food, clothe and guard prisoners convicted of crimes and placed in their care, involving the expenditure of

money, which may vary on account of the cost of clothing, food and labor beyond the control of the authorities, and which could not be accurately estimated in advance for that reason or by determining the exact number of inmates."

Claimant urges us to find express authorization in section 9.02 of the Illinois Purchasing Act. In relevant part said statute provides as follows:

"No amounts of funds in addition to that provided for in a contract for repairs, maintenance, remodelling, renovation or construction may be obligated or expended unless the additional work to be performed or materials to be furnished is germane to the original contract.

Even if germane to the original contract, no additional expenditures or obligations may, in their total combined amounts, be in excess of the percentages of the original amount set forth in subsection (b) of this section, unless they have received prior written approval of the Capital Development Board.

In event that the total of the combined additional expenditures or obligations exceed the percentages of the original contract amount set forth in subsection (b) of this section then the Capital Development Board shall investigate all additional expenditures or obligations and state in detail the reasons for such approval or disapproval.

(b)...

Whenever the contract amount is in excess of $500,000.00, the percentage shall be 3% of the amount about $500,000.00 plus $25,000.00."[1]

Although the extra work, the relocation and linen collector work, were germane to the original contract, we do not view the quoted language as expressly requiring payment.

Authorization for virtually every expenditure of State funds can be traced to a statute or an inference to be drawn from statute. The question is often one of degree. The situation here with this "authorization" we do not feel, rises to the level described in Fergus, ***supra*** The obligation 'shouldcontain the same element of need and exigent circumstances or at the very least be a clear

1. Claimant's original contract was in the amount of $507,000.00. Their change orders totalling $47,200.00 are far in excess of the 3% limit and prior written approval from the CDB was not obtained.

and unequivocal directive to pay or incur an obligation. The "authorization" quoted above is rather a limitation on an agency's power to spend. It does not say that the State shall pay for the work contemplated by the change orders herein. The statute allows the agency to forego other provisions of the Illinois Purchasing Act and the rules and regulations thereunder when certain extras on contracts fall within the parameters of the statute. This "authorization" must be limited to availability of the appropriations.

We cannot make an award on the breach of contract theory, despite the obvious equities in favor of the Claimant, under the facts of this case. To do so would be to condone irresponsible overspending by State agencies.

Claims based on fraud and tortious misrepresentation sound in tort and as such are not susceptible to the defense of lack or insufficiency of appropriations in this Court.

The courts do not always clearly distinguish between fraud and tortious misrepresentation. ***(Mother Earth Ltd. v. Strawberry Camel, Ltd.*** (1979), 72 Ill. App. 3d 37,390 N.E.2d 393.) ***Oltmer v. Zamora*** (1981), 94 Ill. App. 3d 651, 418 N.E.2d 506, states that the tort of misrepresentation involves fraud. It appears that the key differences for purposes of our discussion here are the elements of ***scienter*** and the burden of proof.[2] For a

2. The most significant difference concerns the potential for, and virtually unlimited liability to, unknown plaintiffs as noted by Justice Cardozo in the leading case of *Ultramares* Corporation *v.* Touche (1931), 255 N.Y. 170, 174 N.E. **441,** and which was restricted in Illinois by the Illinois Supreme Court in *Rozny v. Marnul* (1969), 43 Ill. 2d 54, 250 N.E.2d 656. The ambit of liability for negligent misrepresentation is more confined (than for fraud) and will only attach if reliance by the particular plaintiff could be contemplated. This important difference is not of consequence in the claim at bar.

statement to constitute fraud it must be shown to be (1) material, (2) false, (3) known by the person making it to be false, believed by the person making it to be false, or made in culpable ignorance (sometimes referred to as being made with reckless disregard) of its truth or falsity, (4) justifiably relied upon by the victim, (5) made for the purpose of inducing the reliance, and (6) such that the victim's reliance caused him to suffer pecuniary loss. The party claiming fraud has the burden of proving its case by clear and convincing evidence.

As alleged in the Claimant's amendment to its complaint (count 11, par. 30) and as set forth in Claimant's memorandum in support of summary judgment, the following statement taken from a letter from the CDB to the Claimant dated July 29, 1981, was the actionable misstatement:

> "All appropriate parties have authorized your final payment. However, your change orders Nos. PC-1 and PC-2 (the Relocation Work and Linen Collector, respectively) have yet to be approved due to lack of funds remaining for this project. We regret any inconvenience or hardship this may cause your firm and intend to approve your contract changes as funds become available. Until that time we can pay you the current balance remaining in your account.
>
> Should you find the 'delay in the change order approval unacceptable, your recourse is in the Court of Claims." (Parenthetical explanation added).

It was agreed that as of the date the letter was written approximately $26,721.00 of unobligated funds remained in the construction account, enough to have paid the Claimant for all of Change Order 30-PC-2 and part of 30-PC-1.

The Respondent rationalizes the apparent misrepresentation by pointing out that there is nothing in the record to indicate the total amount of other change orders pending at 'the time and adding that it believed that there were insufficient funds to pay all the change

orders in progress. Respondent also asks us to take judicial notice of the fact that there are six other claims involving the University of Illinois Replacement Hospital seeking a total of $2,069,852.15 including:

1) ***Woodwork Corporation*** of ***America v. State,*** No. 80-CC-1336 for $400,000.00;

2) F. E. ***Moran, Znc. v. State,*** No. 82-CC-0397 for $35,000.00;

3) ***Bertrand Goldberg Associates v. State,*** No. 82-CC-2060 for $693,123.66;

4) L. ***K. Comstock & Co., Znc. v. State,*** No. 82-CC-2350 for $299,207.34;

5) ***Morse/Diesel, Znc. v. State,*** No. **83-CC-0155** for $609,590.39;

6) ***Robertshaw Controls Co. v. State,*** No. 83-CC-2560 for $32,930.76.

We do take notice of the fact that those claims are on file but unless the Respondent is willing to concede for the record that there is any merit to them (which Respondent had not done at the time the briefs were filed in this case—in fact a general denial was deemed filed in every one of them) we cannot find their existence relevant to the issues herein. Moreover, any merit to those claims may indicate widespread fraud in the inducement of all the claimants to perform work while the CDB knew or should have known that an insufficient amount of funds was available to pay for the goods and services rendered.

However, assuming arguendo that the first three elements of fraud set forth above have been shown, we

are of the opinion that the last three elements are unsupported by the record. The quoted .misstatement was not shown to have been made to induce reliance. Falsely representing that Respondent lacked funds to pay the 'Claimant can hardly be described as an inducement to be relied upon and the Claimant was told it had recourse in the Court of Claims.

We also do not think the record shows that the Claimant did rely on the alleged misstatement. It is the Claimant's position that as of July 29, 1981, it had already completed its construction. There does not appear to have been anything the Claimant could have done to collect its bill. The only apparent alternative was to file suit in the Court of Claims which was suggested in the letter but which the Claimant did not do until eight months later.

Forebearance from taking action, under certain circumstances, can satisfy the reliance requirement, but there is nothing in the record to indicate how Claimant's inaction caused pecuniary loss. The pecuniary loss had been suffered prior to the making of the alleged misstatement and it does not appear in the record how the Claimant's position changed in any way after the alleged misstatement.

Accordingly, the Claimant's motion for summary judgment on the fraud count is hereby denied.

The tort of negligent misrepresentation, Claimant's third theory of recovery in this claim, entails the basic elements of a negligence action including duty, breach of duty, proximate cause, and damages. The element of scienter required in an action for fraudulent misrepresentation is not present. A misrepresentation need only

to have been shown to be negligent. The burden of proof is by the lesser standard of preponderance of the evidence rather than by clear and convincing evidence.

City Savings & Loan Association v. Fischer (1966), 67 Ill. App. 2d 315, 214 N.E.2d 612, and ***Duhl v. Nash Realty Znc.*** (1982), 102 Ill. App. 3d 483,429 N.E.2d 1267, (the latter cited by the Claimant), have endorsed the American Law Institute's stance on what constitutes negligent misrepresentation:

"One who in the course of his business or profession supplies information for the guidance of others in their business transactions is subject to liability for harm caused to them by reliance upon the information if

(a) he fails to exercise that care and competence in obtaining and communicating the information which its recipient is justified in expecting, and

(b) harm is suffered

(1) by the person or one of the class of persons for whose guidance the informatibn was supplied; and

(2) because of his justifiable reliance upon it in a transaction in which it was intended to influence his conduct or in a transaction substantially identical therewith."

Typical cases involve errors by public weighers, accountants, appraisers, and architects.

The Claimant alleges that the CDB's statement of July 29, 1981, quoted earlier, was the negligent misrepresentation. The duty of the CDB was alleged to be to pay the Claimant for the work it did and/or exercise due care in the connection therewith. (Count 111, par. 77). Claimant elaborated on the Respondent's duty in its brief by stating that the Respondent had a duty to pay the Claimant before (the Respondent) depleted the construction funds account and/or not to deceive the Claimant into believing there were insufficient unobligated funds to pay while the Respondent paid other contractors instead of the

Claimant. Claimant also added in its brief the allegation that the Respondent had a duty to process change orders timely. It is clear that the misrepresentation alleged could only have breached the alleged duty not to deceive the Claimant into believing that there were insufficient funds available to pay the Claimant (assuming the existence of such a duty) and then no harm was shown. The Claimant has not demonstrated reliance. The Claimant's harm was suffered prior to the misstatement and not because of it. According to standard negligence analysis the alleged misstatement was not shown to be the proximate cause of the Claimant's damages. Accordingly, Claimant's motion for summary judgment on the negligent misrepresentation count is hereby denied.

There is nothing in the record to support the prayer for relief seeking costs, attorney's fees, and punitive damages and therefore these too cannot be awarded on the motion for summary judgment.

Seven months after the alleged misstatement, on February **3,1982,** the CDB, apparently at the Claimant's behest, acknowledged in writing that the Claimant had satisfactorily completed all the work on the original contract, the relocation work, and on the linen collector. The CDB wrote Claimant as follows:.

"Per your request, we are writing to acknowledge that ECI has satisfactorily completed all work on both the original contract of $509,000.00 and the pending change orders nos. 30-PC-1 and 30-PC-2 in the amounts of $34,000.00 and $13,200.00, respectively.

We reiterate our intent to approve your contract changes as funds become available and shall expedite any further payments due ECI when the system'sproblems covered under warranty have been corrected."

It was stipulated that all problems have been corrected under the warranty. There **is** nothing in the record as to what these problems were or when they were corrected.

However, in conclusion we find that the Claimant has provided **$47,200.00** worth of goods and services to the Respondent and to the Respondent's satisfaction. The Respondent is unable to pay for these goods and services now due to lack of funds, but the Respondent would pay for them if funds were available now. The record as it presently exists does not support Claimant's allegations of fraud or negligent misrepresentation. Motion for summary judgment denied.

ORDER ON COURT'S MOTION

ROE, C.J.

This cause comes on to be heard on the Court's own motion, and the Court being fully advised;

The Court hereby finds that the Claimant's cause of action has **been** satisfied.

. Wherefore, it is hereby ordered that this cause be, and hereby is, dismissed.

(No. 82-CC-2244—Claim **denied.)**

FIDELITY DEPOSIT COMPANY OF MARYLAND, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Order filed December *13,1984.*

McNEELA & GRIFFIN, LTD., for Claimant.

NEIL F. HARTIGAN, Attorney General (ERIN M. O'CONNELL, Assistant Attorney General, of counsel), for Respondent.

CONTRACTS—*plumbing* work—extras—all funds expended—claim denied. The Claimant's action,'seeking recovery for the extra work done

when its plumbing project for a new school encountered an unanticipated high water table and running sand, was denied, notwithstanding a stipulation of the parties providing for payment of the claim, since all the funds appropriated and released for the project had been expended through other payments and the Goyernor's cancellation of remaining released funds.

ROE, C.J.

This claim is before the Court on the joint stipulation filed by the parties on November 7, 1983. By order of this Court dated January 5, 1984, the case was continued until submission of additional information by the Respondent. 'That information was provided September 12, 1984. The case is now before us for decision.

The parties stipulated as follows:

1. Claimant is a bonding company which pursuant to its bond became the contractor of record for plumbing work completed at New Sycamore Junior High School, Sycamore, Illinois.

2. Claimant hired Great Lakes Plumbing and Heating Company to perform the contract work.

3. In the course of completing the work, Great Lakes encountered conditions not anticipated in the original contract, namely a high water table and running sand.

4. These conditions necessitated renting dewatering equipment so that the plumbing work could be completed.

5. Claimant and Respondent have agreed that the amount of Claimant's claim for the additional expense of the equipment rental is $5,500.00.

6. The parties agree that Claimant should be awarded $5,500.00 as a complete satisfaction of Claimant's claim.

This Court is not bound by such settlements, but neither does it seek to interpose a controversy where none appears to exist. We encourage settlement where the case warrants it and will not reject a settlement out of hand. Although this settlement appears fair and reasonable and entered into at arms length we unfortunately are constrained by operation of law to reject the settlement and deny the claim.

The additional information elicited by our order of January 5, 1985, reveals that all funds appropriated by the legislature *and* released by the Governor have been expended. For this reason we are unable to acquiesce in making an award. We do note for the record however that on July 26, 1978, the director of the Capital Development Board (the Respondent herein) requested, the director of the Bureau of the Budget recommended, and the Governor approved, a cancellation of released funds in the amount of $16,210.00 for the stated purpose that the contracts awarded for the project plus contingencies were less than the amount of funds released, and that therefore that amount of money was not required. We further note for the record that on June 23,1981, the Director of the Capital Development Board requested, the director of the Bureau of the Budget recommended, and the Governor approved another cancellation of released funds in the amount of $40,531.00 for the stated purpose that the project was complete. Thus, it appears at one time there were more than sufficient funds appropriated and released to have covered this settlement but due to the events described above their release was cancelled.

Claim denied.

(No. 82-CC-2265—Claim dismissed.)

TIMOTHY N. KUROWSKI, Claimant, *v.* THE **STATE OF ILLINOIS,** Respondent.

Order filed December 13,1984.

LOUIS G. DAVIDSON & ASSOCIATES, LTD., for Claimant.

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

NEGLIGENCE—***personal injury claim—set off by recovery in civil action for same occurrence—claimdismissed.*** An action in the Court of Claims for personal injury was dismissed, since the Claimant recovered more than $100,000.00 in the settlement of his civil action arising from the same occurrence, and that recovery would completely set off any possible recovery in the Court of Claims, because the limitation provided by the Court of Claims Act is $100,000.00 for any action sounding in tort, and only one satisfaction of any claim is allowed.

WOE, C.J.

This cause coming on to be heard on the motion of Respondent to dismiss the claim herein with prejudice, due notice having been given the parties hereto and the Court being fully advised in the premises:

The court finds that the instant claim, sounding in tort, is for personal injuries and was filed on March 30, 1982, seeking the maximum award of $100,000.00.

Section 8(d) of the Court of Claims Act (Ill. Rev. Stat. 1983, ch. 37, par. 439.8(d)) provides for a $100,000.00 limitation on any Court of Claims award of damages in cases sounding in tort. Further, section 26 of the Act provides that there shall be but one satisfaction of any claim or cause of action in this Court, and any recovery awarded by us shall be subject to the right of set-off.

Claimant concurrently filed another cause in the

Circuit Court of Cook County entitled *Kurowski v. City of Chicago,* **No. 81** L **21396.** This cause arose from the same occurrence that gave rise to the instant claim.

The circuit court action was settled for $115,000.00, which would completely set off any possible recovery Claimant could receive in this Court. The instant cause, therefore, has been rendered moot.

It is therefore ordered that Respondent's motion be, and the same is, hereby granted, and the instant cause is hereby dismissed, with prejudice.

(No. 82-CC-2390—Claimantawarded $28,018.93.)

H & H PLUMBING, HEATING AND ELECTRIC *Co.*, a corporation, Claimant, *v.* THE STATE OF ILLINOIS, CAPITAL DEVELOPMENT BOARD, Respondent.

Opinion filed September 21,1984.

DONALD G. **MUSICK**, for Claimant.

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

CONTRACTS—*original* ***bid*** on ***school included sewage treatment—sewage deleted—bid reduced—contractor's figures controlled.*** A successful bidder on the construction of a school was granted an award based on its figures in determining the amount due when the sewage treatment portion of the project was deleted from the work, due to the absence of the required approval from the Environmental Protection Agency, since the contractor produced direct evidence of the figures used in the original bid showing the cost of the treatment facility, and the State merely alleged that the Claimant did not deduct enough money from the original bid, but adduced no testimony as to the actual cost of the facility.

RAUCCI, J.

This action arises out of the dispute between Claimant, a contracting firm, hereinafter referred to as

H & H, and the State of Illinois arising out of Claimant's bid and construction work on the Ziegler 'Elementary School.

H & H had submitted a bid to the Capital Development Board, hereinafter referred to as CDB, for construction work at the Ziegler Elementary School, which work included a sewage treatment plant facility. The bid submitted by H & H, which was approved and accepted by CDB, did not specify the amount of the bid necessarily attributable to that portion of the work pertaining to the sewage treatment plant facility.

Subsequently, no permit could be obtained from the Environmental Protection Agency for the sewage treatment plant facility and the contract for that portion of the work was not fulfilled by the CDB.

The dispute out of which this action arises developed between H & **H** and CDB. **H** & H claimed that out of their total bid, only **$59,548** should be deducted. CDB, on the other hand, believed that the amount that should be deducted as a result of the cancellation of the sewage treatment plant facility was **$87,466.93.** One hundred dollars was tendered by Respondent, which tender was rejected by Claimant. Thereafter, the amount to be paid by CDB to H & H was in dispute in the sum of **$28,018.93.**

H & **H** brought suit against the State of Illinois for the sum of **$28,018.93.**

H & **H's** project manager estimator, William Hertenstein, testified that he was the'project manager on the Ziegler School job. He was asked to make a calculation of the cost of constructing the sewer treatment plant had H & H proceeded to complete it in accordance with the original plans and specifications. Hertenstein had prepared the construction estimate for

the purpose of bidding the total job at the Ziegler School. The figures included a 15% charge for overhead and profit.

On cross-examination, Hertenstein testified that the estimate was prepared at a time when it had not been determined who was going to continue with the work. It was prepared at a time when an attempt was being made to determine what the costs were for that portion of the job that was not to be completed. Prior to the preparation of the estimate, an issue had arisen with respect to whether that portion of the work was going to be done but it had not been positively determined that H & H was not going to do that portion of the work. It was becoming apparent that EPA was not going to approve the sewage treatment plant so an alternate system was going to have to be installed and it was necessary to know how much the proposed system cost in relation to what another system would cost. The figures on his estimate were simply drawn from the original estimate that had originally been approved by the CDB. The cost of the sewage treatment plant from the supplier was verified in May of 1980 by letter from the supplier to H & H.

Hertenstein testified that the supplier responded to his request for a copy of the original quote and advised that the original quote was $43,263, thereby confirming their original quote.

Therefore, the dispute between the parties revolves about the cost of the sewage treatment plant which had to be deducted from the total competitive bid of H & H since it was never installed. H & H takes the position that the sewage treatment plant, as bid by them, would only have cost $43,263, and that it is the amount which should have been deducted from their competitive bid as a

result of the failure to construct the sewage treatment plant; Respondent, on the other hand, maintained that the amount that should have been deducted from the competitive bid as a result of the non-completion of the sewage treatment plant was $87,466.93. Respondent could not simply draw the figures from the original estimate or bid since the bid figures were "total price" and were not broken down so that the cost of the sewage treatment plant could be readily ascertainable therefrom.

In short, Claimant seeks to establish the correctness of its position through the testimony of Hertenstein, who prepared the original bids and who testified unequivocably that the cost of the plant was approximately $43,000.00. The State seeks to establish that the cost of the plant was $87,500 based on figures extrapolated from copies of letters addressed by Hertenstein to CDB and the architects on the job, which can be interpreted as suggesting that the price of the sewage treatment plant was considerably more than $43,000.00. Hertenstein explains these discrepancies by pointing out that the figures in those letters represent figures obtained by him from manufacturers of sewage treatment plants with respect to anticipated price increases. For example, in one letter Hertenstein warns about a possible price increase of sewage treatment plants in the area of 4 to 12%. In a subsequent letter, he warns that the price increase threatened by the manufacturers of sewage treatment plants could be as much as $8,750.00. From this, the State reasons that the cost of the original plant must have been $87,500, since a price increase of 10% totaling $8,750 would have, of necessity, been figured on an original price of $87,500.00.

Hertenstein stated that the figures used by him in his letter of warning to the CDB and the architect,

regarding the need to decide whether EPA approval could or could not be obtained on the original sewage treatment plant proposal, came from third-party sources in the manufacturing and sales end of the sewage treatment plant business. Therefore, Hertenstein says that such figures need not necessarily reconcile with his figures utilized in the preparation of H & H Plumbing's bid for the Ziegler School contract. Furthermore, there is evidence in the record that the sellers of the sewage treatment facility bid under H & H Plumbing's original proposal reconfirmed that the price for such sewage treatment facilities was, at the time the job was bid, in the area of $43,000.00.

Respondent does not in any way dispute Claimant's entitlement to be paid for lost profit as a result of the fact that the sewage treatment facility did not receive EPA approval and could not be installed. Respondent's sole contention is that Claimant has not deducted enough money from the bid for the cost of the sewage treatment facility. Respondent adduced no testimony as to the actual cost of the sewage treatment facility but seeks to establish such position solely on the basis of incongruities and discrepancies in assertions made by agents of H & H in correspondence concerning a need to expedite the decision on whether or not the facility was to be installed. Claimant, on the other hand, has produced direct evidence of the figures used in the original bid, which when deducted from the amount of the original bid show that Claimant is entitled to a sum of $28,018.93. Claimant has met its burden of proof.

It is therefore ordered that Claimant be awarded twenty-eight thousand eighteen and 93/100 dollars ($28,018.93) in full satisfaction of this claim.

(No. 82-CC-2470—Claimant awarded $1,788.33.)

DARREL B. MARQUIS, d/b/a Marquis Brothers, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed February 28, 1985.

PIERSON & MALONEY, for Claimant.

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

NEGLIGENCE—duty on drivers of State vehicles: The operators of State vehicles have the same duty of care as other drivers, and the State will be held liable for the damages proximately caused by the negligent acts of the operators of State vehicles.

SAME—property damage—collision with snowplow—comparative negligence—claim allowed. An award was granted to Claimant for the damages done to Claimant's truck when it collided with a State snowplow while attempting to pass the plow, since the evidence established that the driver of the State's truck was negligent in failing to use a turn signal and in failing to keep a proper lookout while attempting to turn, but the award was reduced by 25% due to Claimant's own negligence in failing to foresee unusual turns by the snowplow.

SAME—driver has duty to see that which he clearly should see.

ROE, C.J.

This is a claim brought by Darrel B. Marquis, d/b/a Marquis Brothers, against the State of Illinois whereby Claimant seeks recovery of $2,384.44, the undisputed amount of damage to Claimant's truck sustained as the result of an accident in which Claimant's vehicle collided with a State snowplow operated by Andrew Taliani, a State employee. A hearing was held before a commissioner on June 23, 1983. All briefs have been submitted and the commissioner has duly filed his report.

The accident occurred at 1230 p.m., on March 4, 1982, on U.S. Route 6 and Route 34 at the west edge of Sheffield, in Bureau County, Illinois, when Claimant, traveling westbound behind the snowplow, entered the eastbound lane of travel and attempted to pass the

snowplow. As Claimant began accelerating to pass, Mr. Taliani turned the snowplow to the left from the westbound lane into the eastbound lane in an attempt to make a U-turn on said highway. It was Taliani's intent to turn around at that point and proceed back eastward on Route 6.

Claimant contends that the accident and the damage to his vehicle were the proximate result of Ms. Taliani's negligent operation of the snowplow. According to Claimant, Taliani failed to keep a proper lookout for Claimant's vehicle, failed to see it when he easily should have, and turned his vehicle to the left into the path of Claimant's passing vehicle when he should have known that the turn could not be made with reasonable safety. Additionally, Claimant contends that Taliani failed to give an appropriate left turn signal as required by the Illinois Vehicle Code (Ill. Rev. Stat., ch. 95½, par. 11—804), which if true, is a statutory violation and is *prima facie* evidence of negligence. *Old Second National Bank of Aurora v. Bauman* (1980), 86 Ill. App. 3d 315,408 N.E.2d 224.

The State denies that Mr. Taliani was negligent and contends that even if he was, Claimant's own negligence should reduce his award proportionately. Claimant denies any negligence on his part.

Operators of State vehicles are charged with the same duty of care as other drivers upon the highway, and the State is liable for damages proximately caused by the operator's negligent acts. *(Santiago v. State* (1977), 31 Ill. Ct. Cl. 332.) At the time of the accident, therefore, Mr. Taliani was charged with the common law duty to exercise ordinary care at all times to avoid a collision. See I.P.I., 2nd, 70.01.

We find that the State employee, Andrew Taliani,

negligently operated the snowplow by driving it to the right, whereby his right wheels went onto the shoulder, and then making a left turn across the passing lane without adequately looking back to determine if the turn could be made in a reasonably safe manner. A driver's duty is to see that which he clearly should see. (*Payne v. Kingsley* (1965), 57 Ill. App. 2d 245, 207 N.E.2d 177.) Taliani clearly should have seen Claimant's vehicle if he looked before making the left turn.

We further find that the Claimant was also guilty of negligence, and therefore, his damages should be reduced pursuant to the doctrine of comparative negligence adopted in *Alvis v. Ribar* (1981), 85 Ill. 2d 1, 421 N.E.2d 886.) He should have foreseen that the snowplow would take unusual turns and, for that reason, should have exercised a greater degree of care for his safety and the protection of his property. It is the opinion of this Court that Claimant's recovery should be reduced by 25% due to his negligence.

Based on the foregoing, it is hereby ordered that the Claimant be, and is, hereby awarded the sum of $1,788.33, which is the amount of damages stipulated by the parties, reduced by 25% for the percentage of negligence assigned to the Claimant.

(No. 82-CC-2473—Claimant awarded $6,828.06)

TIMOTHY P. MORRELL, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion *filed* May *30,1985.*

WILLIAM S. SCHILDMAN, for Claimant.

NEIL F. HARTIGAN, Attorney General (WILLIAM E.

WEBBER, Assistant Attorney General; of counsel), for Respondent.

STATE EMPLOYEES' BACK SALARY CLAIMS—***wrongful discharge—vacation pay—award granted.*** The Claimant was granted an award for back salary including vacation pay where he was wrongfully discharged from a position with the Department of Children and Family Services, notwithstanding the State's contention that there should be a deduction for accrued vacation money and failure to mitigate damages, since the Claimant lost the ability to use his earned vacation when he was discharged, his vacation days began accruing at zero upon his reinstatement, and he did take reasonable steps to mitigate his damages.

MONTANA, C.J.

This claim was brought by Timothy P. Morrell against the State of Illinois for salary he lost following his discharge by the Illinois Department of Children and Family Services. Claimant was suspended on January 27, 1981, and discharged on February 1, 1981. At that time, he was paid all salary due as well as the sum of $1,293.00 which represented accrued and unused vacation days.

Following a Civil Service hearing, Claimant was reinstated to his employment but was given a 60-day suspension. Claimant has received all back pay due him except for the period from March 28, 1981, the date on which his suspension terminated, through June 30, 1981. No monies could be paid after that period because a new fiscal year began July 1 and all appropriations had lapsed. Therefore, this claim has resulted.

The parties agree that Claimant is due the sum of $5,981.66 in back salary for the period in question. They also agree that the sum of $2,840.00 should be deducted since Claimant received that amount in unemployment compensation. Claimant, therefore, contends that he should receive an award in the amount of $3,141.66. It is Respondent's contention, however, that the accrued vacation money, in the amount of $1,293.00 paid to

Claimant at the time of his discharge, should also be deducted. Respondent contends further that there should be an additional deduction in an unspecified amount, claiming that Claimant failed to mitigate his damages.

Respondent's position on the issue of vacation pay must fail. As Claimant points out, had he not been discharged he would have been paid during the time that he was on actual vacation. When he was discharged he lost not only his salary but the ability to use his earned vacation. Since he could not do that, he was justly compensated. Moreover, the evidence is uncontroverted that when he was reinstated his vacation days began accruing at zero, not at the number of days for which he was paid.

The reason, therefore, that Claimant is receiving actual cash in an amount greater than what he would have received had he not been discharged, is because he lost the opportunity to actually take his vacation and, therefore, must be compensated over and above the amount of salary he would have received had he not been discharged.

It is also clear, as Claimant adequately demonstrated in his brief, that Claimant did in fact take reasonable steps to mitigate his damages.

It is, therefore, hereby ordered that the Claimant be, and hereby is, awarded the sum of $5,981.66 plus appropriate employer contributions and less appropriate employee deductions, including a deduction in the amount of $2,840.00 to be paid to the director of the Department of Employment Security, all as more fully set forth in the Appendix attached hereto and incorporated herein.

APPENDIX A

Identification of the State Contributions and Deductions from Back Salary Award.

To the State Employees' Retirement System

Employee's contribution to State Employees' Retirement Sys.	**187.55**
Employee's contribution to FICA	**397.78**
State's contribution to State Employees' Retirement System	**448.62**
State's contribution to'FICA	**397.78**

To Illinois State Treasurer to be remitted to Internal Revenue Service:

Claimant's Federal income tax	**1196.34**

To Illinois Department:

Claimant's Illinois income tax	**149.55**

To Office of Employment Security:

Director Dept. of Employment Security	**2840.00**

To the Claimant:

Net Salary	**1210.44**

Total award **$6828.06**

(No. 82-CC-2647—Claim denied.)

TALSMA BUILDERS, INC., Claimant, *v.* THE STATE **OF ILLINOIS,** Respondent.

Order filed May 20,1985.

SAUL J. MORSE, THEODORE **J. HARVATIN,** and **GRAMLICH & MORSE,** for Claimant.

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

CONTRACTS—*school* construction—extra*excavation—claim* denied. The Claimant failed to sustain its burden of proving that the "extra" excavation it undertook as part of a school construction project was in fact beyond the scope of the contract and the claim was therefore denied, since the Claimant failed to prove that the materials involved were excess excavated materials below the sub-grade level according to the contract, that the proper change order procedure was followed, or that the contract price was applicable to the work.

HOLDERMAN, J.

Claimant was the successful bidder on a project funded through the State of Illinois and directed by the Capital Development Board, for work on the Raster Elementary School in Chicago, Illinois. The total amount of the contract was approximately **$1.3** million. There is no dispute as to the fact that the work was performed satisfactorily and in a workmanlike manner and that the Claimant was paid the full amount under the original contract.

The dispute centers around Claimant's request for payment for work which it alleges was an extra under the contract. Claimant asserts'that it removed excess excavated material below the ***sub-grade*** for which it was entitled to compensation at a unit price of **$15.00** per unit. Claimant alleges it agreed to pay Latronica & Sons Excavating & Grading to haul **744** loads of excess sub-grade material, constituting **10,416** cubic yards, at a unit

price of **$15.00** per cubic yard, or **$156,240.00,** and, in addition, makes claim for cost and overhead in sum of **$7,812.00,** for a total claim of **$164,052.00.**

Respondent contends the work performed was not outside the scope of the contract; that the State did not agree to unit prices for hauling off site disputed materials; that Claimant's proof was insufficient to show the number of cubic yards of disputed materials hauled off site; that neither ***quantum meruit*** nor estoppel lie against the State. Further, it raises the question whether the claim filed is, in fact, a claim on behalf of Latronica Excavating Company, a subcontractor of Claimant, and as such an improper subject for claim. The State further points out that a change order for such alleged additional work was not submitted until **14** months expired after the hauling was completed.

The first issue to be determined is the nature of the materials hauled out by Claimant's subcontractor. Was it ***"excess sub-grade material"*** as contended by Claimant, or was it debris, footings or building materials and therefore included within the scope of the original contract, as argued by the State.

Claimant relies on the contract provision as appears at section **02210,** part **3.02** (excavation) under subparagraph C which reads as follows:

> **"Cuts and fills are not necessarily balanced. Any additional fills required shall be paid for at the contract unit. Excess excavating materials shall be deposited by burying (as required) and spreading on the site as directed at no additional cost to the owner. In the event excess excavated material, *below the sub-grade level* is encountered, the Architect shall determine if this is to be distributed on-site or off-site and the Contractor shall be reimbursed at the Contract Unit Price."**

This raises the question of what is meant by "excess excavated material ***below the sub-grade level***".

The State, in reference to the above contract

provision, argues that the term sub-grade is the prepared grade upon which the building footings and foundations, drives, parking lot and walks are constructed. It further contends there is nothing in the record to indicate how much material was hauled out ***down to the sub-grade*** nor how much was excavated and hauled out as site preparation and in removing existing underground foundations. As a further contention, it notes that the quoted contract clause requires that the architect determine whether to haul such materials "off-site" or not. Thirdly, the State argues that the clause calls for payment at "the unit price" and there was no unit price agreed upon since unit price was excluded from the contract. The State makes the argument that since unit prices were excluded, the contract became a lump sum contract.

From the record before the Court, the only evidence presented to determine whether the hauling was of debris or was of "excess ***sub-grade*** material" was testimony of Arthur A. Talsma, president of Claimant corporation, Kenneth Talsma, Claimant's construction superintendent on the job, and Michael Latronica, an excavator and grader. Talsma said that debris which was included in the contract price was material on the surface visible to the eye, that was at grade level, and that sub-grade material refers to material ***below the grade*** or ground level and not visible to the eye at the time of beginning construction. According to this witness excess sub-grade material is material which if not removed, would have raised the "topo" elevation. He further stated he asked the architect if he wanted to revise the elevation by letting the material remain on site. However, for four months he received no response and rather than delay the completion of the project, the decision was made to haul the material away. This was

done to conform with the original specifications, according to his testimony.

Such testimony fell short of proving what was meant by "below the sub-grade" level. Below the grade is not the equivalent of below the sub-grade.

Claimant has failed to meet it's burden of proof that the materials removed were below the sub-grade level. Even if it were, he has failed to prove the quantity of such materials. If there were excess materials outside the contract, the procedure called for a change order before the work was done. This procedure was not followed before such removal and this was not authorized.

Although Claimant did request authorization for the additional work claimed by submitting a change order, as is customarily done, such authorization was never given by the owner or his authorized representative, and proceeding with the work without such authorization was the Claimant's election and risk.

On the question of unit price, again the evidence is clear from Respondent's exhibit No. 2, which is entitled owner-contractor-agreement, which said exhibit was duly admitted into the record, that Claimant acknowledged that unit prices would not apply and are excluded from the contract. Arthur G. Talsma testified that he executed the agreement on behalf of the Claimant, and that he also initialed and acknowledged that unit prices were not applicable. It is apparent from the evidence that Claimant agreed to construct the project for a lump sum price, subject, of course, to change orders by which additional work would be compensated at a price negotiated by the parties.

The Court holds that Claimant failed to meet its burden of proof in the following respects:

1. That the material was excess excavated material *below the sub-grade* level.

2. That the proper change order procedure was followed assuming the material was outside the scope of the Contract.

3. That unit price was applicable assuming the work was outside the Contract.

Claim is therefore denied.

(No. 83-CC-0154—Claimant awarded $5,000.00.)

DUFFIE S. CLARK, Claimant, ***v.*** **THE STATE OF ILLINOIS,** Respondent.

Opinion filed July ***2,1984.***

Order on motion for extension of time to file petition for rehearing filed October 24,1984.

DUFFIE S. CLARK, ***pro se,*** for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

NEGLIGENCE—*dental* ***malpractice—"common knowledge" exception to requirement of expert testimony.*** The Claimant in an action for dental malpractice is ordinarily required to show by expert testimony that the dentist was negligent in treating the Claimant and that the injuries suffered were the result of that negligence, but there is an exception to the requirement of expert testimony for cases of "common knowledge" or "gross negligence," where the treatment is so common or the conduct is so negligent that a layman could appraise it without expert testimony.

SAME—dental treatment of penitentiary inmute—negligence inferred—expert testimony not required—award granted. An award was granted for the unnecessary pain and suffering caused to an inmate of a correctional center due to the negligent dental treatment received by the inmate at the center, notwithstanding the fact that the inmate did not present any expert

testimony, since the negligence of the treating dentists could be inferred because the Claimant's unrebutted testimony established negligence so palpable that expert testimony was unnecessary, and the State failed to call any of the treating dentists as witnesses.

MONTANA, J.

This is a claim brought by Duffie S. Clark (Claimant), a resident of Stateville Correctional Center, alleging dental malpractice as a result of dental treatment received by him at the correctional center.

On January 4, 1982, Claimant went to the dental clinic at the correctional center complaining of intense pain from a lower left wisdom tooth. That tooth had a sharp edge which penetrated his upper gum when he closed his mouth or ate and caused his gums to swell. This condition had existed for two days prior to his visit to the clinic.

At the clinic a dentist on duty, one Dr. Albertson, X-rayed the tooth and advised Claimant that it had to be removed. After giving Claimant an anesthetic, Dr. Albertson attempted to extract the tooth, which apparently fractured in Claimant's gum. Dr. Albertson worked on Claimant's tooth for 1% to 2 hours and then told him to come back for examination a few weeks later.

Claimant then went back to his unit and went to sleep. When he awakened, he noticed that a piece of the tooth was protruding from his gum. This condition caused Claimant intense pain and discomfort continuously until his next appointment with Dr. Albertson on January 18, 1982.

When he next visited Dr. Albertson on January 18, 1982, an X ray was taken of his tooth. Claimant was told that the sharp edge he felt and pain he was experiencing was due to a sequester, a dead portion of bone, which

remained in his gum. He was advised by Dr. Albertson that this would loosen and fall out on its own. Although he requested some pain reliever, he was not given anything and instead was rescheduled for another appointment.

By January 20, **1982,** Claimant was experiencing such severe pain that he obtained an emergency dental pass and went back to the clinic. He was examined by Dr. Verde at the clinic. Claimant informed Dr. Verde that he felt a piece of tooth protruding from his gum. Dr. Verde took another X ray of Claimant, and told him that it was just a piece of bone which, when it came loose, could be "flicked" out by Claimant. Dr. Verde prescribed Tylenol 3 for pain.

Two days later, still suffering from intense pain, Claimant went back to the clinic and was seen by Dr. Fleichman. Claimant told Dr. Fleichman that there was a piece of tooth protruding from his gum which was causing him pain. Dr. Fleichman cleaned Claimant's gum, packed it with gauze, and prescribed penicillin to alleviate the swelling.

On January **27, 1982,** Claimant made yet another trip to the clinic where he was again examined by Dr. Verde. Dr. Verde X-rayed the tooth and told Claimant he was fine. When Claimant told Dr. Verde again about the piece of tooth protruding from his gum, Dr. Verde used an instrument and probed Claimant's gum. He acknowledged that there was something in the gum and tried to pull it out. When Dr. Verde could not extract the remaining piece, he broke it off, leaving still another piece in the gum. Claimant was then again told he was fine and he left.

From January **27,1982,** to March **30,1982,** Claimant

contined to experience intense pain, which caused him not to be able to work, eat or sleep. On February 16, 1982, he wrote a letter to the hospital clinic coordinator regarding his tooth. He received no response. Throughout this period of time, Claimant's jaw was swollen and he continued to take penicillin.

It was not until March 30, 1982, when Claimant obtained another emergency dental pass that surgery was performed and bone fragments in the gum were removed. Claimant endured almost three months of unnecessary suffering until this surgery was performed. Claimant thereafter received follow-up care at an oral surgeon in Joliet, and made several trips to this oral surgeon from April 6,1982, through April 19, 1982.

No expert dentist testified on behalf of Claimant. Ordinarily, it is necessary for a claimant in a malpractice action to establish by expert testimony that the physician or dentist was negligent in his treatment and that the injuries suffered by the claimant were a result of that negligence. ***Piacentini v. Bonnefil*** (1966), *69* Ill. App. 2d 433,440,217 N.E.2d 507; ***Graham v. St. Luke's Hospital*** (1964), 46 Ill. App. 2d 147,156, 196 N.E.2d 355.

An exception to that rule has been established in cases of so-called "common knowledge" or "gross negligence'' where the physician's or dentist's conduct is so palpably negligent or the treatment is so common that a layman could readily appraise it without expert testimony. ***Lundahl v. Rockford Memorial Hospital Association*** (1968), 93 Ill. App. 2d 461, 235 N.E.2d 671; ***Scardina v. Colletti*** (1965), 63 Ill. App. 2d 481,488, 211 N.E.2d 762.

Here, we believe that the Court can infer negligence on the part of the dentists who treated Claimant because

the unrebutted testimony of Claimant, establishes negligence so palpable that expert testimony was not necessary. Even a layman could infer from Claimant's testimony that the extraction was not complete, that a piece of tooth remained which should have been removed, and that had it been totally removed, as it, should have been, Claimant would not have had the injury and experienced the pain he suffered. Accordingly, under these limited circumstances, we find that Claimant established a *prima facie* case of negligence.

Moreover, in finding the dentists negligent, we do not rely exclusively upon the permissible inference to be **derived** from Claimant's testimony under the so-called "gross negligence" or "common knowledge" exceptions described above. We also rely upon the inference to be derived from Respondent's total failure to call as witnesses any of the treating dentists or to present any evidence at all to rebut Claimant's evidence. Respondent was given more than ample opportunity to do so and the treating dentists were available and under Respondent's control. Further, Respondent did not and could not offer any reasonable explanation or excuse for its failure to present any of the treating dentists as witnesses. Under these circumstances, we are permitted to infer that had the treating dentists testified, their testimony would have been unfavorable to Respondent. *Fuery* v. *Rego Co.* (1979), 71 Ill. App. 3d 739, 390 N.E.2d 97; *Berlinger's Znc. v. Beef's Finest, Znc.* (1978), 57 Ill. App. 3d 319,372 N.E.2d 1043.

Put another way, we can infer under these circumstances that the treating dentists would not have been able to contradict Claimant's testimony as to what occurred and that they would have had no explanation for their treatment of Claimant to rebut the inference of

negligence to be derived from Claimant's testimony alone in this case. If the treating dentists had favorable evidence to offer from Respondent's point of view, what a simple matter it would have been for Respondent to call them as witnesses. Having failed to do so, Respondent is bound by the reasonable inference that their testimony would have hurt Respondent's cause.

Accordingly, this Court finds that Respondent's dentists were negligent in their care and treatment of Claimant and that as a result of that negligence, Claimant was forced to undergo three months of unnecessary pain and suffering.

It is hereby ordered that judgment be and is hereby rendered on behalf of Claimant in the amount of five thousand dollars ($5,000.00).

ORDER ON MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REHEARING

MONTANA, J.

Respondent has moved for an order extending its time to file a petition for rehearing with respect to the judgment of this Court entered on July 2, 1984, and, assuming the Court grants such an extension, Respondent asks that the judgment be vacated due to Claimant's alleged failure to file a notice of intent to sue for personal injuries.

The Court observed that the Claimant's alleged failure to file a notice of intent to sue either was known or should have been known to Respondent since the time this case was commenced in this Court on August 9, 1982. The Respondent delayed bringing this alleged deficiency to the Court's attention for over two years.

In the meantime, a full hearing was held before a

commissioner. At the hearing on the merits, despite being given ample opportunity to do so, Respondent failed to produce any evidence to rebut Claimant's testimony concerning negligence, even though the treating dentists were available to testify and were within Respondent's control. Then, based on the hearing, this Court rendered an opinion and entered judgment in favor of Claimant. Then Respondent did not timely file a petition for rehearing within the 30 days allowed by the Court's rules.

Because of these cumulative circumstances, the Court denies Respondent's motion for an extension of time to file a petition for rehearing. Consequently, it is not necessary to address the alleged merits of Respondent's petition to vacate judgment. The Court's judgment of July 2, 1984, will stand.

(No. 83-CC-0288—Claimant awarded $100,000.00.)

DOROTHY WILLIAMS, Independent Administrator **of** the Estate of Benjamin Bradford Jones, Deceased, Claimant, ***v.*** THE **STATE OF ILLINOIS,** Respondent.

Opinion and Order filed March 21,1985.

R. CORYDON FINCH, for Claimant.

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

DAMAGES—***damages for pain and suffering—duration goes only to amount.*** **The fact that a decedent suffered only a short time does not affect the administrator's right to recover for pain and suffering, since the duration of the suffering goes only to the amount of damages.**

SAME—civilian murdered by escaped mental patient—exemplary

damages not recoverable. The State was not liable for exemplary and punitive damages based on an escaped mental patient's murder of a civilian, since the statute providing for the liability of the State under such situation does not authorize the additional assessment of exemplary and punitive damages.

PRISONERS AND ***INMATES—civilian murdered by escaped mental patient—award granted.*** The administrator of the estate of an individual who was murdered by an escaped mental patient was granted an award for wrongful death, pain and suffering and funeral expenses, since the evidence established that the State's treatment staff should have known of the patient's homicidal tendencies, notwithstanding the fact that his recent conduct did not indicate any dangerous propensities, but allowed the patient to be placed in a minimum security situation.

MONTANA, J.

This claim arises out of a tragic accident which occurred on August 9, **1982,** in Anna, Illinois. On that date Donald Charles Meeker was a committed patient at the Anna Mental Health and Developmental Center at Anna, Union County, Illinois. Meeker escaped unmolested and unrestrained from the grounds in a taxi, which he had called from Anna, and went to a shopping center in Anna. He promptly obtained a knife and brutally murdered a 73-year-old retired Pentecostal minister named Benjamin Bradford Jones in the shopping center parking lot.

The decedent's daughter, as administrator, brought this action in five counts alleging that the State was guilty of negligence, or wilful'and wanton conduct, in (1)permitting Meeker to escape from the Anna Mental Health Center; **(2)** in failing to know that Meeker had been transferred to the minimum security Anna Mental Health Center; (3)in transferring Meeker to a minimum security institution; **(4)** in failing to provide sufficient security for Meeker at the Anna Mental Health Center; ***(5)*** in permitting Meeker to have a "grounds pass", thereby enabling Meeker to escape; (6) in failing to keep Meeker in a maximum security enclosure; and (7) in

permitting Meeker to have access to telephone communications to aid in his escape.

Respondent argues that it owed no duty to Claimant and that therefore negligence is not an issue. Respondent fails to distinguish the case of ***Eichen v. State*** (1975), **31** Ill. Ct. Cl. 6, or ***Malloy v.*** State, **18** Ill. Ct. Cl. **137.** These cases are controlling.

The ***Eichen*** case presented a claim for damages to a sawmill that was burned down by a ward of the Illinois Department of Children and Family Services. The Court found that the facts in that case supported Claimant's contention that Respondent was negligent in failing to exercise a reasonable degree of foresight in light of Respondent's ward's past record of violent tendencies. In the *Malloy* case, Claimant was attacked in her store on November **1, 1946,** by an escapee from the Illinois Security Hospital at Menard, Illinois, an institution for the criminally insane operated by Respondent. The inmate had been convicted many times of charges relating to burglary, larceny, robbery, carrying concealed weapons'and murder.

After discussing the facts of the case, the Court held as follows:

The injuries and damages to Claimant hereinabove set forth were substantially caused by the Respondent's negligence. But for the negligence the Claimant would have suffered no harm. No new element contributes to her harm additional to the existing factors of the situation under which the Respondent's conduct we deem was negligent. The injuries suffered by Claimant could have been prevented by the duty of care which the defendant violated.

In the case at bar, the evidence makes it clear that

Respondent's agents should have known of Meeker's dangerous propensities. The information compiled in Meeker's file was voluminous and pointed to the conclusion that Meeker represented a real and continuing threat to persons with whom he may come in contact. Notwithstanding this information, Respondent permitted Meeker to be placed in a minimum security situation at the Anna Mental Health Center where he was permitted to obtain, and did obtain, grounds privileges and the means for effecting escape.

Information available to staff concerning Meeker's potentially dangerous nature included the following:

1. A memorandum dated December **7, 1978,** from Dr. Clarence Novak to Assistant Warden Riegel of the Department of Corrections warned that Meeker was a danger to himself and others and recommended an emergency medical transfer to Menard Psychiatric Division.

2. A Menard Psychiatric Center Program Treatment Plan dated April **12,1979,** by Robert L. Andresen, a Correctional Counselor, which described Meeker as "a very dangerous young man."

3. A Menard Psychiatric Center Quarterly Review by Robert L. Andresen, Correctional Counselor 111, dated March **3,1980,** which characterized Meeker as one of the most potentially dangerous persons if he were in a free society.

4. A treatment plan dated **8/22/80** by Counselor Margaret Waymen stating that Meeker's behavior was difficult to predict.

5. A certificate of examination by Dr. J.A. Pichardo dated May 23, **1981,** in which Pichardo opined

that Meeker was mentally ill and could be reasonably expected to inflict serious harm upon himself or another.

6. Union County Circuit Court cause 82-MH-152 In ***the Matter of the Mental Illness of Donald Meeker,*** where a petition for involuntary admission was filed May 20, 1982, alleging that Meeker was mentally ill and reasonably expected to inflict serious physical harm upon himself or another in the near future.

7. A certificate of examination by Dr. C. Willsen, a psychologist, dated May 18, 1982, stating that Meeker was mentally ill and reasonably expected to inflict serious physical harm upon himself or another in the near future in that Meeker remained chronically psychotic with major thought disorders.

8. A further certificate filed May 20, 1982 by Elizabeth Auld, M.D., setting forth the opinion that Meeker was mentally ill and reasonably expected to inflict serious physical harm upon himself or another in the near future and was distinctly paranoid.

9. The testimony of Dr. David J. Warshauer in cause 82-MH-152 in the Union County Circuit Court that Meeker was a paranoid schizophrenic and that because of his mental illness, could reasonably be expected to inflict serious physical harm upon himself or other people.

In a final summary of the "unusual incident" report prepared by the Superintendent of the Anna Mental Health facility, it was concluded that Meeker's treatment staff, at the time of the death of Benjamin Bradford Jones, were not aware of Meeker's homicidal tendencies, notwithstanding the fact that those tendencies and past overt actions of Meeker were part of the clinical record, which was available on the unit. The staff's

ignorance of Meeker's homicidal tendencies stemmed simply from the fact that they did not review Meeker's record from the beginning of his hospitalization. Under these circumstances Respondent may not escape liability by suggesting that Meeker's recent conduct was not indicative of severely dangerous propensities. There is no question that Respondent has a duty, in situations such as presented in the case at bar, to protect the public from known propensities of persons within the control of State institutions.

Based on the foregoing allegations of negligence, Counts II and IV of Claimant's complaint sought exemplary and punitive damages against Respondent arising out of the death of Benjamin Bradford Jones. The liability of the State in this cause is founded on Illinois Revised Statutes, chapter 23, section 4041. This statute is in derogation of common law and provides the exclusive remedy available to Claimants. This act does not authorize this Court to assess exemplary and punitive damages against Respondent. Therefore Counts II and IV of Claimant's complaint must be denied.

Count I of Claimant's complaint sought an award of compensatory damages for pain and suffering experienced by the decedent. The Illinois Supreme Court has held in Glover *v. City of Chicago* (1982), 106 Ill. App. 3d 1066, 436 N.E.2d 623, that an administrator may assert a cause of action for pain and suffering of the decedent even where the decedent suffered only a short time. The duration of pain and suffering affects the amount of damages, not the administrator's ability to recover such damages.

In the instant case, evidence showed that decedent's pain and suffering was substantial. Decedent suffered at least 30 stab wounds to the chest and neck. There were

multiple wounds to the hands and arms of the decedent apparently resulting from decedent's having attempted to defend himself against the attack. After having escaped from the vehicle in which the attack took place, decedent was heard to groan and was kicked by Meeker while decedent was lying on the ground. Decedent was conscious when medical technicians arrived on the scene and was alive in the ambulance on the way to the hospital. It was during the trip to the hospital that decedent expired. The evidence established that although decedent's suffering was of relatively short duration, it was none the less excruciating and horrendous. The number of wounds inflicted upon the decedent's body indicate the more than brief struggle with Meeker. It is the opinion of this Court, based upon the facts in this case, that Claimant should be awarded the sum of $25,000 compensatory damages for pain and suffering experienced by the decedent.

Count III of the complaint for wrongful death sought awards for loss of support, consortium and services. Decedent was 73 years old at the time of his death and his life expectancy was 8.9 years. At the time of decedent's death, he was receiving $410 in monthly Social Security benefits and a pension of $200 per month from his retirement as a United Pentecostal minister. Combined with Mrs. Jones' Social Security benefits of $202, their total monthly income was $800, all of which was used for daily living expenses. As a result of decedent's death, the pension has terminated and, after considering the net increase received by decedent's widow, after his death the aggregate loss of support amounts to $4,800 per year.

In addition, the evidence showed that decedent performed many household services including cleaning,

washing, cooking, plumbing, carpentry and electrical repairs. It would appear that the weekly services performed by decedent could not have been performed in less than two eight-hour days per week. At an hourly value of $5.00 per hour, this amounts to $4,160 each year over a life expectancy of 8.9 years, or $37,024. This sum combined with the loss of $42,720 in real income totals $79,744.

Finally, Claimant is entitled to recover her funeral expenses in full.

Although said damages total $108,526.45 this Court is limited by section 8 of the Court of Claims Act (Ill. Rev. Stat., ch. 37, par. 439.8(d)), to an award not to exceed $100,000. Based upon that limitation, it is hereby ordered that Claimant Dorothy Williams, as independent administrator of the estate of Benjamin Bradford Jones, be awarded the sum of $100,000.00.

(No. 83-CC-0924—Claim denied.)

WILLIAM L. BETZ, Claimant, *v.* **THE STATE OF ILLINOIS,** Respondent.

Opinion filed *September 21, 1984.*

WILLIAM L. BETZ, pro se, for Claimant.

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

PRISONERS AND INMATES—*inmate* **transferred—property lost—no showing State converted property—claim denied.** An inmate's claim for the loss of his personal property when he was placed in segregation after an altercation with his cellmate was denied, since the Claimant admitted that the property might have been taken by his cellmate or other inmates, and there was no showing that the State or any of its agents came into possession of the property.

RAUCCI, J.

Claimant seeks payment for the alleged conversion of his property.

The evidence of the Claimant fails to establish that the Respondent converted his property.

Claimant testified that on August 25, 1982, he was involved in an altercation with his cellmate at the Stateville Correctional Center.

Claimant and his cellmate were placed in segregation. The cellmate apparently was allowed to leave the segregation unit, and removed his personal property.

Later, Claimant received a few items of his personal property, but claims a loss of various other items. Claimant admits that it was possible that his cellmate or other inmates took his property.

Since no showing was made that the Respondent or any of its agents come into possession of the property, the Claim will be denied, with prejudice.

(No. 83-CC-0987—Claim denied.)

ALLIES FOR A BETTER COMMUNITY, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

***Order on stipulation filed June* 20,1983.**

***Order in response to order on stipulation filed September* 7,1984.**

***Opinion filed February* 28,1985.**

LEONARD MURRAY, for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN

O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

EVIDENCE—report of agency prima facie evidence.

LAPSED APPROPRIATIONS—*standard* ***lapsed appropriations claim—procedure.*** In a standard lapsed appropriations claim, a proper obligation of the State is not paid prior to the lapse period, the funds are said to lapse back to the State's general funds and the funds are available, but unspent because the authority of the agency to spend has ceased, a claim is then made to the Court of Claims, and if there was proper authorization for incurring the obligation, the court awards payment.

SAME—lapsed appropriation—funds reverted to Federal government—claim denied. The claim seeking payment for certain services allegedly rendered to the Department of Public Health was denied even though the parties stipulated that the services were performed, since the funds to pay the claim had reverted to the Federal government, and therefore the State agency no longer had the authority to spend the money and the money was no longer available for use, and making an award would constitute a usurpation of the legislative prerogative to appropriate funds.

ORDER ON STIPULATION

ROE, C.J.

This cause comes on to be heard following the stipulation by the parties to the facts in this case and to the entry of an award in the amount of **$12,500.00;**

This Court is not bound by such stipulations and it does not seek to interpose controversy where none appears to exist. However, before we render a decision in this matter we need certain additional information in the record. The departmental report, marked exhibit **A** and entered into evidence without objection, raises an issue regarding availability of funds.

This is a claim ostensibly for lapsed appropriations. From the response given to question No. 15 of the departmental report, the claim would have been paid from fund No. **063,** the **U.S.** Public Health Service Fund. It was stated that said fund expired on September **30, 1980,** and **1981,** and the funds are no longer available to

pay this claim. We understand that the department may no longer have the legal capability to make payments out of those previous fiscal year Federal funds. Because we are unfamiliar with this particular Federal fund, we need to know whether or not, if we were to make an award in this case, there exists some procedure whereby the State can recoup the unexpended portion of those funds from those earlier Federal grants which relate to the claim at bar.

It is hereby ordered that this claim be, and hereby is, continued generally until the Respondent has provided us with the information described above.

ORDER IN RESPONSE TO
ORDER ON STIPULATION

ROE, C.J.

This cause comes on to be heard following the Respondent's response to our order of June 20,1983;

We have reviewed the response and again, due to our unfamiliarity with the particular Federal grant involved in this claim, we have questions.

Many of the Federal funds against which or for which claims are brought in this Court have provisions enabling the State to reserve or retain a portion of the funds, after the grant has expired, for payment of obligations which have accrued or are projected, but not actually billed to the State, and paid prior to the expiration of the availability of the funds.

First, we need to know if the fund involved in this claim contained such a provision. If the fund did not contain such a provision we need to know when the Claimant submitted its bills to the Respondent. If the

fund did contain such a provision we want to know why the funds sought were not reserved.

So ordered.

OPINION

ROE, C.J.

The Claimant brought this action seeking payment of $15,480.00 for certain services allegedly rendered to the Respondent's Department of Public Health. In a standard "lapsed appropriation'' form complaint, Claimant alleged that it made demand for payment from the agency, but that its demand was refused on the grounds that the funds appropriated for such payment had lapsed.

The parties filed a joint stipulation agreeing to our entry of an award in the amount of $12,500.00. In their stipulation the parties also agreed that a report compiled by the Department of Public Health be admitted into evidence without objection. Pursuant to Rule-14 of the Rules of the Court of Claims, such reports are *prima facie* evidence of the facts contained therein.

After careful review of the record, we noted in an order dated June 20, 1983, that the information- contained in the departmental report raised an issue regarding the availability of funds. We made the following observations:

"This is a claim ostensibly for lapsed appropriations. From the response given to question No. 15 of the departmental report, the claim would have been paid from fund No. 063, the U.S. Public Health Service Fund. It was stated that said fund expired on September 30, 1980, and 1981, and the funds are no longer available to pay this claim. We understand that the department may no longer have the legal capability to make payments out of those previous fiscal year Federal funds. Because we are unfamiliar with this particular Federal fund, we need to know whether or not, if we were to make an award in this case, there exists some procedure whereby the State can recoup the unexpended portion of those funds from those earlier Federal grants which relate to the claim at bar."

We then put the case on general continuance pending submission of further information..

Our order elicited a response from the Respondent offering a letter from a Mr. William L. Wheeler, chief counsel to the Department of Public Health, and copies of the contracts under which this claim was made, into evidence pursuant to the aforementioned Rule **14.** There was no objection to their admission. Both the response and the letter stated that the Federal grant which would have covered this billing was closed on May **25,1982.** In his letter, Mr. Wheeler stated that his agency had been informed by the U.S. Department of Health and Human Services that such a late claim cannot now be paid. He also stated that he had a telephone conversation with an assistant U.S. Attorney from the Springfield, Illinois, office who apparently corroborated the position.

A subsequent order of this Court, dated September **7,1984,** elicited an amended departmental report, which also is prima ***facie*** evidence of the facts contained therein. This amended report stated, ***inter alia,*** that:

1. the Federal fund from which this obligation was to have been paid was unavailable after September 30, **1981;**

2. requests **for** payment of the claim herein were first received on November **23,1981;**

3. the Federal grant of funds contained no provision for reservation of funds to pay claims received after the end of the grant period.

The report contained no explanation of the status of the grant between the September 30, **1981,** availability cutoff date and the May **25,1982,** date described by Mr. Wheeler as the date the grant was closed.

The case at bar is different from the usual lapsed appropriation case routinely dealt with by this Court. In the usual case, where a proper obligation of the State is not paid prior to the lapse period, the funds for payment of the obligation are said to lapse back into the State's general revenue fund (or another State fund), *i.e.* the funds are still available and unspent but the authority of the State agency to spend them has ceased. A claim is then made to this Court for payment. If there was proper authorization for incurring the obligation and, but for the lapsing of sufficient funds for paying the debt, the debt would have been paid, then this Court awards the payment. In the case at bar the funds reverted to the Federal government. Not only does the State agency no longer have authority to spend them, the money is no longer available for use. In this instance, for us to make an award would be in effect appropriating State funds, which is the sole prerogative of the legislature. The facts presented are thus analogous to the line of cases in this Court wherein the claims are denied due to insufficient lapsing of funds. For those reasons we are constrained to deny this claim.

We also should point out for the record that the contracts involved herein expressly provide on the first page of the contracts that the contracts are made subject to the availability of Federal funding from the U.S. Department of Health and Human Services for the comprehensive high blood pressure control program.

Although we find, based on the Respondent's stipulation, that the Claimant did in fact perform the services for which this claim was made, due to the unavailability of funds with which to pay it, it is hereby ordered that this claim be, and hereby is, denied.

(No. 83-CC-1486—Claimantawarded $6,000.00.)

DOLPHUS HUGHES, Claimant, *v.* THE STATE OF ILLINOIS, **Respondent.**

Opinion and order filed December 18,1984.

ROBERT M. HODGE, for Claimant.

NEIL F. HARTIGAN, Attorney General (LYNN SCHOCK, Assistant Attorney General, of counsel), for Respondent.

PRISONERS AND INMATES—*duty of State to supervise inmates.* The Department of Corrections has a duty to supervise the work of inmates in State penitentiaries and to provide safe and adequate work tools.

SAME—*inmate* ***unloading ice blocks—inadequate supemision—hand crushed—award granted.*** An inmate in a State penitentiary was granted an award for the injuries sustained when his hand was crushed between two blocks of ice while he was unloading the blocks from a truck, since the evidence established that the State failed to provide adequate supervision of the inmate after assigning him the ,task of unloading the ice, but the award was reduced due to the Claimant's own negligence.

MONTANA, J.

Claimant; a former resident of Vienna Correctional Center, brought this action for personal injuries sustained by him on October 20, 1982, on the correctional center grounds when a block of ice injured his left hand.

The incident giving rise to his injuries occurred outside of the kitchen at the Vienna Correctional Center. Claimant, a 23-year-old man with no special skills and an eleventh grade education, was employed in the kitchen as a cook. On his day off; he was called into a kitchen office by Mr. Johnson and Mr. Hill, food supervisors and employees of the Department of Corrections, and ordered to unload an ice truck with five other inmates. When Claimant advised the prison personnel that he had no experience unloading an ice truck, he was told that it did not make "too much difference" because somebody would be there supervising. He and another inmate who

was in the office were then given cotton gloves and ice tongs. According to testimony, the tongs had handles on one end and metal semicircular "claws" on the other, which were dull and ineffective.

Claimant and four or five other inmates were then led to the back of the kitchen to the ice house by Mr. Hill. A correctional officer with a truck of ice was awaiting them. Each block of ice was three feet tall and weighed approximately 300 pounds. A wooden inclined ramp was, placed at the back of the truck to the ice house. This ramp was a board which was two or three feet wide and had elevated sides made of two-by-fours to keep the blocks of ice from sliding off. Two men on the truck, using tongs, would position a block of ice at the head of the ramp and let it slide down. Two men stationed on the side of the ramp would steady the block of ice to prevent it from sliding into the ice house until the two men in the ice house were ready to receive it. Then, the two men in the ice house, with the assistance of the two men on the side of the ramp, would push the ice from the ramp into the ice house.

The only instruction the inmates received prior to unloading the ice was to "be careful." At first, Claimant just watched the unloading procedure, but was then told by Mr. Hill to help. Claimant stationed himself on one side of the ramp and had assisted in the unloading of four blocks of ice when the accident occurred. Claimant had his left hand resting on a block of ice waiting to move it into the ice house when a block of ice being held at the top of the truck broke away from their hold and slid down the ramp. Claimant's left hand was crushed between the block of ice he was holding and the one which slid down the ramp. Claimant pulled his hand out from between the blocks of ice and realized imme-

diately that it was seriously injured. He ran approximately one mile to 'the institution hospital, which immediately transferred him to a hospital 'outside the facility. The hospital took X rays and determined that Claimant had fractured his left long, ring and small fingers. All three of these fingers required sutures. Claimant's hand was bandaged by the hospital and he was sent back to the Vienna Correctional Center hospital, where he was given pain pills for a two-month period. Claimant was also told to exercise his fingers, which he did for a two-month period. An independent medica1 examination revealed that Claimant has a 22% impairment of his left ring finger and a 78% impairment of function of his left small. finger. Evidence propounded by Claimant showed that future surgery may improve the range of motion in Claimant's small finger.

This Court finds that the evidence presented by Claimant clearly shows that the failure of 'the Department of Corrections to supervise the work of the inmates and to provide safe and adequate work tools were the proximate cause of the injuries to Claimant.

Respondent failed to produce any witnesses at trial or submit a brief although given more than ample opportunity to do so.

This Court finds that Claimant suffered great pain as a result of the accident and has suffered permanent injuries to his left ring finger and his small finger. However, the Court takes into account the fact that Claimant was contributorily negligent because he placed his left hand on the side of the block of ice where he knew or should have known it would be in danger of being hit by the next block of ice to slide down the ramp.

The Court finds that, due to Respondent's negligence, Claimant was damaged in the amount of $9,000, but that award should be reduced to $6,000 due to the negligence of Claimant.

It is therefore ordered that the Claimant be granted an award in the amount of six thousand dollars ($6,000).

(No. 83-CC-1648—Claimants awarded $85,000.00.)

CORABELL DEWITT, Executor of the Estate of Vladimir G. Urse, Deceased, JEAN URSE POPOFF, and LINDA URSE ANTON, Claimants, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed October 29,1984.

SPRINGER, CASEY, HAAS, DIENSTAG & SILVERMAN, for Claimants.

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

STIPULATIONS—safe deposit box inventory by employee of Treasurer's office—theft—negligent hiring—award granted. The Claimants were granted an award for the securities stolen by an employee of the State Treasurer's office while inventorying the safe deposit box of Claimants' decedent pursuant to the Illinois Inheritance Tax Act, since the stipulation of the parties showed that the State admitted the theft and that the amount offered by the State in settlement of the claim was accepted by the Claimants.

ROE, C.J.

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

1. That instant claim was brought as a tort under section 8(d) of the Court of Claims Act (Ill. Rev. Stat. 1981, ch. 37, par. 439.8(d)). The 'complaint makes allegations of negligent hiring practices.

2. The instant claim arose from the theft of

securities from the safety deposit box of Vladimir G. Urse by an employee of the State Treasurer's office while the employee was inventorying the safety deposit box pursuant to the Illinois Inheritance Tax Act (Ill. Rev. Stat. **1981,** ch. **120,** par. 383).

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

4. The Respondent admits that the theft of the securities was done by an employee of the State Treasurer's office (said employee has been convicted for the crime) while performing the safety deposit box inventory pursuant to the Illinois Inheritance Tax Act.

5. That after careful consideration of the issues and facts pertaining to the instant claim, as well as the potential time, preparation and expense of litigation and its possible outcome, the parties have agreed to settle the claim for the sum of $85,000.00.

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

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

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

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

Although the Court is not bound by a stipulation

such as this, it is also not desirous of interposing a controversy wheremone appears to exist. As long as the stipulation appears reasonable and fair, and this one does, we see no reason to question its validity or to force the parties to take the time and expense of proving facts which are not in dispute.

Claimants are hereby awarded the amount of $85,000.00 (eighty-five thousand dollars and no cents).

(No. 83-CC-2026—Claimant awarded $3,000.00.)

BRETT J. DECKER, Claimant, *v.* **THE STATE OF ILLINOIS,** Respondent.

Opinion filed July 2,1984.

Mom, LEWIS & REILLY, for Claimant.

NEIL F. HARTIGAN, Attorney General (**JOHN J. PERCONTI,** Assistant Attorney General, of counsel), for Respondent.

STIPULATIONS—*personal injury—rubies shots due to agency's conflicting tests—award grunted.* Based on the joint stipulation of the parties, the Claimant was awarded $3,000.00 for the injuries sustained due to the fact that he underwent rabies inoculations for a dog bite because of the Department of Public Health's initial tests, which indicated that the dog had rabies, and the Department's retest found no evidence of rabies.

HOLDERMAN, J.

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

That this is a personal injury action brought pursuant to section 8(d) of the Court of Claims Act (Ill. Rev. Stat. 1983, ch. 37, par. 439.8(d)).

On November 10, 1981, Claimant was bitten by a dog suspected to have been rabid. About three days later, brain samples of the dog were sent to the Department of Public Health for rabies testing. On November 17, 1981, the lab reported positive evidence of rabies. On November 18, 1981, the Department retested the samples and found no evidence of rabies. As a result of the Department's initial positive finding, the Claimant underwent a series of rabies inoculations.

It is hereby ordered that the Claimant, Brett J. Decker, be and hereby is awarded the sum of three thousand dollars and no cents ($3,000.00), in full satisfaction of this claim.

(No. 83-CC-2609—Claimant awarded $4,558.45.)

WILLIAM HOLLAND, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion *filed* July *27,1984.*

WILLIAM HOLLAND, *pro se*, for Claimant.

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

STATE EMPLOYEES' BACK SALARY CLAIMS—*accrued vacation—change* of position—award granted. The Claimant elected to receive a lump-sum settlement for his accrued vacation pay when he transferred from a position with the State that was not subject to the Personnel Code to a position subject to the Code, and an award was granted for the amount due based on the stipulation of the State, since there were no funds in the line item appropriations due to the abolition of the commission for which he previously worked, and the State was still obligated to pay since the Claimant's election to receive a lump-sum settlement for the accrued vacation pay was expressly authorized by the Personnel Code.

ROE, C.J.

This cause coming on to be heard on the stipulation of Respondent, due notice having been given the Claimant and the Court being fully advised in the premises. The Court finds:

. That this claim is for salary due Claimant. The appropriations, by line items, out of which this would have been paid are as follows: 488-55201-1120-0000-83, 488-55201-1161-0000-83, and 488-55201-1170-0000-83.

Claimant is seeking a lump-sum payment of his accrued vacation days. He was the executive director of the Illinois Law Enforcement Commission at the time of its abolition by the legislature on March 31,1983. On that date Claimant had 24% accrued vacation days, or a **monetary total** of **$4,318.76.**

Claimant was then transferred to the Illinois Bureau of Employment Security on May 10, 1983. Thus, Claimant had transferred from a position not subject to the Personnel Code (Ill. Rev. Stat. 1981, ch. 127, par. 63b101 et *seq.*) to a position subject to the Code.

At that time, Claimant sought a lump-sum payment of his accrued vacation days. He made this election in accordance with section 14(a) of the Personnel Code (Ill. Rev. Stat. 1981, ch. 127, par. 150a), which provides that; "... upon the movement of a State employee ... to a position subject to the Personnel Code from a State position not subject to the Personnel Code ... his accrued vacation and overtime shall be either payable in a single lump sum .payment, or ... credited to the employee's account. . ."

It is thus apparent that Claimant's election to receive a lump-sum payment of accrued vacation days

was in accordance with applicable law. However, he did not receive such payment because no funds existed in the line item appropriations due to the abolition of the Law Enforcement Commission.

We believe this matter is within the purview of section 30 of the Finance Act (Ill. Rev. Stat. 1981, ch. 127, par. 166), which prohibits a State commission from obligating the State in an amount in excess of the money appropriated, ***unless expressly authorized by law.*** We find that Claimant's election to receive a lump-sum accrued vacation payment was expressly authorized by the Personnel Code, and that Respondent, therefore, remains obligated to pay Claimant's accrued vacation days through March 31,1983.

It is therefore ordered that Claimant be, and hereby is, awarded four thousand three hundred eighteen dollars and seventy-six cents ($4,318.76).

APPENDIX A (10% State general rev.)

Identification of State Contributions and Deductions from Back Salary Award.

To the State Employees' Retirement System

Employee's contribution to State Employees' Retirement System	.00
Employee's contribution to FICA	.00
State's contribution to State Employees' Retirement System	23.97
State's contribution to FICA	.00

To Illinois State Treasurer to be remitted to Internal Revenue Service:

Claimant's Federal income tax	86.38

To Illinois Department:

Claimant's Illinois income tax	**15.12**

To the Claimant:

Net Salary	**330.38**

Total award **$455.85**

APPENDIX A (90% Federal funds)

Identification of State Contributions and Deductions from Back Salary Award.

To the State Employees' Retirement System

Employee's contribution to State Employees' Retirement System	.00
Employee's contribution to FICA	.00
State's contribution to State Employees' Retirement System	**215.72**
State's contribution to FICA	.00

To Illinois State Treasurer to be remitted to Internal Revenue Service:

Claimant's Federal income tax	**777.37**

To Illinois Department:

Claimant's Illinois income tax	**136.04**

To the Claimant:

Net Salary	**2973.47**

Total award **$4102.60**

(No. 83-CC-2751—Claim dismissed.)

ILLINOIS MASONIC MEDICAL CENTER, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Order filed March 7, 1985.

BISWURM & MYERS, LTD., for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

JURISDICTION—***circuit courts have jurisdiction to review administratiue decisions.*** The Illinois Public Aid Code provides for an administrative hearing system for applicants for aid under the Code, and the review of those final administrative decisions is a matter within the jurisdiction of the circuit courts, not the Court of Claims.

SAME—vendor payment claims under Public Aid Code within jurisdiction of Court of Claims. The Court of Claims has jurisdiction under the Public Aid Code to consider vendor payment claims, and such claims are limited to actions for payment for goods or services furnished to or in behalf of recipients.

SAME—Vendor has no standing to appeal decision as to recipient's eligibility for public aid. A vendor's claim for medical services rendered to an indigent patient was dismissed, since the Department of Public Aid had denied the patient's application for medical assistance, and the vendor had no standing to bring a claim in the Court of Claims, because the Public Aid Code does not give vendors the right to appeal the administrative decisions as to eligibility of applicants.

ROE, C.J.

This matter coming to be heard on the motion of the Respondent to dismiss the claim herein, due notice having been given and the Court being fully advised, finds as follows:

Claimant has brought this action seeking payment for hospital and medical services provided by the Claimant to an individual patient. Claimant has alleged that the patient was medically indigent and therefore the Illinois Department of Public Aid (IDPA) is liable for payment for the hospitalization and medical care

provided. Claimant has also stated that an application for medical assistance made on behalf of this patient was denied by IDPA.

The Court has previously ruled, and again so rules that:

1. Section **11** of the Illinois Public Aid Code (Ill. Rev. Stat. **1983,** ch. 23, par. **11—1** ***et seq.***) provides for a system of administrative hearings and appeals for applicants for aid under the Code. That section states that article III of the Code of Civil Procedure (Ill. Rev. Stat. **1983,** ch. **110,** par. **3—101** et ***seq.***) "shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Illinois Department (of Public Aid)." Under article 111, jurisdiction to review final administrative decisions is vested in the circuit courts. That fact prevents the Court of Claims from assuming jurisdiction over this matter;

2. This Court has jurisdiction under the Illinois Public Aid Code to entertain vendor payment claims. Such claims are limited to actions for payment for goods or services furnished to or in behalf of recipients. A recipient is one who is currently receiving aid from IDPA or who has been found eligible for such aid. This patient was not a recipient of aid nor had the patient been found eligible for aid. Therefore, this Court can not entertain this action;

3. Claimant has no standing to bring this claim, as the Illinois Public Aid Code does not give vendors of goods or services an opportunity to appeal the administrative decisions of IDPA regarding eligibility for aid under the Code.

It is hereby ordered that the motion of the

Respondent be, and the same is, hereby granted and the claim herein is accordingly dismissed.

(No. 83-CC-2755—Claimant awarded $300.00.)

KENNETH STEPHENSON, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed January 31, 1985.

KENNETH STEPHENSON, pro se, for Claimant.

NEIL F. HARTIGAN, Attorney General (JOHN J. PERCONTI, Assistant Attorney General, of counsel), for Respondent.

PRISONERS AND INMATES—*transfer of inmate—personal property lost—award granted.* An inmate of a correctional center was granted an award of $300 for the accumulation of legal files, books and records which were lost when he was transferred from the disciplinary segregation unit at the center to the health-care unit, since the State took possession of the property, but never returned it to him, and the amount awarded was fair and reasonable in view of the age and nature of the materials lost.

RAUCCI, J.

This is a claim for the loss of items of personal property when Claimant was taken from the disciplinary segregation unit at the Menard Correctional Center to the health-care unit of the institution on April 27, 1983.

There is no dispute that the State took possession of Claimant's property and that it was not returned to him. The problem presented by this case is the value to be placed on the lost items.

In the portion of his complaint entitled bill of particulars, Claimant described the items as follows:

"(9) Nine years accumulation of legal files, books and records including but not limited to the following, (4) Illinois Criminal Law and Procedures (1977

to 1980) (5) Illinois Legal Directories, 8 Litigation Manuals, complete records and transcripts of appeals, post-conviction, conviction and approximately six civil actions, including exhibits, all of which was photostatically reproduced for the claimant at cost. Claimant seeks an estimated $850.00 for his losses."

He testified that the four copies of the Illinois Criminal Code were paperbacks, that he had a Blacks Legal Dictionary, and four legal directories of the type that are published annually. He lost the transcript of his 1975 trial in Cook County, the transcript consisting of at least 500 pages. He lost the transcripts of his post-conviction proceedings and the briefs and transcript of his post-conviction appeal, plus material pertaining to certain Federal actions, some apparently still pending.

He offered no proof as to what it would cost him to replace these documents, and the record fails to disclose that he actually has a need for them. The age and nature of the material supports the amount of $300.00 as fair and reasonable compensation for his loss.

It is therefore ordered, adjudged and decreed that Claimant be awarded three hundred ($300.00) dollars in full and complete satisfaction of this claim.

(No. **84-CC-0338—Claimant awarded $500.00.**)

LEOBARDO GUTIERREZ and MARY GUTIERREZ, Claimants, v. THE STATE OF ILLINOIS, Respondent.

Opinion filed November 27, 1984.

WEISZ & WEISZ, **for** Claimants.

NEIL F. HARTIGAN, Attorney General (JOHN J. PERCONTI, Assistant Attorney General, of counsel), for Respondent.

STIPULATIONS—*personal injury—pedestrian tripped while walking on State highway—stipulation—award granted.* **Based on the joint stipulation of the parties, the Claimant was granted an award for the personal injuries she suffered when she tripped while walking on a State highway, and her husband's claim for loss of consortium was voluntarily dismissed with prejudice.**

HOLDERMAN, J.

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

Finds:

That this is a personal injury action brought pursuant to section 8(d) of the Court of Claims Act (Ill. Rev. Stat. 1983, ch. 37, par. 439.8(d)).

That pursuant to section 2—1009(a) of the Code of Civil Procedure (Ill. Rev. Stat. 1983, ch. 110, par. 2—1009(a)) the claim of Leobardo Gutierrez for loss of consortium is voluntarily dismissed with prejudice.

On March 16, 1983, Claimant, Mary E. Gutierrez, tripped and fell while walking on Illinois' Highway Route 47 near or about its intersection with Donovan Avenue, City of Woodstock, County of McHenry, State of Illinois.

The parties hereto have agreed to a settlement of this claim, and Respondent agrees to an entry of an award in favor of Claimant in the amount of five hundred dollars and no cents ($500.00) in full satisfaction of this claim.

It is thereby ordered that the Claimant, Mary E. Gutierrez, be and hereby is awarded the sum of five hundred dollars and no cents ($500.00) in full satisfaction of this claim.

(No. 84-CC-0339—Claim dismissed.)

QUINCY PARK DISTRICT, Claimant, *v.* **THE STATE OF ILLINOIS,** Respondent.

Order filed January 25, 1985.

GOEHL & SCHUEFUNG, for Claimant.

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

CONTRACTS—***alleged oral contract—exceeded $500—Statute of Frauds violated—claim dismissed.*** A park district's claim for the price of a tramway which the State allegedly orally contracted to buy was dismissed for failure to comply with the Statute of Frauds, since the price exceeded $500, and the tramway constituted "goods" for purposes of the Uniform Commercial Code, and therefore the contract was unenforceable without a writing evidencing the alleged contract, signed by the party sought to be charged.

HOLDERMAN, J.

This cause having come for consideration on the Respondent's motion to file affirmative defenses instanter and the Court being duly advised in the premises:

Finds, that the price of the tramway, which Respondent allegedly orally contracted to buy, exceeds $500.00. The said tramway is a "good" within the definition of "goods" provided by the Uniform Commercial Code. (Ill. Rev. Stat. **1983,** ch. **26,** par. **2—105.)** A contract of the sale of goods for a price exceeding $500.06 is unenforceable without a writing evidencing the alleged contract and signed by the party against whom enforcement is sought. Ill. Rev. Stat. **1983,** ch. **26,** par. **2—201(1).**

It is hereby ordered, that Claimant's complaint is dismissed for failure to comply with the Statute of Frauds. Ill. Rev. Stat. **1983,** ch. **26,** par. **2—201(1).**

(No. **84-CC-0427—Claim denied.)**

CHRISTOPHER SCHAEFER, Claimant, ***v.*** **THE STATE OF ILLINOIS,** Respondent.

Opinion filed October 19,1984.

CHRISTOPHER SCHAEFER, pro *se*, for Claimant.

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

HIGHWAYS AND STREETS—*traffic control sign blown onto Claimant's car—State's knowledge of defective condition not shown—claim denied.* **The Court of Claims denied a motorist's claim for damages which occurred when a speed limit sign was blown onto his vehicle as he was proceeding through an intersection, since the Claimant presented no evidence that the State had any actual or constructive knowledge of any defective condition of the sign.**

POCH, J.

This is a claim for property damage to an automobile which is alleged to have occurred by reason of the vehicle being struck by a traffffic control signal being blown onto the automobile.

At a hearing before a commissioner of this Court, Claimant testified that on May 6,1982, at about 4 o'clock p.m., he was driving his automobile on Lawrence Avenue eastbound 'at or near the intersection of Lawrence Avenue and Canfield Road, City of Norridge, Illinois.

Immediately beyond the intersection, there was a light post with a 40-mile-per-hour speed limit sign affixed thereto. As Claimant proceeded past the intersection, the sign came off the post striking Claimant's automobile.

The sign weighed about 20 to 25 pounds and was about 2%feet in length and three feet in width. It had a

hole in both top and bottom where it had been affixed to the pole. The holes had some sign of rust about them.

For his evidence of cost of repair, Claimant presented an unpaid repair estimate, which was inadmissible.

Respondent introduced into evidence a departmental report which indicated that on April 2 and 3, 1982, slightly over a month prior to the date of the accident, there were wind gusts in the area of the sign of 50 to 60 miles per hour. As a result of those wind gusts, the sign in question, among others, was inspected by a field traffic engineer and the sign was found not to be in need of repair.

Claimant presented no evidence of any prior actual or constructive knowledge of any defective condition of the sign. At the time of the incident in question, the wind was 23 miles per hour.

In cases such as the one before the Court, it must be shown that the State had actual or constructive knowledge of the defective conditions of the sign in question.

From the evidence before the Court, the Claimant failed to provide the Court with evidence of either actual or constructive knowledge of any defective condition of the sign.

For the above reasons Claimant's claim will be denied.

(No. 84-CC-0645—Claimantawarded $1,000.00.)

JONATHAN CHILDRESS, Claimant, *v.* **THE STATE OF ILLINOIS,** Respondent.

Order filed December 18,1984.

JONATHAN CHILDRESS, pro **se,** for Claimant.

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

NEGLIGENCE—*essence* ***of res ipsa loquitur.*** When an injury has been caused by something under the management of the party charged with negligence and the injury is such that in the ordinary course of events it would not have happened if those in control used proper care, the accident itself affords reasonable evidence, in the absence of an explanation, that it arose from the want of due care.

PRISONERS AND INMATES—***inmate's hand crushed in cell door—res ipsa loquitur—award granted.*** An inmate of a correctional center was granted an award for the injuries sustained when his hand was crushed in an electrically operated cell door while he was being moved inside the center, since the inmate proved a ***prima facie*** case of negligence on the part of the State, based on ***res ipsa loquitur,*** because the cell door was totally controlled by the State, and the State called no witnesses to explain how the injuries could have occurred without negligence on the part of the State.

MONTANA, J.

This is a claim brought by Jonathan Childress, a resident of Stateville Correctional Center, for personal injuries when his cell door was closed on his right hand.

On September 23, 1982, Claimant was transported from his cell in E house to a cell in F house. He was then taken to see an investigator and ultimately returned to his new cell in F house around 10:00 p.m. Claimant was handcuffed with his hands behind his back while escorted to the investigator. The normal procedure for removing the handcuffs from a handcuffed prisoner is for the prisoner to enter his cell, which is then closed, and the prisoner is directed to stand with his back to the cell door. The officer reaches in through a chuck hole (or

feeding hole) in the door and removes one handcuff. The prisoner then sticks his other hand out through the chuck hole and the officer removes the remaining handcuff.

In this case, after Claimant entered his cell, the cell door remained partially open (two or three inches) instead of being fully closed. The guard reached in through the chuck hole and removed the handcuff from Claimant's right hand. When Claimant bent over to stick his left hand out through the feeding hole, he raised his right arm and rested his right hand against the door frame of the still open door. Claimant did not know that the doors were operated electrically. In **E** house, where Claimant had come from, the doors opened and closed manually. Claimant had never been in F house before and did not know the doors were closed electrically. While Claimant had his free right hand resting on the door frame between the partially opened door and the frame, the guard in the central tower closed the door on Claimant's hand.

Since the cell was about a half story higher than the tower, the Claimant could see the guard in the tower and the guard in the tower could see Claimant at all times.

Although Claimant thought the guard removing the handcuffs had closed the door, when he asked the guard to open the door, the guard turned around and waved to the guard in the tower to open the door.

The incident caused Claimant to be in pain and he asked for medical attention. Although the guard said he would send somebody up, nobody came to attend to Claimant. **By** morning the hand was swollen three to four times its normal size. **(R. 21.)** Claimant was then taken to the institution hospital where the doctor

examining Claimant told him there was no fracture. Claimant insisted that there had been a fracture and after the doctor took additional X rays it developed that there was an oblique fracture involving the first metacarpal and a transverse fracture involving a distal phalanx of the right middle finger. The doctor could not put a cast on it because of the swelling. He prescribed hot packs and a week later he put a cast on the hand.

The following colloquy took place between Claimant and the commissioner:

"Q: Now, then your complaint is then that you received no treatment the night of the injury? Is that what your complaint is?

A: Yes.

Q: You are not complaining about the treatment you received after you finally got to see the medical personnel?

A: No.

Q: Now, I acknowledge that you were in pain and that your hand had swollen, but in what way would your medical condition be any better if you had gone to the doctor that night?

A: They could have given some type of treatment, something for the pain.

Q: Something for the pain?

A: Yes.

Q. How soon after the incident did you notice that your hand was swelling?

A: I woke up the next morning, it was swollen.

Q: Okay. You went to sleep though before you saw, before you noticed it?

A: It was swelling a little.

Q: Now, describe the pain. How did your hand feel when you woke up in the morning?

A: It was stiff. I couldn't move it. I could barely move the tips of my fingers.

Q: Because of the swelling?

A: Right.

Q: But you weren't feeling any pain from the incident?

A: Yes, I was feeling pain.

Q: How did it feel?

A: Sharp.

Q: Let me see if I am summarizing this correctly. Your complaint about the medical treatment is that you are saying that you should have been able to see medical personnel immediately following the incident rather than having to wait until the following morning?

A: Yes.

Q: But once you got the medical treatment, you are not saying that you were dissatisfied with what the doctor did.

A: No."

Claimant also complains of some partial permanent disability resulting from the incident. His testimony on this point is reproduced in full:

"Q: . . . How is your hand now?

A: It is all right. I still have a knot in it but it is okay.

Q: So you don't feel that you have any permanent injuries from this incident?

A: I can't say for sure. Like I say all of the swelling is stuff still hasn't left out of it. I haven't seen the last x-rays that they had took after they took the cast off to see whether the bone mended back together or what. They said it would be some time before it would be all the way healed.

Q: Were there any bones broken?

A: It was cracked in two different spots.

Q: Which bone was that?

A: Here and there.

Q: It is in the hand?

A: Yes.

Q: Not in the fingers?

A: No. It is in the hand.

Q: Do you have any trouble using your fingers?

A: No, I don't.

Q: You can close your fingers just as well with you right hand as you can with your left hand?

A: I can't close it as tight as my left.

Q: Let me see your hand. Does it show any evidence of the injury?

A: Like I say. It still has a knot right in here. You could feel it right there on the bone.'' (R. **6-7.)**

Additionally, Claimant testified:

"Q: But you don't really have any permanent injury from the door closing on the hand?

A: Yes, I do.

Q: The knot that is what you are talking about?

A: Yes.

Q: All right. Now, let me see your hand again?

A: Right there.

Q: But does that affect you in any way?

A: Like I said I can't tighten my hand all the way up. I know it is not the way that it is supposed to be.

Q: How old are you?

A: I am 31.

Q: How long have you been here?

A: 3 years.

Q: Before you came here, what kind of work did you do?

A: I was a cosmetologist.

Q: You mean you worked in a beauty salon or something like that?

A: Yes.

Q: When will you be released from here?

A: In '88.

Q: Will you go back and do that same type of work?

A: I don't know.

Q: Well, will this in any way affect your ability to earn a living?

A: I don't know. I can't really say at the time.

Q: You have never done manual work?

A: Yes, I have.

Q: What kind?

A: Quite a few. Gardening, landscape.

Q: Are you on any work details now?,

A: Yes, I am.

Q: What?

A: I am a clerk.

Q: Do you find any inconvenience in your work as a clerk caused by your hand?

A: It is not any inconvenience in my clerk work but it inconvenienced me being on the weight-lifting team and things like that.

Q: How does it affect you on the 'weightlifting team?

A: Like I say I can't ball my hand up all the way tight.

Q: Since the time the door closed on it?

A: Yes, I was on the weightlifting team before the injury happened and I was assigned back to the weightlifting team about two months ago trying to exercise to see if the strength will come back in the hand. So far it hasn't.

Q: How long did you suffer pain?

A: What do you mean?

Q: For how long was your hand in pain from having the door close on it?

A: Until it got well.

Q: How long?

A: I would say what, four months." (R. 18-20.)

Respondent called Dr. Gartrell King, medical director at Stateville Correctional Center, as a witness. Dr. King was not the treating doctor, but testified from Claimant's medical records.

At the request of the commissioner, Dr. King examined Claimant's right hand (R. 32-35). He found slight tenderness over the right second metacarpal, found that the hand appeared to be "grossly unremarkable," could not say with a reasonable degree of medical certainty, based on the information that he had, that the knot on the back of Claimant's hand was caused by the fracture, and found that the patient appeared "to have substantial ability to grip with his right hand.''

It is clear that Claimant proved a *prima facie* case of negligence on the part of Respondent. The instrument causing the injury was totally under control of Respondent, and Respondent called no witnesses to explain how the incident occurred.

As held by this Court in *Westchester Fire Insurance Co. v. State,* 27 Ill. Ct. Cl. 327:

"When a thing which has caused an injury is shown to be under the management of the party charged with negligence and the accident is such as in the ordinary course of things will not happen if those who have such management use proper care, the accident itself affords reasonable evidence, in the absence of an explanation by the parties charged, that it arose from want of due care."

Claimant was not guilty of contributory negligence because of his unfamiliarity with F house and specifi-

cally, its electronic doors. Moreover, the guard removing Claimant's handcuff did not warn him not to rest his hand on the door frame or in any other manner advise him of safe procedures.

Although in the departmental report Warden DeRobertis offered the conjecture that Claimant injured his hand in a fight prior to being taken to segregation, Respondent called no witnesses to support this conjecture. In fact, Respondent introduced Claimant's medical records which include Claimant's resident injury report which recites that Claimant caught his right hand in a cell door.

Claimant failed to prove substantial permanent injuries, but he obviously experienced pain and suffering. The failure of Respondent to furnish Claimant with emergency medical treatment increased Claimant's pain and suffering.

It is hereby ordered that Claimant Jonathan Childress be and hereby is awarded the sum of one thousand dollars ($1,000).

(No. 84-CC-0663—Claimant awarded $35,831.00.)

CITY OF QUINCY, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Order filed* August *13,1984.

DONALD D. ADAMS, for Claimant.

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

LAPSED APPROPRIATIONS—*award of funds cannot exceed appropriations.* The Court of Claims is not permitted to make awards of funds in excess of those funds the legislature has appropriated.

SAME—*fire protection for veterans home—insufficient appropriations—services authorized* by *law—award granted.* Even though the funds to pay a city for the fire protection provided for a State veterans home had either lapsed or the appropriation was insufficient, an award was granted to the city, since there is an exception to the rule prohibiting awards in excess of appropriated funds for cases in which the services provided are expressly authorized by law, and the fire protection services were a statutorily mandated part of the operation of the veterans homes.

ROE, C.J.

The City of Quincy brought this claim seeking the sum of **$35,831.00** in payment for fire protection provided the Respondent's Illinois Veterans Home located in Quincy, Illinois. The Claimant alleged that it demanded payment from the Respondent but its demand was refused on the grounds that the appropriation with which it could have been paid had lapsed or, in the alternative, on the grounds that there were insufficient funds appropriated for the payments.

It appears from the departmental report compiled by the Respondent's Department of Veterans' Affairs, which report is ***prima facie*** evidence of the facts contained therein pursuant to Rule **14** of the Rules of the Court of Claims, that amidst massive cost reduction measures taken by the Respondent with respect to the operation of the Veterans Home, it was decided that the City of Quincy's fire protection bill would not be paid. The Department of Veterans' Affairs described the situation as follows:

"During December, 1982, the staff of the Illinois Veterans Home, at Quincy, prepared an updated projection of expenditures through FY83. This projection indicated that, if the then current operational level was to be maintained, it was probable that overspending of the appropriated amount by approximately $500,000 would occur.

The Department implemented various cost curtailment measures wherever possible, to assure spending within the limits of the approved

appropriation. Significant reductions were made in staffing levels with lay-offs and the freezing of vacant positions. Participation of employees in the voluntary furlough program was encouraged. All future equipment acquisition was frozen, various service contracts were cancelled, commodity inventories were reduced and new purchases were deferred.

About this time, it also became apparent that the Illinois Veterans Home Fund was experiencing a serious cash-flow problem, as generated income was not keeping pace with expenditures. The Illinois Veterans Home Fund is funded from revenue generated at the Home through partial reimbursement of costs by the Veterans Administration and Medicare. A maintenance charge is also collected from the members of the Home, which is based on their monthly income. The Illinois Veterans Home Fund has in recent years supported approximately 60%of the operating costs of the Home.

This tight money situation was further adversely affected in March, 1983, when the Governor's freeze on new admissions was put into effect. This freeze on new admissions, while intended to reduce operating costs, also placed a freeze on new income. As members died or moved out of the Home, income also was reduced.

A situation developed in which everyone involved was engaged in efforts intended to reduce expenditures and maximize the generation of income, while maintaining a level of operation which would provide adequate care and service for the approximately 600 members of the Home. In spite of efforts to reduce the cost of contractual services it was found that, in particular, the high cost of providing hospital and medical care for the members of the Home was continuing to increase at a drastic rate as the fiscal year was drawing to a close. Adding to the difficulty was the fact that the extent of Medicare participation in payment is never known with certainty until after a lag of several weeks.

Although adequate income was generated and cash was allocated to permit payment of all anticipated expenditures, and total expenditures were curtailed to within the limits of the total appropriation, the Department found that the appropriation by line item was greatly dislocated from where the costs were being incurred.

The remaining amount of transferability under the 2%transfer statute was necessarily utilized to permit payment of the final FY83 payrolls at the Home.

The Department sought the aid of the General Assembly in obtaining an amendment to our FY83 Appropriation to make the necessary transfer. Unfortunately, it was too late in the legislative session, and the Department was unsuccessful in this effort.

As a result, while the Department was lapsing approximately $162,000.00 in the Commodities line item, it was unable to transfer those funds to satisfy the additional needs in the Contractual Services line item."

Ordinarily in circumstances such as this, this Court must deny this claim, as this Court is not permitted

under the Constitution of the State of Illinois, 1970, article 8, section 2, or section 30 of the State Finance Act (Ill. Rev. Stat., ch. 127, par. 166), to award funds in excess of those the legislature has appropriated. However, the complaint and the departmental report, which pursuant to Rule 14 of the Rules of the Court of Claims is *prima facie* evidence of the facts stated therein, both state that the Claimant is requesting payment for fire protection rendered to the Illinois Veterans Home in Quincy, Illinois. Clearly, this is a service which is indispensable for those institutionalized at the home, and it is a service which cannot be purchased from any other source. There is an exception for payment of services in excess of the appropriated amount where those services are expressly authorized by law. The State submits that the operation and maintenance of the Illinois Veterans Home is mandated by section 2.01 of "An Act creating the Illinois Department of Veterans' Affairs" (Ill. Rev. Stat., ch. 126½, par. 67.01), and that fire protection services are part of the operation of that home, and that these services are expressly authorized by law. This interpretation is consistent with the holding in *Fergus v. Brady*, 227 Ill. 272.

It is hereby ordered, that the Claimant be awarded $35,831.00.

(No. 84-CC-0770—Claimant awarded $2,500.00.)

JAMES PYGOTT, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Order filed February 28, 1985.

BAIRD, LATENDRESSE, MCCARTHY & ROWDEN, for Claimant.

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

STIPULATIONS—*fall through defective manhole couer on State parking lot—award granted.* **Pursuant to the joint stipulation of the parties, the Claimant was granted an award for the injuries he sustained when he fell through a defective cover on a manhole located in the parking lot of a State office building, since the stipulation of the parties appeared reasonable and appeared to have been fairly and freely executed.**

MONTANA, J.

This cause comes on the joint stipulation of facts and attachments submitted by the parties. The stipulation of facts is that the Claimant, James C. Pygott, Sr., suffered an injury on October **16, 1981,** at a parking lot located at **3122** North Water Street, in the City of Decatur, County of Macon, State of Illinois. That said parking lot was next to the State of Illinois' Department of Public Aid office in Decatur, Illinois, and was owned or leased by the State of Illinois; and further, there was a storm sewer located below said parking lot with access to the sewer provided by manholes with manhole covers which were maintained and repaired by the State of Illinois. On the day in question, the Claimant, being lawfully on said parking lot, stepped onto a manhole cover located on said lot; and because of the manhole cover's state of ill repair, fell through it with one of his legs, causing him bodily injury. The cover of the manhole referred to above was at said time and place in a damaged or defective state in that one of the metal rods of the grating was missing, thus allowing said accident to happen. The Respondent, State of Illinois, did not have a maintenance or inspection program for this grate.

Because of this accident, the Claimant suffered injuries on various parts of his body; specifically, his lower back, his cervical spine, his head and his left knee;

and continues at this time to have lower back pain with radiation to both hips, superimposed over a pre-existing, but asymptomatic, condition known as spondylolisthesis, headaches and accompanying upper back pain and left knee pain on occasion, all of which impair his ability to work and carry on usual activities. Claimant has incurred medical bills amounting to roughly $1100.00 because of this accident and may incur future medical bills for treatment of the above described injuries. Based on the facts, the parties have agreed to settle the above captioned matter for the sum of two thousand five hundred dollars ($2500.00) and respectfully ask that this Court approve this settlement agreement.

While this Court is not required to accept such settlements, the Court has no desire to impose a controversy where none appears to exist. The stipulation submitted by the parties appears to have been entered into freely and fairly, and its contents appear to be reasonable.

It is hereby ordered, that the Claimant be awarded $2500.00 in full and final satisfaction of this claim and all other claims arising from this incident.

(No. 84-CC-0794—Claim dismissed.)

MICHAEL E. SCHAFER, M.D., Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

***Order filed April* 19, 1984.**

***Order on motion to dismiss filed September* 7, 1984.**

MICHAEL E. SCHAFER, M.D., pro se, for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

PRACTICE AND PROCEDURE—departmental reports are prima facie evidence of facts they contain.

SAME—departmental reports from one agency to another do not become prima facie evidence. The Court of Claims will not allow a departmental report from one State agency to another describing transactions of another State agency to become ***prima facie*** evidence under Rule 14 of the Court of Claims, since the weakness of triple hearsay outweighs circumstantial guarantees ordinarily attributed to departmental reports.

LAPSED APPROPRIATIONS—*medical* ***services to ward of DCFS—claim paid directly by Department of Public Aid—claim dismissed.*** The Claimant's action seeking payment for medical services rendered to a ward of the Department of Children and Family Services was dismissed, since the claim was shown to have been paid directly by the Department of Public Aid at a rate set in accord with the Medical Assistance Program Pricing Index.

ROE, C.J.

This cause comes on to be heard on the Respondent's motion to dismiss, due notice having apparently been given, and the Court being fully advised in the premises;

The Claimant brought this action seeking payment of $2,100.00 for medical services provided to a child in the custody of the Department of Children and Family Services (DCFS). He alleged in his form "lapsed appropriation'' complaint that demand for payment was made from DCFS, but his demand was refused on the grounds that the funds with which his bill could have been paid had lapsed.

The Respondent has moved for dismissal on the grounds that this obligation has been paid. In support of its position, the Respondent attached as Exhibit A a letter from DCFS which was described as a departmental report and offered as prima facie evidence of the

facts contained therein pursuant to Rule **14** of the Rules of the Court of Claims. The letter states that the Department of Public Aid paid this Claimant **$1,480.00** which is in accordance with their pricing index for such services.

This Court has consistently rejected such evidence. Rule **14** is very beneficial to the Respondent and it enables this Court to function efficiently and economically. However, we cannot allow a departmental report from one State agency describing transactions of another State agency to become prima facie evidence under the rule. The weaknesses of the triple hearsay nature of the evidence outweigh any circumstantial guarantees of accuracy ordinarily attributed to departmental reports.

Motion denied.

ORDER ON MOTION TO DISMISS

ROE, C.J.

This matter coming to be heard on the amended motion of the Respondent to dismiss the claim herein, due notice having been given and the Court being fully advised;

Finds that this claim has been paid directly by the Illinois Department of Public Aid at rates in accordance with the Medical Assistance Program Pricing Index.

It is hereby ordered that the motion of the Respondent be, and the same is, hereby granted and the claim herein is dismissed.

(No. 84-CC-1273—Claim dismissed.)

CITY OF CHICAGO, Claimant, *v.* THE STATE OF ILLINOIS, Respondent

Order filed September 21,1984.

JAMES D. MONTGOMERY and EDWARD T. MCAULIFFE, for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

LAPSED APPROPRIATIONS—***appropriated funds reduced by "contingency reserves"—claim dismissed.*** A city's claim against the State was dismissed notwithstanding the State's stipulation agreeing to payment even though sufficient appropriated funds were not available, and the city's contention that the claim should be paid because the expenditure was "expressly authorized by law" was rejected, since the appropriated funds had been reduced through the device known as "contingency reserves," as provided by the Emergency Budget Act, and the Court of Claims was therefore required to deny the claim.

RAUCCI, J.

This cause ,comes on to be heard on stipulation of the Respondent to pay the Claimant's claim of $13,700.15, notwithstanding the fact that sufficient appropriated funds were not available at the end of Fiscal Year 1983to pay this claim.

Respondent urges us that this expenditure "was expressly authorized by law" and therefore not subject to the ordinary restriction that public monies must be appropriated by the General Assembly in order to be expended.

The "expressly authorized by law" concept has its genesis in the opinion of the Supreme Court of Illinois in the case of ***Fergus v. Brady*** (1917), 277 Ill. 273. And following that opinion, this Court has made numerous awards on the basis that they "were expressly authorized

by law." See Rock *Island County v. State* (1973), **28** Ill. Ct. Cl. **337,** and *Clavey v. State* (1973), **29** Ill. Ct. Cl. **21.**

Unlike the prior cases, the instant case arises because the General Assembly legislated that the funds previously appropriated be reduced through a device known as "contingency reserves." This authorization is contained in the Emergency Budget Act (P.A. **82-1038,** approved December **1982).**

The Act withstood vigorous constitutional attack by a divided Supreme Court of Illinois in Warrior *v.* Thompson (1983), **96 Ill.** 2d **1,449** N.E.2d **53.**

The specific legislative intent (*i.e.* to "reserve" appropriations) being easily ascertainable, this Court has no alternative but to deny the claim.

It is therefore ordered that the claim be dismissed, with prejudice.

(No. 84-CC-1275—Claim dismissed.)

CITY OF CHICAGO, Claimant, *v.* **THE** STATE **OF ILLINOIS,** Respondent.

Order filed September 21,1984.

JAMES D. **MONTGOMERY** and **EDWARD** T. **MCAULIFFE,** for Claimant.

NEIL F. HARTIGAN, Attorney General **(KATHLEEN** O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

LAPSED APPROPRIATIONS—*appropriated* funds reduced by "contingency reserves"—claim *dismissed.* A city's claim against the State was dismissed notwithstanding the State's stipulation agreeing to payment even though sufficient appropriated funds were not available, and the city's contention

that the claim should be paid because the expenditure was "expressly authorized by law" was rejected, since the appropriated funds had been reduced through the device known as "contingency reserves," as provided by the Emergency Budget Act, and the Court of Claims was therefore required to deny the claim.

RAUCCI, J.

This cause comes on to be heard on stipulation of the Respondent to pay the Claimant's claim of **$10,872.96** notwithstanding the fact that sufficient appropriated funds were not available at the end of Fiscal Year **1983** to pay this claim.

Respondent urges us that this expenditure "was expressly authorized by law" and therefore not subject to the ordinary restriction that public monies must be appropriated by the General Assembly in order to be expended.

The "expressly authorized by law" concept has its genesis in the opinion of the Supreme Court of Illinois in the case of ***Fergus v. Brady*** (1917), **277** Ill. **273.** And following that opinion, this Court has made numerous awards on the basis that they "were expressly authorized by law." See Rock ***Island County v. State*** (1973), **28** Ill. Ct. Cl. **337,** and ***Clavey v. State*** (1973), **29** Ill. Ct. Cl. **21.**

Unlike the prior cases, the instant case arises because the General Assembly legislated that the funds previously appropriated be reduced through a device known as "contingency reserves." This authorization is contained in the Emergency Budget Act (P.A. **82-1038,** approved December **1982).**

The Act withstood vigorous constitutional attack by a divided Supreme Court of Illinois in ***Warrior v. Thompson*** (1983), **96** Ill. **2d 1,449** N.E.2d **53.**

The specific legislative intent (***i.e.*** to "reserve"

appropriations) being easily ascertainable, this Court has no alternative but to deny the claim.

It is therefore ordered that the claim be dismissed, with prejudice.

(No. 84-CC-1377—Claim dismissed.)

STATE EMPLOYEES' RETIREMENT SYSTEM, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Order filed September 21, 1984.

STATE EMPLOYEES' RETIREMENT SYSTEM, pro *se,* for Claimant.

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

APPROPRIATIONS—*appropriations shall* **not exceed funds estimated** to **be available.** The General Assembly by law shall make appropriations for all expenditures of public funds by the State, and the appropriations for a fiscal year shall not exceed the funds estimated by the General Assembly to be available during that *year* (Ill. Const. 1970, art VII, sec. 2(b)).

LAPSED **APPROPRIATIONS—State's contribution to employees' retirement system—insufficient funds—claim dismissed.** The General Assembly's action reducing the funds appropriated for the State's contribution to the State Employees' Retirement System resulted in insufficient funds to cover the claim by the retirement system, and the claim was therefore denied, since the Court of Claims had no alternative in view of the General Assembly's determination that sufficient funds would not be available.

RAUCCI, J.

This issue in this case involves the constitutional power of the General Assembly to control the fiscal policy of the State.

In 1982, the General Assembly, in various appropriation bills, provided funding that included the State's portion for retirement contributions to the various

retirement systems, including the State Employees' Retirement System for Fiscal Year 1983 (commencing July 1, 1983). The contribution rate set by Claimant for FY 1983 was 5.5% of employee compensation.

In April of 1982, responding to the State's fiscal crisis, the General Assembly passed Senate Bill 177. That bill amended the various appropriation bills to reduce the previously appropriated monies for retirement contributions to a rate of 4.5%. On April 29, 1983, Governor James R. Thompson exercised his power to item reduce certain items and Senate Bill 177 became effective immediately as Public Act 83-0002.

On April 28, 1983, the Senate adopted Senate Joint Resolution No. 33, sponsored by Senators Philip Rock, President of the Senate, and Howard W. Carroll, Chairman of the Senate Appropriations I Committee.

Senate Joint Resolution No. 33 declared that:

". . . Senate Bill 177 was adopted for the purpose of helping to alleviate the state's current cash problems by reducing appropriations made for the employees' contributions to various state retirement systems for fiscal year 1983. . ."

and that:

". . . it is the intent of the General Assembly to pay to the various pension funds. . . the amount by which payments to those funds were reduced for fiscal year 1983, plus interest at the rate of 6% per year. . ."

The Resolution then resolved that the amounts reduced would be repaid by 20% of the reduction made for each of the next five fiscal years commencing with fiscal year 1984, plus 6% interest per year.

Claimant filed this claim to recover $869.35 for payment of retirement contributions for employees of the Department of Nuclear Safety.

Because of the aforesaid action of the General Assembly, insufficient funds were appropriated (as a result of Senate Bill 177) to cover this claim.

Article VII, section 2(b) of the 1970 Constitution of the State of Illinois provides:

"The General Assembly by law shall make appropriations for all expenditures of public funds by the State. Appropriations for a fiscal year shall not exceed funds estimated by the General Assembly to be available during that year."

The General Assembly having deteimined (perhaps belatedly) that funds would not be available during Fiscal Year 1983 to cover this claim, this Court has no alternative but to deny the claim.

It is therefore ordered, that this claim be dismissed, with prejudice.

(No. 84-CC-1440—Claim dismissed.)

SAVIN CORPORATION, Claimant, *v.* THE STATE OF ILLINOIS, Respondent

Order filed December 6, 1984.

SAVIN CORPORATION, pro se, for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

CONTRACTS—*claim* for use of copy machine—no contract—claim denied. The Claimant's action to recover payment for the State's use of a copy machine after the original rental contract had expired was denied, since the Comptroller would have been unable under the applicable statute to issue warrants for the use of the machine for a period not covered by a contract which had been executed or filed with the Comptroller, and the Court of Claims would also be unable to make an award on such a claim.

RAUCCI, J.

This matter coming to be heard on the motion of the Respondent to dismiss the claim herein, due notice having been given and the Court being fully advised.

The record in this matter discloses that Claimant furnished a copying machine to the Department of Children and Family Services pursuant to'a contract for Fiscal Year **1981.** After that contract expired, DCFS continued to use the copying machine but no new contract was executed.

The Comptroller would have been unable to issue warrants in payment for the rental of this machine because no contract for the same was ever executed or filed with the Comptroller as mandated by law. Therefore, this Court is also unable to make an award on this claim.

It is hereby ordered that the motion of the Respondent be, and the same is, hereby granted and the claim herein is dismissed.

(No. **84-CC-1770—Claim denied.)**

GEORGE GRAWE, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed October 19,1984.

Order on petition for rehearing filed January 24,1985.

JOHN M. HOSTENY, for Claimant.

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

STATE EMPLOYEES' BACK SALARY **CLAIMS—rule of mitigation of damages in wrongful discharge cases. In an action based on wrongful discharge from employment, the Claimant must show that he has used reasonable means under the circumstances to avoid, mitigate, reduce or minimize the damages incurred as a result** of **the wrongful act.**

SAME—wrongful layoff—no mitigation of damages—claim denied. The

Claimant was properly denied the recovery of lost wages for the time that he was wrongfully discharged by layoff from his employment as a highway maintainer, since his efforts to find work amounted to merely looking at "want ads" and relying on the opinion of a relative, and that activity did not constitute a reasonably active effort to mitigate his damages under the circumstances.

HOLDERMAN, J.

This is a claim by George Grawe against the State of Illinois for lost wages during a period of time that he was wrongfully discharged from his employment with the Department of Transportation as a highway maintainer. A hearing was held on June 6, 1984, all briefs have been filed, and the matter now comes on for an opinion by the Court.

In 1977, Claimant suffered a heart attack which resulted in a workmen's compensation case against the State. During the pendency of that case, Claimant was off work. The case was ultimately settled by the parties in 1979. Thereafter, Claimant remained off work by taking a series of six-month leaves of absence until January of 1981. Claimant was terminated from his employment by Respondent, effective January 9, 1981. He sought review of that decision before the Civil Service Commission and ultimately through the courts. As a result of that action, Claimant was reinstated to his position on December 3, 1981. Claimant now seeks $17,385.45 for back wages for the period of January 9, 1981, through December 3, 1981, and $1,500.00 for lost overtime wages which Claimant states he expected to earn during that period.

The question of overtime, which was raised at the time of the trial of this case, is, in the Court's opinion, irrelevant. This Court has previously held that the Claimant, in cases such as this, must meet his burden of proving he took reasonable steps to mitigate the

damages suffered as a result of the State's wrongful act. The rule on mitigation of damages is stated distinctly in ***Fuller v. State,*** 26 Ill. Ct. Cl. **14,** as follows:

"This Court has long followed the principle of 'avoidable consequences' which holds that a Claimant must use means as are reasonable under the circumstances to avoid, mitigate, reduce or minimize the damages, which he has incurred as a result of a wrongful act."

Claimant testified he did not make any job applications in his home town of Camp Point which had a population of approximately **14,000** people. He further testified that the "want ads" he looked at disclosed nothing he considered suitable for his abilities, and that he did not seek job applications in Quincy, Illinois, because his son-in-law advised him there were no suitable positions available in that town.

It is the Court's opinion that Claimant's attempts to find work were not reasonable within the meaning of the Court's decision in the case above cited. A claimant must take steps beyond merely looking at "want ads" and relying on a relative's opinion.

Award denied. Case dismissed.

ORDER ON PETITION FOR REHEARING

HOLDERMAN, J.

This matter comes before the Court upon Claimant's petition for rehearing on an order heretofore entered by this Court dismissing said cause, and Respondent's reply to said petition.

Claimant seeks to recover compensation for a period of time when he had been wrongfully discharged from his employment with the Department of Transportation as a highway maintainer. A hearing was held on this matter and a Commissioner's report was returned.

In **1977,** Claimant suffered a heart attack which resulted in a workmen's compensation case against the State which was eventually settled. Claimant remained off work until January **1981** by taking a series of six-month leaves of absence at which time his employment was terminated.

The evidence introduced before the commissioner at the time of the hearing was to the effect that Claimant had made little effort to mitigate the damages suffered as a result of his wrongful layoff. Claimant lived in a town of approximately **14,000** people and was in fairly close proximity to Quincy, Illinois, a much larger town. Claimant testified his son-in-law told him there was not any work available for him in Quincy and he had been unable to find work in his home town. His efforts to find work were minimal, to say the least.

The rule on mitigation of damages is stated distinctly in ***Fuller v. State,*** 26 Ill. Ct. Cl. **14,** as follows:

"This Court has long followed the principle of 'avoidable consequences' which holds that a Claimant must use means as are reasonable under the circumstances to avoid, mitigate, reduce or minimize the damages, which he has incurred as a result of a wrongful act."

Claimant further testified that he made no job applications in his home town and that the "want ads" that he looked at disclosed nothing he considered suitable for his abilities.

It is the Court's opinion that its original order denying Claimant an award because of his failure to actively seek to mitigate the damages is correct.

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

(No. 84-CC-1836—Claimant awarded $10,078.30.)

JESSE LEE BROWN, *et al.*, Claimants, *v.* THE STATE OF ILLINOIS, Respondent.

Opinion filed July25,1984.

AVIVA FUTORIAN and .DIANE REDLEAF, of Legal Assistance Foundation, for Claimants.

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

LAPSED APPROPRIATIONS—AFDC *benefits—awards granted.* The Court of Claims granted an aggregate award for several claims for benefits under the Aid to Families with Dependent Children program of the Illinois Department of Public Aid pursuant to the joint stipulation of the parties, since the expenditure was authorized under the Public Aid Code, and would have been paid, except for protracted Federal litigation which precluded the State from acknowledging the obligation until after the lapse of appropriated funds.

ROE, C.J.

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

That the multiple-party group of Claimants listed herein consists of 17 Claimant seeking individual awards of varying amounts. These claims, in the aggregate amount of ten thousand seventy-eight dollars and thirty cents ($10,078.30), are for recovery of benefits to which the named Claimants were entitled between April 1980, and March 17,1982, but did not receive, under the Aid to Families with Dependent Children (AFDC) program of the Illinois Department of Public Aid. The joint stipulation is preceded by and predicated upon a U.S. district court decision in litigation entitled *Simpson v.* Miller, 535 F. Supp. 1041 (N.D. Ill.). This expenditure is authorized in article IV of the Public Aid Code (Ill. Rev. Stat. 1981, ch. 23, par. 4—1 et *seq.*).

The amount due would have been paid in the regular course of business had the obligation been acknowledged by Respondent at the appropriate time. Such acknowledgment was not then possible because of protracted Federal court litigation, and Claimants could not be timely notified of their right to file claims until recently. By then, the appropriation of funds with which the Department of Public Aid would ordinarily pay such claims had lapsed.

The sole reason said obligation was not previously paid is the present nonavailability of State funds appropriated to the Department for the period in which this debt was incurred.

Money was appropriated under line items:

AFDC 001—47801—4400—02—00 FY'80
AFDC 001—47801—4400—02—00 FY'81
AFDC 001—47801—4400—02—00 FY'82

A sufficient amount lapsed to cover this claim.

It is therefore ordered that Jesse Lee Brown et *al.*, be and are hereby each awarded the sums specified in the parties' joint stipulation, for an aggregate amount of ten thousand seventy-eight dollars and thirty cents ($10,078.30).

(No. 84-CC-1922—Claim dismissed.)

COUNTY OF ST. CLAIR, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Order filed October *31,1984.*

Order on motion for rehearing filed March *25,1985.*

GARY L. BEMENT, Assistant State's Attorney, for Claimant.

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

PRACTICE AND PROCEDURE—*actual* controversy required before Court *of* Claim must make ***decision*. An** actual controversy is required before the Court of Claims will decide a case, and the mere claim for declaratory relief does not keep an otherwise moot claim alive, since the declaratory judgment procedure is not intended to permit litigation of moot issues.

APPROPRIATIONS—*money* must be appropriated to be expended.

SAME—appropriation reduced through "contingency *reserves*"—*claim* denied. The Court of Claims dismissed Claimant's action seeking payment of an amount due from the State, since the legislature decided that the funds which had previously been appropriated for the claim should be reduced through the device known as "contingency reserves" as provided in the Emergency Budget Act, therefore no funds were available to pay the claim, and monies must be appropriated before they can be expended.

RAUCCI, J.

This cause comes on to be heard on motion of the Respondent to dismiss the Claimant's claim of $953.01 due to the fact that sufficient appropriated funds were not available at the end of Fiscal Year 1983 to pay this claim.

Respondent urges us that this expenditure is subject to the ordinary restriction that public monies must be appropriated by the General Assembly in order to be expended.

The instant case arises because the General Assembly legislated that the funds previously approp-

riated be reduced through a device known as "contingency reserves.'' This authorization is contained in the Emergency Budget Act (P.A. 82-1038, approved December, 1982).

The Act withstood vigorous constitutional attack by a divided Supreme Court of Illinois in ***Warrior v. Thompson*** (1983), 96 Ill. 2d 1,449 N.E.2d 53.

The specific legislative intent (*i.e.* to "reserve" appropriations) being easily ascertainable, this Court has no alternative but to deny the claim.

Claimant, subsequent to Respondent's motion, filed its motion to amend complaint. Because of the disposition of Respondent's motion, Claimant's motion is moot.

It is therefore ordered that the claim be dismissed, with prejudice.

ORDER ON REHEARING

RAUCCI, J.

This cause having come for consideration on the Respondent's objection to Claimant's motion for rehearing and the Court being duly advised in the premises:

Finds, that the Claimant is asking for a rehearing on a matter which is already moot. Claimant asks that this Court decide the "merits" of this case. However, in order for the Court to decide this case there is need for an actual controversy. ***(Royal Glove Insurance Company v. Aetna Insurance Company,*** 82 Ill. App. 3d 1003, 403 N.E.2d 680; ***Midwest Petroleum Marketer Association v. City of Chicago,*** 82 Ill. App. 3d 494, 402 N.E.2d 709.) Furthermore, a claim for declaratory relief,

standing alone, does not keep an otherwise moot claim alive. (*Simpson v. Miller,* **93** F.D.R. 540.) A moot case can not support an entry of declaratory judgment with regard to future rights. ***(Berg v. City of Chicago,*** 97 Ill. App. 2d **410,** 240 N.E.2d **344.)** Declaratory judgment procedure is not intended to permit litigation of moot or hypothetical cases. ***Clyde Savings & Loan v. May Department Stores,*** 100 Ill. App. 3d **189,426** N.E.2d **955.**

It is hereby ordered, that as this case has been decided, and the issue is moot, the motion for rehearing is denied.

(No. 84-CC-2062—Claim dismissed.)

TEXACO, INC., Claimant, *v.* **THE STATE OF ILLINOIS, Respondent.**

Opinion filed May 25,1984.

Order on Court's motion filed July 27,1984.

JAMES C. SHY, for Claimant.

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

LAPSED APPROPRIATIONS—*gasoline* ***bill—previously paid—claim dismissed.*** The Claimant's standard lapsed appropriation claim seeking to recover payment for gasoline provided for State-owned vehicles was dismissed, even though the Court of Claims initially granted the Claimant an award, since the Claimant advised the Court that it had, in the interim, received payment directly from the agency involved, and but for the Claimant's actions, a double payment would have resulted.

POCH, J.

The record in this cause indicates that this is a standard lapsed appropriation claim. The Attorney

General has submitted a Respondent's stipulation based upon a report of the Department of Corrections.

This Court finds that this was a properly authorized expenditure of which $36.39 remains unpaid. The purpose of the expenditure was for gasoline for State-owned vehicles.

Money was appropriated under line item #001-42605-1800-00-00. A sufficient amount lapsed to cover this claim. Claimant's Social Security or Federal Tax I.D. number is 741-383-447.

It is hereby ordered that the Claimant be and is hereby awarded, in full satisfaction of this claim, the sum of thirty-six and 39/100 ($36.39) dollars.

ORDER ON COURT'S MOTION

ROE, C.J.

This matter comes on to be heard on the Court's own motion:

On May 25, 1984, this Court rendered an opinion in this claim awarding the Claimant $36.39. The claim was for payment for gasoline for State-owned vehicles and was based on lapsed appropriations. Our decision was based on a stipulation by the Respondent and a departmental report issued by the Illinois Department of Corrections. Such reports are accorded the extraordinary status of being *prima facie* evidence of the facts therein by rule of this Court.

The bill of particulars attached to the complaint in this case shows that the claim consists of two purchases, one occurring in May of 1983, and one occurring in April of 1983. The departmental report, signed by one John S. Crain, fiscal manager, of the Department of Corrections

and dated March **19, 1984,** verified this was a proper claim for Fiscal Year **1983** funds.

In due course the Court caused a State warrant to be issued in payment of the award made. Subsequently the Court received a letter from the Claimant stating it had received payment of the amount claimed on February 29, **1984.** Enclosed with said letter was the Court's warrant. Vouchering of this payment would have had to have been done at least three weeks prior to the date of the Department of Corrections' report. But for the integrity and laudable actions of the Claimant herein, the negligence and possible violation of the law by the Department of Corrections in paying the claim with Fiscal Year **1984** funds would have resulted in double payment.

Because this cause of action has been previously satisfied, it is hereby ordered that it be, and hereby is, dismissed.

(No. 84-CC-2682—Claiin dismissed.)

UNION ELECTRIC CO., Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Order on motion to dismiss filed August 22,1984.

Order on motion to reconsider filed *January* 31,1985.

POPE & DRIEMEYER, for Claimant.

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

STATUTE OF LIMITATIONS—*action* **on contract must be brought within five years. All claims arising out of a contract must be filed with the Court**

of Claims within five years of the date the cause of action accrues, or should be forever barred.

CONTRACTS—*electric service—lapsed* ***appropriation—barred by five-year limitations period.*** The Claimant's lapsed appropriation claim for electric service rendered to the State was dismissed, since the claim involved service provided more than five years earlier, and was therefore barred by the five-year limitations period applicable to actions arising out of a contract.

ORDER ON MOTION TO DISMISS

RAUCCI, J.

This cause coming on to be heard on the Respondent's motion to dismiss and the Court being duly advised in the premises:

Finds, that the Claimant's complaint was filed on April 6, 1984. Exhibit A to the complaint and the departmental report establish that the electrical service was rendered between June 21, 1977, and July 21, 1977. Claimant's response to the motion to dismiss now asserts that

"the claim is for 'the balance remaining due for *current* charges on the account involved herein after applying the most recent payment received from the State of Illinois first to the previous balance on this account and then applying the remaining balance of such payment to current charges.' " (Emphasis added)

This position is untenable. If this claim were for current service, it would not be filed in this Court at this time, but would be paid out of the current appropriation. Additionally why would Claimant attach a 1977 invoice to justify a current claim?

This is a lapsed appropriation claim, which stems from a contract. Section 22(a) of the Court of Claims Act (Ill. Rev. Stat. 1983, ch. 37, par. 439.22(a)) establishes that all claims arising out of contract must be filed with the Court of Claims within five years of the date the cause of action accrues, or should be forever barred. This claim has not been timely filed.

It is hereby ordered that this cause is dismissed with prejudice.

ORDER ON MOTION TO RECONSIDER

This cause coming on to be heard on the Claimant's. motion to reconsider, the Court being fully advised in the premises:

The motion to reconsider should be denied for the reasons stated in the Respondent's memorandum in opposition to Claimant's suggestions in support of motion to reconsider.

It is therefore ordered that the motion to reconsider be, and it is hereby, denied.

(No. 84-CC-2750—Claim dismissed.)

NORTHERN ILLINOIS GAS *Co.*, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Order filed September 21,1984.

ALEXANDER C. ALLISON, for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

STATUTE OF LIMITATIONS—***electric service—untimely claim—barred by five-year limitations period.*** Even though the State stipulated to the payment of a claim for electric service provided to the State, the claim was dismissed, since it involved service provided more than five years after the expiration of the fiscal year the services were provided and the claim was filed more than six years after the service was provided, thereby showing on its face that it was barred by the five-year limitations period.

RAUCCI, J.

This cause comes on to be heard on the stipulation of Respondent to pay Claimant $7,888.52. Ordinarily, we would accept the stipulation and award Claimant the sum sought. However, to do that in this case would require us to ignore what is evident from a cursory examination of the documents submitted.

The complaint seeks payment for electrical services provided the Department of Mental Health and Developmental Disabilities from December 16, 1977, to February 17,1978.

The complaint was filed on April 13,1984, a period of time six years after the provision of the electric services, and 5% years after the expiration of the fiscal year in which the services were provided.

Accordingly, from the *face of the pleadings,* the claim is barred by the five-year statute of limitations.

It is therefore ordered that this claim be, and is hereby, dismissed.

(No. **84-CC-2859—Claimant awarded $63,494.91.)**

JACOB M. KUNZ, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Order filed* June *10,1985.

WINSTEIN, KAVENSKY, WALLACE & DOUGHTY, for Claimant.

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

STIPULATIONS—*wrongful discharge—lost wages—award granted.* Based on the joint stipulation of the parties, the Claimant was granted an award for the wages lost due to his wrongful discharge by the Office of the Secretary of State, since the Claimant did all in his power to mitigate his damages, but the amount of unemployment compensation benefits received by the Claimant was set aside for repayment to the Department of Employment Security on behalf of Claimant's account:

MONTANA, C.J.

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

This claim comes before this Court on the joint stipulation of the parties, which stipulation is quoted verbatim as follows:

"1. This is a claim for lost wages in the amount of $63,494.91 as the result of a wrongful discharge of the Claimant'by the Office of the Illinois Secretary of State.

2. During the period of time for which claim is being made, the Claimant received unemployment compensation benefit payments in the amount of $3,016.00 for which the Claimant recognizes a valid claim by the Department of Employment Security.

3. Although the Claimant received Social Security benefits in the amount of $18,650.60 during the period of time for which claim is being made, the parties recognize the state of the law which allows the Claimant to earn salary without a limitation at the same time he is permitted to collect Social Security and Social Security ,payments therefore should not be deducted from any benefits awarded by the Court.

4. The issues before'the Court, if a hearing were conducted into this matter would be limited to mitigation and other income.

5. Claimant has prepared an affidavit which states the substance of what he would testify to if called upon to give testimony as to his other earnings and mitigation efforts during the time for which claim is being made.

6. Both parties stipulate and agree that the affidavit may be entered into the record without objection.

7. Both parties agree to waive, with the Court's permission, any further hearing in this matter.

8. The parties agree that the Court may decide the issues in this matter based upon the record now before the Court and without the presence of the parties."

Having carefully reviewed the stipulation of the parties, we find that the Claimant did all in his power to mitigate his losses and we hereby grant the Claimant an award as claimed in the amount of sixty-three thousand four hundred ninety-four and 91/100 **($63,494.91)** dollars, with **$3,016.00** to be set aside for repayment of unemployment compensation received by the Claimant, which amount is to be paid to the Department of Employment ,Security on behalf of the Claimant's account, with the net amount remaining to be paid directly to the Claimant in the amount of sixty thousand four hundred seventy-eight and 91/100 **($60,478.91)** dollars.

APPENDIX A

Identification of the State Contributions and Deductions from Back Salary Award.

To the State Employees' Retirement System

Employee's contribution to State Employees' Retirement Sys.	**2539.80**
Employee's contribution to FICA	**4119.92**
State's contribution to State Employees' Retirement System	**4021.05**
State's contribution to FICA	**4119.92**

To Illinois State Treasurer to be remitted to Internal Revenue Service:

Claimant's Federal income tax	**12698.99**

To Illinois Department:

Claimant's Illinois Income Tax	**1587.38**

To Office of Employment Security:

Director Dept. of Employment Security	3016.00

To the Claimant:

Net salary	39532.82

Total award $71635.88

(No. 84-CC-3288—Claimant awarded $250,637.50 plus interest.)

JEFFREY D. COLMAN, a partner acting on behalf of the law firm of JENNER & BLOCK, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Order filed November 27, 1984.

JENNER & BLOCK, for Claimant.

NEIL F. HARTIGAN, Attorney General (H. ALFRED RYAN, Assistant Attorney General, of counsel), for Respondent.

SUMMARY JUDGMENTS—*Federal court order that State pay Claimant's attorney fees as prevailing party in Federal court—award granted.* Based on an order of a Federal court requiring the State to pay Claimant an amount for attorney fees as a prevailing party in the Federal court action, an award was granted plus interest, since the Claimant's attorney presented an affidavit representing that the State did not oppose the entry of an order granting an award and the State did not object to the Claimant's motion for summary judgment.

RAUCCI, J.

This cause comes on to be heard on the Claimant's Jeffrey D. Colman, a partner acting on behalf of the law firm of Jenner & Block, motion for summary judgment.

Claimant's claim is founded upon an order of a three-judge District Court in the Northern District of Illinois in the consolidated cases of ***Rybicki v. State Board of Elections,*** No. **81** C **6030;** ***Crosby v. State Board of Elections,*** No. **81** ***C*** **6093;** and ***DelValle v. State Board of Elections,*** No. **81** C **6052.** On April **27,1984,** the three-judge court ordered that Respondent pay Claimant the amount of **$250,670.35** as and for attorney fees as a prevailing party.

Claimant's motion for summary judgment seeks an award in the amount of **$250,670.35** pus **9%** interest per annum pursuant to statute.

The affidavit of Claimant's counsel represents that Respondent does not oppose the entry of an order in accordance with the relief sought, and Respondent in fact has not objected to the motion.

It is therefore ordered, that Claimant, Jeffrey D. Colman, a partner acting on behalf of the law firm of Jenner & Block, is awarded **$250,637.50** plus interest at the rate of **9%** per annum from April **27,1984,** in full and complete satisfaction of this claim.

(No. 85-CC-0036—Claimant awarded $81,180.00 plus interest.)

RAYMOND G. ROMERO ex *rel.* MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND, INC., AND PUERTO RICAN LEGAL DEFENSE AND EDUCATIONAL FUND, INC., Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Order filed December 6,1984.

RAYMOND G. ROMERO, ***pro se,*** for Claimant.

NEIL F. HARTIGAN, Attorney General (H. ALFRED RYAN, Assistant Attorney General, of counsel), for Respondent.

SUMMARY JUDGMENTS—*Federal court* **order that State pay** *Claimant's* **attorney fees as prevailing party in Federal court—award granted.** Based on an order of a Federal court requiring the State to pay Claimant an amount for attorney fees as a prevailing party in the Federal court action, an award was granted plus interest, since the Claimant's attorney presented an affidavit representing that the State did not oppose the entry of an order granting an award and the State did not object to the Claimant's motion for summary judgment.

RAUCCI, J.

This cause'comes on to be heard on the Claimant's Raymond G. Romero, acting on behalf of both the Mexican American Legal Defense and Educational Fund, Inc., and the Puerto Rican Legal Defense and Educational Fund, Inc., motion for summary judgment.

Claimant's claim is founded upon an order of a three-judge district court in the northern district of Illinois in the consolidated cases of ***Rybicki v. State Board of Elections,*** No. 81C 6030; Crosby ***v. State Board of Elections,*** No. 81 C 6093; and *DelValle* ***v. State Board of Elections,*** No. 81 C 6052. On April 27,1984, the three-judge court ordered that Respondent pay Claimant the amount of $81,180.00 as and for attorney fees as a prevailing party.

Claimant's motion for summary judgment seeks an award in the amount of $81,180.00 plus 9%interest per annum pursuant to statute as attorney fees.

The affidavit of Claimant's counsel represents that Respondent does not oppose the entry of an order in accordance with the relief sought, and Respondent in fact has not objected to the motion.

It is therefore ordered, that Claimant, Raymond G.

Romero, acting on behalf of both the Mexican American Legal Defense and Educational Fund, Inc., and the Puerto Rican Legal Defense and Educational Fund, Inc., is awarded $81,180.00 plus interest at the rate of 9% per annum from April 27, 1984, in full and complete satisfaction of his claim.

(No. 85-CC-0212—Claimant awarded $35,998.65.)

CHRISTINE MILLER, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Order filed January 31, 1985.

RAYMOND FUNDERBURK, for Claimant.

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

CIVIL RIGHTS—*sex* ***discrimination—university*** *professor—stipulation—* ***award granted.*** The Claimant, an assistant professor at a State university, was granted an award based on the joint stipulation of the parties pursuant to the investigation and settlement of the claim of sex discrimination she filed before the United States Equal Employment Opportunity Commission, since it was determined that the settlement of the claim by a payment to Claimant in full resolution of all claims arising out of the alleged discrimination would be in the best interest of all concerned.

RAUCCI, J.

This claim is before the Court of Claims following the filing of a joint stipulation whereby the parties agreed as follows:

Respondent Board of Governors of State Colleges and Universities is a body corporate and politic and an agency of the State of Illinois. Ill. Rev. Stat. 1981, ch. 144, par. 1001 et *seq*.

The claim in this cause is made against Respondent in its capacity as an agency of the State of Illinois and is brought under sections 8(a) and (b) of the Court of Claims Act. Ill. Rev. Stat. **1981,** ch. **127,** par. **439.1** ***et seq.***

The claim in this cause is not made under "An Act to Provide for Representation and Indemnification, etc." Ill. Rev. Stat. **1981,** ch. **127,** par. **1301** ***et seq.***

Claimant, Christine Miller, was employed by the Board of Governors of State Colleges and Universities as an Assistant Professor of Marketing at Chicago State University.

Chicago State University is an institution of higher education established by the State of Illinois; operated, managed, controlled and maintained by the Board of Governors of State Colleges and Universities, the Respondent. Ill. Rev. Stat. **1981,** ch. **14,** par. **1101** ***et seq.*** and par. **1001** ***et seq.***

During her employment as an assistant professor of accounting at Chicago State University, Claimant Christine Miller was allegedly discriminated against by reason of her sex in violation of Federal statutory and constitutional rights and prohibitions.

As a result of the alleged discrimination, Claimant Christine Miller filed a grievance against the Board of Governors pursuant to a collective bargaining agreement and filed charges with the United States Equal Employment Opportunity Commission and the Illinois Human Rights Commission.

After thorough investigation and careful consideration of the evidence and arguments in front of the Equal Employment Opportunity Commission, the Board of Governors determined that a settlement of the claim was in the best interest of all concerned. Therefore, a

settlement agreement was entered into by and between the Claimant, Christine Miller, and the respondent, the Board of Governors of State Colleges and Universities. A copy of that agreement is attached to the complaint filed in this matter.

Among other things, said settlement provides for payment of **$35,998.65** to Claimant Christine Miller in full and complete resolution of all claims arising out of the alleged discrimination.

We find that the payment provided for in said settlement agreement should be made and an award of said sum should be made by this Court.

It is therefore ordered that Claimant Christine Miller be, and hereby **is,** awarded the sum of thirty-five thousand, nine hundred ninety-eight dollars and 65/100 **($35,998.65).**

(No. 85-CC-0281—Claimant awarded $35,914.65.)

GARY GREEN, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Order filed January 8, 1985.

DANIEL E. RADAKOVICH, for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

CML RIGHTS—*race discrimination—university* **professor—stipulation—*award* granted.** The Claimant, an assistant professor at a State university, was granted an award based on the joint stipulation of the parties pursuant to the investigation and settlement of the claim of race discrimination he filed before the United States Equal Employment Opportunity Commission, since it was determined that the settlement of the claim by a payment

to Claimant in full resolution of all claims arising out of the alleged discrimination would be in the best interest of all concerned.

MONTANA, J.

This claim is before the Court of Claims following the filing of a joint stipulation whereby the parties agreed as follows:

1. Respondent Board of Governors of State Colleges and Universities is a body corporate and politic and an agency of the State of Illinois. Ill. Rev. Stat. **1981,** ch. **144,** par. **1001** ***et seq.***

2. The claim in this cause is made against Respondent in its capacity as an agency of the State of Illinois and is brought under sections 8(a) and (b) of the Court of Claims Act. Ill. Rev. Stat. **1981,** ch. **127,** par. **439.1** ***et seq.***

3. The claim in this cause is not made under "An Act to Provide for Representation and Indemnification etc." Ill. Rev. Stat. **1981,** ch. **127,** par. **1301** ***et seq.***

4. Claimant, Gary Green, was employed by the Board of Governors of State Colleges and Universities as an assistant professor of accounting at Chicago State University.

5. Chicago State University is an institution of higher education established by the State of Illinois; operated, managed, controlled and maintained by the Board of Governors of State Colleges and Universities, the Respondent. Ill. Rev. Stat. **1981,** ch. **14,** par. **1101** ***et seq.*** and par. **1001** ***et seq.***

6. During his employment as an assistant professor of accounting at Chicago State University, Claimant Gary Green was allegedly discriminated against by reason of his race in violation of Federal statutory and constitutional rights and prohibitions, ***viz:*** **(42** U.S.C. sec.

2000(e) et *seq.*, **42** U.S.C. Sec's. **1983** and **1988,** and the fourteenth amendment to the United States Constitution).

7. As a result of the alleged discrimination, Claimant Gary Green filed a grievance against the Board of Governors pusrsuant to a collective bargaining agreement and filed charges with the United States Equal Employment Opportunity Commission.

8. After thorough investigation and careful consideration of the evidence and arguments in front of the Equal Employment Opportunity Commission, the Board of Governors determined that a settlement of the claim was in the best interest of all concerned. Therefore, a settlement agreement was entered into by and between the Claimant, Gary Green, and Respondent the Board of Governors of State Colleges and Universities. A copy of that agreement is attached to the complaint filed in this matter as Exhibit B.

9. Among other things, said settlement provides for payment of $35,914.65 to Claimant Gary Green in full and complete resolution of all claims arising out of the alleged discrimination.

10. The payment provided for in said settlement agreement and set forth in paragraph **9** above should be made and an award of said sum should be made by this Court.

We have reviewed the record. The stipulation is corroborated by the record. There is nothing more for us to consider. In matters such as the one at bar this court is but a vehicle for payment.

(No. 85-CC-0351—Claimant awarded $55,879.16 plus interest.)

RONALD A. **LIEBMAN,** Claimant, ***v.*** **THE STATE OF ILLINOIS,** Respondent.

Order filed June 10, 1985.

LAWRENCE S. ADELSON, of ISHAM, LINCOLN & BEALE, for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

CIVIL RIGHTS—*race* ***discrimination—university professor—Federal court judgment—stipulation—award granted.*** The Claimant, an assistant professor at a State university, was granted an award, including interest, based on the joint stipulation of the parties following the Claimant's filing of race discrimination charges before the United States Equal Employment Opportunity Commission and the judgment for damages and attorney fees awarded to Claimant in his subsequent civil action in the Federal district court based on those same charges, since the Federal court had jurisdiction to require the State to pay the judgment regardless of any action by the Court of Claims.

MONTANA, C.J.

This claim is before the Court of Claims following the filing of a joint stipulation whereby the parties agreed as follows:

1. Respondent Board of Governors of State Colleges and Universities is a body corporate and politic and an agency of the State of Illinois. Ill. Rev. Stat. **1981,** ch. **144,** par. **1001** ***et seq.***

2. The claim in this cause is made against Respondent in its capacity as an agency of the State of Illinois and is brought under sections 8(a) and (b) of the Court of Claims Act. Ill. Rev. Stat. **1981,** ch. **127,** par. **439.1** ***et seq.***

3. The claim in this cause is not made under "An Act to Provide for Representation and Indemnification etc." Ill. Rev. Stat. **1981,** ch. **127,** par. **1301** ***et seq.***

4. Claimant, Ronald A. Lieman, was employed by the Board of Governors of State Colleges and Universities as an assistant professor in the College of Business and Administration at Chicago State University.

5. Chicago State University is an institution of higher education established by the State of Illinois; operated, managed, controlled and maintained by the Board of Governors of State Colleges and Universities, the Respondent. Ill. Rev. Stat. **1981,** ch. **14,** par. **1101** ***et seq.***

6. During his employment as an assistant professor in the College of Education and Administration at Chicago State University, Claimant was allegedly discriminated against by reason of his race in violation of Title VII of the Civil Rights Act of **1964,** as amended, **42 U.S.C.** sec. 2000(e) ***et seq.***

7. As a result of the alleged discrimination, Claimant filed charges with the Illinois Fair Employment Practices Commission and the United States Equal Employment Opportunity Commission. The **Equal** Employment Opportunity Commission having duly certified that it was unable to complete its investigation within **180** days from the date said charges were filed, the United States Department of Justice issued a Right to Sue Letter to Claimant, who, thereupon, filed his complaint for equitable, declaratory, monetary and other relief as a civil action in the United States District Court of the Northern District of Illinois, Eastern Division, in Cause No. **79** CC **4256,** naming the Respondent Board of Governors of State Colleges and Universities ***et al.*** as defendant. Exhibit A to the complaint in this cause is a true and correct copy of said complaint.

8. On April **23, 1984,** after a trial of the cause, the

district court entered judgment for the Claimant consisting of an award of damages and attorney fees. Exhibit C to the complaint in this cause is a true and correct copy of said Court's Order.

9. Claimant then attempted to collect his judgment in the United States District Court, but was ultimately required to file in the Illinois Court of Claims.

10. Among other things, the United States District Court judgment provided for:

(a) Payment of **$35,879.16** to Claimant, Ronald A. Liebman and

(b) Payment of **$20,000** as reasonable attorney fees and costs.

11. Additionally, the Claimant has here requested interest at the annual rate of **10.81%** from the date the judgment was entered to the date the Court of Claims vouchers the award, all as provided for in 28 U.S.C. sec. **1961.**

12. The payments provided for in said judgment and set forth in Paragraph 10 above should be made and an award of said sums should be made by this Court together with interest thereon as is provided for in 28 U.S.C. sec. **1961.**

We have reviewed the record. The joint stipulation is corroborated by the record. There is nothing more for us to consider. In matters such as the one at bar this Court is but a vehicle for a payment. Actually, whether or not this Court concurs with the parties' joint stipulation and enters an award is immaterial because if the Federal court has jurisdiction to enter an order which is the subject of this claim (and it unquestionably does) the Federal court can enforce its order and require the

State to pay regardless of any action by this Court and/or any action by the legislature.

It is hereby ordered that the Claimant, Ronald A. Leibman, be and is hereby awarded the sum of $35,879.16 plus $20,000.00 in attorney fees plus interest thereon from the date of the judgment entered in the United States District Court at the annual rate of 10.81%.

(No. 85-CC-0364—Claimant awarded $64,903.00 plus interest.)

CAROL MOSELEY BRAUN, Claimant, *v.* **THE STATE OF ILLINOIS,** Respondent.

Order filed November 27,1984.

CAROL MOSELEY BRAUN, ***pro se,*** for Claimant.

NEIL F. **HARTIGAN,** Attorney General (H. ALFRED RYAN, Assistant Attorney General, of counsel), for Respondent.

SUMMARY JUDGMENTS—***Federal court order that State pay for services and Claimant's attorney fees—award granted.*** Based on an order of a Federal court requiring the State to pay Claimant an amount for attorney fees as a prevailing party and to pay a third party for services, an award was granted plus interest, since the Claimant's attorney presented an affidavit representing that the State did not oppose the entry of an order granting an award and the State did not object to the Claimant's motion for summary judgment.

RAUCCI, J.

This cause comes on to be heard on the Claimant Carol Moseley Braun's motion for summary judgment.

Claimant's claim is founded upon an order of a three-judge district court in the northern district of Illinois in the consolidated cases of ***Rybicki v. State Board of Elections,*** No. 81 C 6030; **Crosby *v. State***

Board of Elections, No. 81 C 6093 and ***DelValle v. State Board of Elections,*** No. 81 C 6052. On April 27,1984, the three-judge court ordered that Respondent pay Claimant the amount of $14,903.00 as and for attorney fees as a prevailing party, and to pay National Technologies Unlimited the amount of $50,000.00 for services.

Claimant's motion for summary judgment seeks an award in the amount of $14,903.00 plus 9% interest per annum pursuant to statute as attorney fees, and the amount of $50,000.00 plus 9% interest per annum for National Technologies Unlimited.

The affidavit of Claimant's counsel represents that Respondent does not oppose the entry of an order in accordance with the relief sought, and Respondent in fact has not objected to the motion.

It is therefore ordered, that Claimant, Carol Moseley Braun, is awarded $14,903.00 plus interest at the rate of 9% per annum from April 27, 1984, in full and complete satisfaction of her claim, and the amount of $50,000.00 plus interest at the rate of 9% per annum from April 27, 1984, in full and complete satisfaction of the amount due National Technologies Unlimited.

(No. 85-CC-0489—Claimant awarded $11,600.00 plus interest.)

RICHARD H. **NEWHOUSE, JR., Claimant,** *v.* **THE STATE OF ILLINOIS,** Respondent.

Order filed November 27,1984.

JENNER & BLOCK, for Claimant.

NEIL F. HARTIGAN, Attorney General (H. ALFRED RYAN, Assistant Attorney General, of counsel), for Respondent.

SUMMARY JUDGMENTS—*Federal court order that State pay Claimant's attorney fees as prevailing party in Federal court—award granted.* Based on an order of a Federal court requiring the State to pay Claimant an amount for attorney fees as a prevailing party in the Federal court action, an award was granted plus interest, since the Claimant's attorney presented an affidavit representing that the State did not oppose the entry of an order granting an award and the State did not object to the Claimant's motion for summary judgment.

RAUCCI, J.

This cause comes on to be heard on the Claimant Richard H. Newhouse, Jr.'s motion for summary judgment.

Claimant's claim is founded upon an order of a three-judge district court in the northern district of Illinois in the consolidated cases of ***Rybicki v. State Board of Elections,*** No. 81 C 6030, ***Crosby v. State Board of Elections,*** No. 81 C 6093 and ***DelValle v. State Board of Elections,*** No. 81 C 6052. On April 27,1984, the three-judge court ordered that Respondent pay Claimant the amount of $11,600.00 as and for attorney fees as a prevailing party.

Claimant's motion for summary judgment seeks an award in the amount of $11,600.00 plus 9%interest per annum pursuant to statute.

The affidavit of Claimant's counsel represents that Respondent does not oppose the entry of an order in accordance with the relief sought, and Respondent in fact has not objected to the motion.

It is therefore ordered, that Claimant, Richard H. Newhouse, Jr., is awarded $11,600.00 plus interest at the rate of 9% per annum from April 27, 1984, in full and complete satisfaction of this claim.

(Nos. 85-CC-0715, 85-CC-0586, 85-CC-0558, 85-CC-0554, 85-CC-0545 not cons.—Claimant in No. 85-CC-0545 awarded $504.20; other claims dismissed.)

AURORA COLLEGE et *al.*, Claimants, *v.* **THE STATE OF ILLINOIS,** Respondent.

Opinion filed February 21, 1985.

AURORA COLLEGE, ST. FRANCIS COLLEGE, ROOSEVELT UNIVERSITY, GOVERNORS STATE UNIVERSITY, pro *se*, for Claimants.

F. ANNE ZEMEK, for Claimant COMMUNITY COLLEGE DISTRICT 508.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN,, Assistant Attorney General, of counsel), for Respondent.

LAPSED APPROPRIATIONS—***no award may be granted when no funds lapsed.*** There is a long-standing fundamental rule of law in the Court of Claims, with certain extremely narrow exceptions, that no award can be made in a lapsed appropriation case when no funds lapsed, and where an insuffficient amount of funds lapsed to pay all the claims, an award is made of the balance remaining to the earliest filing Claimants until the balance has been exhausted.

SAME—***tuition claims—Scholarship Commission lapsed funds insufficient to pay all claims—award granted to earliest filing Claimant.*** Where several colleges filed claims against the Illinois State Scholarship Commission for tuition payments for students with Illinois State Scholarships, an award was granted only to the earliest filing Claimant, since insufficient funds had lapsed to pay all the claims, and the award to the earliest filing Claimant exhausted the lapsed balance.

ROE, C.J.

These five claims have been brought against the Respondent's Illinois State Scholarship Commission for tuition payments for students with Illinois State Scholarships who were properly enrolled and certified for payment. All of the Claimants have alleged that they made demand for payment but that their demand was refused on the grounds that the funds appropriated for the

payments have lapsed. The Respondent has stipulated to payment of one of the claims and has moved to dismiss the others. A departmental report, which is prima facie evidence of the facts contained therein pursuant to Rule 14 of the Rules of the Court of Claims, was attached to and incorporated in the stipulation and the motion. None of the Claimants filed responses and the time for doing so has elapsed.

Aurora College filed its claim on October 26, 1984, and it seeks $733.33. The reason stated in the departmental report why the college was not paid prior to the lapsing of the funds was that the student had filed an appeal and was then granted a scholarship for the third quarter of the 1983-84 school year (Respondent's fiscal year 1984).

St. Francis College filed its claim on October 15, 1984, and it seeks $1,525.00. The reason stated in the departmental report why the college was not paid prior to the lapsing of the funds was that the college had incorrectly coded the students as having total refunds.

Community College District 508 filed its claim on October 11, 1984, and it seeks $13,066.00. The reason stated in the departmental report why it was not paid prior to the lapsing of the funds is that the Illinois State Scholarship Commission did not have the funds to pay the Loop College for the students for which reimbursement was sought for the 1983-84 school year.

Governors State University filed its claim on October 11,1984, and it seeks $473.00. The reason stated in the departmental report why it was not paid prior to the lapsing of the funds is as follows:

"Student was not included in the second semester payout in error. We owe $473.00 to the school."

Roosevelt University filed its claim on October 10, 1984, and it seeks $1,100.00. The reason stated in the

departmental report why it was not paid prior to the lapsing of the funds was that the student was coded by the university as not being registered.

The latest filed departmental report states that $2,100.20 of the line item appropriation for these scholarships was all that lapsed and that claims totalling $18,493.33 have been filed against that lapsed money. It is a long-standing fundamental rule of law in this Court that, barring certain extremely narrow exceptions not applicable here, an award cannot be made in a lapsed appropriation claim where no funds lapsed. Where an insufficient amount of funds lapsed, an award is made of the balance remaining only. It is not an infrequent situation that, as with the claims at bar, numerous claims are filed against a lapsed balance insufficient to cover all the claims. When this happens and the Court has actual knowledge of it, it has been our policy to make awards to the earliest filing Claimants until the lapsed balance has been exhausted. We have considered alternatives and have decided that, while this policy is not free from criticism, the alternatives are too impractical, unworkable, or too unfair.

Previously awarded claims have exhausted all but $504.20 of $2,100.20 which lapsed. Respondent stipulated to payment of that sum to St. Francis College and moved to dismiss the claims of the others on the grounds that insufficient funds lapsed to pay them. For the reason stated above we feel that said sum should be awarded to Roosevelt University which filed its claim the earliest. Accordingly, it is hereby ordered that Roosevelt University, in claim number 85-CC-0545, be and hereby is awarded the sum of $504.20 and the other claims are hereby dismissed.

(No. 85-CC-1114—Claim dismissed.)

WAY-KEN CONTRACTORS SUPPLY, Claimant, *v.* THE STATE OF ILLINOIS, Respondent.

Order filed March 20, 1985.

WAY-KEN CONTRACTORS SUPPLY, pro se, for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

INTEREST—***when interest penalty is allowed on State's bills.*** Payment of an interest penalty of 1% is allowed on the State's bills unpaid after 60 days after the receipt of the bill (Ill. Rev. Stat. 1983, ch. 127, par. 132.401 ***et seq.).***

SAME—interest not allowed after agency's ability to pay ends. The statute pertaining to interest on the State's bills does not authorize interest on matters pending in the Court of Claims, and it does not authorize interest after the agency's legal ability to pay has ended (Ill. Rev. Stat. 1983, ch. 127, par. 132.401 ***et seq.).***

LAPSED APPROPRIATIONS—***interest on bills denied.*** The Claimant was denied accrued interest on outstanding bills for which Claimant subsequently received payment pursuant to filing lapsed appropriation claims, since the ability of the State agency owing the bills to make payment ended before the statutory obligation to pay an interest penalty commenced.

ROE, C.J.

This cause comes on to be heard on the motion by the Respondent to dismiss, due notice having been given, and the Court being fully advised;

The Court finds:

1. The motion at bar was brought pursuant to section 2—619(a)(9) of the Code of Civil Procedure (Ill. Rev. Stat. 1983, ch. 110, par. 2—619(a)(9)).

2. Claimant filed this action as a lapsed appropriation matter and based its claim on "An Act to require prompt payments by the State of Illinois for goods and services" (Ill. Rev. Stat. 1983, ch. 127, par. 132.401 et *seq.*).

3. Claimant seeks accrued interest on several outstanding bills for machine repair work done for the Illinois Department of Transportation. This claim is for interest on $2,180.30 and $24.00, the amounts of the outstanding bills, for the periods of September 7, 1983, and August 8,1983, to October 12,1984.

4. Claimant previously filed, on November 28, 1983, a claim with this Court for payment of those outstanding bills which the Department of Transportation was no longer able to pay due to the lapsing of the appropriation. An award was made on that action, docket number 84-CC-1221, on March 20, 1984. Claimant received payment of its award on October 12, 1984.

5. "An Act to require prompt payments . . ." authorizes payment of an interest penalty of 1% on the State's bills unpaid after 60 days after the receipt of the bill.

6. The bills at issue herein were received by the Department of Transportation less than 60 days prior to the end of the 90-day grace period following the end of the fiscal year and the Department's ability to pay those bills. After September 30 the Department was unable, by law, to pay any bills for the prior fiscal year and any vendors with unpaid bills had to file in the Court of Claims for payment.

7. This Court has previously ruled, in OK *Electric v. State,* 84-CC-2736 (order filed September 7, 1984), that "An Act to require prompt payments . . ." does not authorize interest on matters pending in the Court of Claims nor does it authorize interest after the agency's legal ability to pay has ended.

8. The ability of the Department of Transportation

to pay the bills at issue herein ended before the State's obligation to pay a 1% interest penalty began.

Wherefore, it is hereby ordered that the claim herein be, and hereby is, dismissed.

(No. 85-CC-1686—Claim dismissed.)

GREGORY MACON, Claimant, *v.* **THE STATE OF ILLINOIS,** Respondent.

Order filed June 10, 1985.

GREGORY MACON, pro **se,** for Claimant.

NEIL F. HARTIGAN, Attorney General (G. **MICHAEL TAYLOR,** Assistant Attorney General, of counsel), for Respondent.

PRISONERS AND INMATES—*inmate* not allowed to attend mother's funeral—claim dismissed. The Court of Claims dismissed an inmate's action, alleging that the Department of Corrections was negligent in failing to allow him to attend his mother's funeral, even though the complaint alleged mental suffering, since Claimant failed to allege any physical impact or sympton, and, in addition, based on Claimant's record during his incarceration, the Department did not abuse its administrative discretion in refusing to grant Claimant a funeral furlough.

MONTANA, C.J.

This cause having come for consideration on the Respondent's motion to dismiss and the Court being duly advised in the premises:

Finds, that Claimant's complaint states that the negligence of the Illinois Department of Corrections resulted in his not being allowed to attend his mother's funeral. He seeks $15,000.00 as compensation for mental suffering. Respondent has moved to dismiss the complaint for failure to state a cause of action.

While Claimant's complaint does allege mental suffering, it does not allege any physical impact or symptom as a result thereof. No recovery may be had for the negligent infliction of mental distress, absent some physical manifestation of the distress. See ***Daniels v. Adkins Protective Service, Inc.*** (Miss. 1971), *247* So. 2d **710** (no recovery from mental distress absent physical injury or physical manifestation of distress).

Further, the granting of a funeral furlough is a matter of administrative discretion. Based upon Claimant's record compiled during his incarceration, it cannot be said that the discretion of the Department of Corrections was abused. Hence, this Court will not review the exercise of 'such discretion. Holmes ***v. State*** (1978), 32 Ill. Ct. Cl. **275.**

LAW ENFORCEMENT OFFICERS, CIVIL DEFENSE WORKERS, CIVIL AIR PATROL MEMBERS, PARAMEDICS AND FIREMEN COMPENSATION ACT

Where a claim for compensation filed pursuant to the Law Enforcement Officers, Civil Defense Workers, Civil Air Patrol Members, Paramedics and Firemen Compensation Act (Ill. Rev. Stat., ch. 48, par. 281 et *seq.*), within one year of the date of death of a person covered by said Act, is made and it is determined by investigation of the Attorney General of Illinois as affirmed by the Court of Claims, or by the Court of Claims following a hearing, that a person covered by the Act was killed in the line of duty, compensation in the amount of $20,000.00 or $50,000.00 if such death occurred on or after July 1, 1983, shall be paid to the designated beneficiary of said person or, if none was designated or surviving, then to such relative(s) as set forth in the Act. The following reported opinions include all such claims resolved during fiscal year 1985.

OPINIONS PUBLISHED IN FULL FY 1985

(No. 81-CC-2297—Claim denied.)

***In re* APPLICATION OF MARGARET WATSON.**

Opinion filed April 12, 1984.

Order on denial of petition for rehearing filed July 11, 1984.

MICHAEL B. MCCLELLAN, for Claimant.

NEIL F. HARTIGAN, Attorney General (KATHLEEN O'BRIEN, Assistant Attorney General, of counsel), for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT—*what necessary to recover under Law Enforcement Officers and Firemen*

Compensation Act. In order to recover under the Law Enforcement Officers and Firemen Compensation Act, it must be shown that the officer involved was killed in the line of duty as defined in the Act, and "killed in the line of duty" has been defined as losing one's life as a result of an injury arising from violence or other accidental cause during the active performance of duties, and the death occurs within one year from the date the injury was received.

SAME—*police* **officer—heart attack—not in** *line* **of duty—claim denied.** No award was granted for the death of a police officer due to a heart attack, even though the death occurred several days after the officer was cut on the finger while arresting a knife-wielding woman, since the failure to show a causal connection between the heart attack and the incident in which the officer was cut on the finger precluded Claimant from proving that the officer was killed in the line of duty as required by the Act.

ROE, C.J.

The Claimant seeks an award as the statutory beneficiary of Police Officer Curtis Watson pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," (hereinafter, the Act). Ill. Rev. Stat. 1981, ch. 48, par. 281 *et seq.*

The Court has carefully considered the application for benefits and documents submitted in support thereof, a written statement of the decedent's supervising officer, a report by the Illinois Attorney General's Office, an evidence deposition, and a commissioner's report submitted following the filing of a joint stipulation in which both parties agreed to submit the matter to the Court on evidence depositions to be filed with the Court. It was also agreed in the stipulation that briefs were to be waived.

The record shows that the decedent, Curtis Watson, was involved with the arrest of a knife-wielding woman on April 4, 1980, and that in the ensuing struggle to subdue the suspect, he was cut on the finger. Immediately after the arrest he was treated at Mercy Hospital in Champaign, Illinois, and found to have high blood pressure in addition to the finger injury. On April 25, 1980, he collapsed while on duty at 11:01 p.m. and was

declared dead at 12:16 a.m. on April 26,1980. The cause of death was "Acute Cardiac Failure" due to "Interstitial Myocarditis" (inflammation of the heart muscle).

In order to recover under the Act it must be shown that the officer was killed in the line of duty as defined by the Act. Section 2(e) of the Act provides, in relevant part, that " 'killed in the line of duty' means losing one's life as a result of injury received in the active performance of duties as a law enforcement officer * * * if the death occurs within one year from the date the injury was received and if that injury arose from violence or other accidental cause."

The evidence deposition of Dr. Jose Racquel shows that he thought there was a possibility that an infection caused by the knife wound brought on the heart attack; however, he stated he could not be sure this is what happened and could not be sure that the incident of April 4, 1980, was the cause. Neither could the coroner nor the pathologist, in their reports, state with any certainty what caused the inflammation of the heart and the resulting heart attack.

While the death of Officer Watson was certainly unfortunate, we find that the Claimant has failed to show that Officer Watson was killed in the line of duty as required by the Act. It has not been proven that he lost his life as a result of injury received in the active performance of duties as a law enforcement officer because a causal connection has not been adequately shown between the incident of April 4, 1980, and the decedent's death on April 26,1980. Therefore, this claim must be denied.

It is hereby ordered that this claim be, and hereby is, denied.

ORDER ON DENIAL OF PETITION FOR REHEARING

ROE, C.J.

This cause is before the Court on Claimant's petition for rehearing.

In an opinion dated April 12, 1984, this Court determined that the Claimant was not entitled to compensation pursuant to the Law Enforcement Officers and Firemen Compensation Act (Ill. Rev. Stat. 1981, ch. 48, par. 281 et *seq.*) (hereinafter referred to as the Act), because she had failed to show that the decedent was killed in the line of duty as required by section 2(e) of the Act. The Claimant contends in her petition for rehearing that we overlooked certain evidence in reaching our decision to deny compensation.

We disagree with the Claimant's contention. All of the evidence which the Court supposedly overlooked was considered in reaching our decision to deny compensation. Since the petition for rehearing fails to state any points overlooked or misapprehended by the Court, the petition must be denied.

It is hereby ordered that Claimant's petition for rehearing be, and hereby is, denied.

(No. 82-CC-0483—Claim denied.)

In re APPLICATION OF BERTHA PAPPALARDO.

Opinion *filed March 25, 1985.*

Order filed June 3, 1985.

TULLY, RODDY & WEINSTEIN, for Claimant.

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

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT—*what* necessary to recover under Law Enforcement Officers and Firemen Compensation Act. In order to recover under the Law Enforcement Officers and Firemen Compensation Act, it must be shown that the officer involved was killed in the line of duty as defined in the Act, and "killed in the line of duty" has been defined as losing one's life as a result of an injury arising from violence or other accidental cause during the active performance of duties, and the death occurs within one year from the date the injury was received.

SAME—*police* officer—heart attack—no *injury—claim* denied. The Claimant was denied recovery under the Law Enforcement Officers and Firemen Compensation Act for the death of her husband, a police officer, due to a heart attack, since the evidence failed to disclose any injury or unusual job-related stress prior to the heart attack, and therefore Claimant was unable to show that her husband was killed in the line of duty for purposes of the Act, because his death did not arise from "violence or other accidental cause."

ROE, C.J.

This is a claim for benefits filed pursuant to the Law Enforcement Officers, Civil Defense Workers, Civil Air Patrol Members, Paramedics and Firemen Compensation Act (Ill. Rev. Stat., ch. **48,** par. 281 et ***seq.)*** (hereinafter referred to as the Act) by Bertha Pappalardo, widow of Police Sergeant Carmen Pappalardo, who died of an acute inferior wall myocardial infarction due to or as a consequence of coronary heart disease after being on duty for the City of Chicago. Mrs. Pappalardo was named the sole beneficiary of any award authorized by this Court.

The record consists of the claim, designation of beneficiary, statement of supervising officer, certificate of death, Attorney General's report, partial stipulation of facts, evidence deposition of Claimant's expert witness, and briefs and arguments submitted by counsel for both parties. Based on the record, the commissioner has duly

filed his report and the matter is now before us for a decision.

The sole issue is whether Officer Carmen Pappalardo's death meets the requisite of being "killed in the line of duty" as defined in section 2(e) of the Act which provides, in relevant part, that " 'killed in the line of duty' means losing one's life as a result of injury received in the active performance of duties as a law enforcement officer * * * 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.,'

The record reflects that Officer Carmen Pappalardo was an area administrative sergeant performing clerical duties prior to his death on August **19, 1981.** On the Saturday preceding his death, he complained of chest pains and nausea. On August **17,1981,** he was seen by his physician and given an EKG which was noted to be abnormal. On Tuesday, August **18, 1981,** he continued to experience chest pains and left work early. The next morning he was taken by ambulance to Weiss Memorial Hospital where he was pronounced dead several hours Iater. The cause of death was acute myocardial infarction.

The record further reflects that Dr. William Wehrmacher, who testified as an expert witness for Claimant, did not establish a causal connection between the decedent's duties as an area administrative sergeant and his death. The doctor noted that the decedent was both physically and emotionally predisposed to heart disease and that it was likely that he would have died of a heart attack in any job that subjected him to stress. In addition, he noted the likelihood of his dying of a heart attack was enhanced by the decedent's cigarette smoking and being overweight. Finally, there is no

evidence that unusual stress was present on the decedent's last day of work.

Although coverage of the Act is not limited to healthy persons, the preponderance of the evidence shows that Claimant's decedent was not killed in the line of duty, as defined under section 2(e) of the Act and the guidelines set forth by the Court of Claims, as his death did not arise from "violence or other accidental cause" since no injury, or other unusual force, has been shown which might have caused the heart attack. (See *Wierciak v. State* (1981), *34* Ill. Ct. C1.302; *McNamara v. State,* 81-CC-2814 (opinion filed August 23, 1982).) In the *McNamara* case, the Court said at page 3 of the opinion:

"Clearly there can be no recovery under the statute if Captain McNamara was not first injured. Death alone is not sufficient. It must be preceded by an 'injury.' In all cases involving death by 'heart attack' an effort is made to pin-point injury which triggered the fatal attack."

While the death of Sargeant Pappalardo was certainly unfortunate, we find that it has not been shown that he was killed in the line of duty as is required for recovery under the Act. Therefore this claim must be denied.

It is hereby ordered that this claim be, and hereby is, denied.

ORDER

MONTANA, C.J.

Claimant has filed a petition for rehearing. The Court has reviewed the petition, its original opinion and the record in this case. Unfortunately, no basis exists for the Court modifying its opinion filed March 25, 1985. The petition for rehearing is denied.

LAW ENFORCEMENT OFFICERS, CIVIL DEFENSE WORKERS, CIVIL AIR PATROL MEMBERS, PARAMEDICS AND FIREMEN COMPENSATION ACT

OPINIONS NOT PUBLISHED IN FULL FY 1985

Where the Attorney General's investigation determines that claim is within the scope of Act claim will be allowed.

84-CC-0371	King, Michael, son of Frieda Bell King, deceased	$20,000.00
84-CC-2123	Lynch, Lorraine M.	50,000.00
84-CC-2689	Collins, Joyce A.	50,000.00
84-CC-2780	Walsh, Silvia	20,000.00
84-CC-3029	Brandon, Matthew, Jr.	50,000.00
84-CC-3604	Foecking, Joanne E.	50,000.00
85-CC-0488	Murrin, Pamela	50,000.00
85-CC-0535	Clarke, Robert E.	50,000.00
85-CC-0676	Hanner, Levernia Eckles & Eckles, Eleanor	50,000.00
85-CC-1464	Kenneally, Jane	50,000.00

CASES IN WHICH ORDERS OF AWARDS WERE ENTERED WITHOUT OPINIONS FY 1985

82-cc-2522	Computer Equipment Services, Inc.	$ 7,488.42
83-CC-0552	Miletto, Andrew & Evelyn B.	800.00
83-CC-0944	Hendrixson & Sons	500.00
83-CC-1219	Franco, Ofelia C.	450.00
83-CC-1523	Francisco, Connie Lee	1,000.00
83-cc-2681	Stephenson, Kenneth	50.00
83-cc-2690	Xerox Corp.	194.69
83-cc-2821	Catholic Charities of the Archdiocese of Chicago	55,846.67
84-CC-0507	Jenner & Block	48,716.82
84-cc-1284	Pollock, Charles W.	30.00
84-cc-1363	Nelson, Rebecca S.	315.28
84-CC-1462	Mantei, Ludwig & Elsie	12.00
84-cc-1991	Kankakeeland Community Action Program	8,051.36
84-CC-2077	King, Wesley C., Jr.	1,015.00
84-CC-2662	Wade, Raymond	15.00
84-cc-2699	Illinois Department of Public Aid, Daniel T. Walsh, Custodian PCF	17.18
84-CC-2734	Veterans' Administration	37,500.00
84-CC-2762	James, Harold G.	15.00
84-CC-2767	Leff, Mack B.	50.00
84-CC-2791	Huot, Lawrence	184.12
84-CC-2930	Flanagan, Joseph F.	12.00
84-CC-2932	Strauss, Charles R.	25.00
84-CC-3034	Cook County Comptroller, Thomas P. Beck	1,970.00
84-CC-3168	Walters, Gary	321.27
84-CC-3191	Pearson, Vicki S.	25.00
84-cc-3205	Cantrell, Troy S.	15.00
84-CC-3298	Ross, Clyde	1,000.00
84-cc-3557	Sonnenschein Carlin Nath & Rosenthal	100,848.27
84-CC-3558	Piers, Matthew J., Esq., et al.	11,683.23
84-cc-3582	Baldwin, Roger, Foundation of ACLU	11,127.63
85-cc-0083	Zack, Jean	25,937.29
85cc0188	Dahlin, Warren M., Jr. & Joanne	48.18
85-CC-0236	Veterans' Administration	3,069.73
85-cc-0239	Ohio, State of	6,855.98
85-CC-0247	Edquist, Earl L.	250.00

85-cc-0249	Illinois Bell Telephone Co.	1,030.75
85-CC-0310	Kimball, Harold M.	180.65
85-CC-0360	Mottley, Gregory	30.00
85-cc-0473	Rouse, Sharon A.	873.00
85-cc-0484	Thomas, Donna	2,500.00
85-CC-0532	Thomas, Jeanne	468.17
85-CC-0555	Fox Valley Insurance	50.00
85-CC-0563	Pohn, Joan S.	15.00
85-CC-0788	Rocker, Phillip	48.00
85-CC-0848	Greenbrier Insurance	100.00
85-CC-0894	Corcoran, Brian F.	15.00
85-cc-1006	Hindert, Jan Dougherty	30.00
85-CC-1320	Minton, D. Rennie	30.00
85-cc-1441	Midwest Pre-School	252.00
85-CC-1876	Brown, Charles	1,322.80
85-CC-1877	Fry, James W.	1,322.80
85-CC-1878	DeLong, John R.	526.40
85-CC-1879	Jackson, Hardie	365.00
85-cc-1910	Reid, Mark W.	300.00

CASES IN WHICH ORDERS OF DISMISSAL WERE ENTERED WITHOUT OPINIONS FY 1985

6697	Benjamin, Wilbur H.
74-CC-0393	Laughlin, Daniel W.; Adm. of the Estate of Kevin Daniel Laughlin, Deceased
76-CC-0338	Presto, Frank
77-CC-0372	Kline, David
77-CC-1104	Robinson, Catherine
78-CC-0130	Preston, Raymond D.
78-CC-0577	Country Mutual Insurance Co.
78-CC-1225	Champaign, County of
78-CC-1298	Homewood Rehabilitation Center
79-CC-0154	Scanlon, Margaret; & Renehan, Dawn; a Minor by Lawrence Renehan, her Father & next Friend
79-CC-0594	Thompson, Gail
79-CC-0842	Speller, Herbert
80-CC-1156	American Bankers Life Assurance Co. of Florida
80-CC-1335	Bolshon, Herbert R. & Rose
80-CC-2033	Gutierrez, Alejandro; Ind. & as Father & next Friend of Laura Gutierrez & Alejandro Gutierrez
81-CC-0295	Gallagher Bassett Insurance Service; Subrogee of All Saints Cemetery
81-CC-0326	Coleman, Sequito; a Minor by his Parents & Next Best Friend; Alvin & Edna Coleman
81-CC-0743	Lewis, Marge
81-CC-1555	Roseland Buick Sales, Inc.
81-CC-1939	Groves, S. J., & Sons Co.
81-CC-1955	Garza, Joseph C.
81-CC-2178	Northwestern Memorial Hospital
81-CC-2315	Ferreira, Marie & Ferreira, Kathryn Anne; Adm. of the Estate of Richard C. Ferreira
81-CC-2340	Brown, Alice M.; Adm. of the Estate of Lawrence G. Brown, Deceased
82-CC-0065	Freeman, Edward
82-CC-0175	Xerox Corp.
82-CC-0180	Xerox Corp.
82-CC-0210	Meza, Victor

82-CC-0259	Madden, Thomas M., Co.
82-CC-0302	Koches, Kenneth L.
82-CC-0308	Coggins, Donald R.
82-CC-0447	Illinois Power Co.
82-CC-0671	Slayton, Harriet; Ind. & as Adm. of the Estate of Andrew F. Slayton, Deceased
82-CC-0795	Brooks, Shirley; Special Adm. of the Estate of Ernest Brooks, Deceased
82-CC-1031	Neathammer, Francis E.; Guardian of the Estate of Mark Gregory Neathammer, a Disabled Person
82-CC-1032	Maskowski, John
82-CC-1076	Mercy Hospital & Medical Center
82-CC-1077	Mercy Hospital & Medical Center
82-CC-1175	Xerox Corp.
82-CC-1178	Xerox Corp.
82-CC-1179	Xerox Corp.
82-CC-1180	Xerox Corp.
82-CC-1181	Xerox Corp.
82-CC-1182	Xerox Corp.
82-CC-1215	National Aviation Underwriters, et al.
82-CC-1260	Browne, Michael
82-CC-1412	Kiesselbach, Wilhem J.
82-CC-1414	Kelly, Thomas
82-CC-1496	Cunningham, Earl, Jr.
82-CC-1738	Treister Orthopaedic Services
82-CC-1740	Treister Orthopaedic Services
82-CC-1746	Treister Orthopaedic Services
82-CC-1748	Treister Orthopaedic Services
82-CC-1752	Skokie, Village of
82-CC-1803	Xerox Corp.
82-CC-2045	Springfield Internal Medicine
82-CC-2097	McGaw, Foster G., Loyola University
82-CC-2098	McGaw, Foster G., Loyola University
82-CC-2099	McGaw, Foster G., Loyola University
82-CC-2100	McGaw, Foster G., Loyola University
82-CC-2103	McGaw, Foster G., Loyola University
82-CC-2104	McGaw, Foster G., Loyola University
82-CC-2105	McGaw, Foster G., Loyola University
82-CC-2106	McGaw, Foster G., Loyola University
82-CC-2209	LaSalle National Bank
82-CC-2242	Mercy Center for Health Care Services

82-CC-2264	Ryan, Robert Allen; Special Adm. of the Estate of Richard Winslow Ryan, Dec'd.
82-CC-2293	Holland, John
82-CC-2238	Treister Orthopaedic Services, Ltd.
82-CC-2358	Feldman, Audra; a Minor by & through her Father & next Friend, Jack Feldman
82-CC-2440	St. Joseph Hospital
82-CC-2472	Henderson, Ricky L.
82-CC-2478	Petruzzelli, Janice; Ind. & as Spec. Adm. of the Estate of Dominic Petruzzelli, Deceased
82-CC-2515	La Salle National Bank, as Trustee under Trust 103399 & Maurice R. Kay
82-CC-2523	Bertram, Rosamon L.
82-CC-2551	Nagel, Dale A.
82-CC-2722	Lowe, Viola C. & Amica Mutual Insurance Co.
82-CC-2737	Martin, Geraldine
82-CC-2750	Manzella, Joseph
83-cc-0099	Ferris, Joseph K.
83-CC-0303	Kave, Lorraine J. & Kave, Herbert A., Sr.
83-CC-0318	Finis, Martin W.
83-CC-0377	Xerox Corp.
83-cc-0384	Anton, Andrew & Bess
83-CC-0405	Consolo, David J. & Ramona
83-CC-0421	Illinois Bell Telephone Co.
83-CC-0463	Mercy Center for Health Care Services
83-CC-0594	Smith, Dale M.
83-CC-0598	Savin Corp.
83-CC-0654	Tidwell, James Albert
83-cc-0693	McGaw, Foster G., Loyola University
83-CC-0696	Illinois Bell Telephone Co.
83-CC-0765	Capparrelli, Dominic
83-CC-0797	Mitchell, Charles
83-CC-0806	Anderson, Nikki
83-cc-0834	Woodruff, Hubert W., II
83-CC-0937	Carlson, Larry, & Assoc., Inc.
83-CC-1007	Thompkins, Kenneth A.
83-CC-1151	St. Anthony Hospital
83-cc-1210	Essey-Haven
83-CC-1376	Henderson, James R.
83-CC-1378	Family Medical Center
83-CC-1504	Thompson, Shirley

83-CC-1528	Roseland Community Hospital
83-CC-1568	Chicago, University of, Hospital
83-CC-1589	Chicago, University of, Hospital
83-CC-1600	Williams, Michael Jon; for the use of Allstate Insurance co.
83-CC-1612	Ravenswood Hospital Medical Center
83-CC-1631	Ravenswood Hospital Medical Center
83-cc-1641	Ravenswood Hospital Medical Center
83-CC-1655	Dukett, Robert
83-CC-1687	Chicago, University of, Hospital
83-CC-1773	Franciscan Sisters Health Care Corp., d/b/a St. Elizabeth Hospital of Danville, Ill.
83-CC-1836	Grover, John Allen; Administrator of the Estate of Randi Kay Grover, a minor, Deceased
83-CC-1838	Fain, Kenneth
83-CC-1843	St. Therese Hospital
83-CC-1929	Baley, Frank J.
83-CC-2015	Fayette County Hospital
83-CC-2029	Ravenswood Hospital Medical Center
83-CC-2031	Ravenswood Hospital Medical Center
83-cc-2035	Ravenswood Hospital Medical Center
83-CC-2157	McTush, John L.
83-CC-2159	Princeton Optometric Center
83-CC-2188	Thompson Electronics Co.
83-CC-2189	Twin County Trucking, Inc.
83-CC-2218	Inglot, Mary
83cc2261	Bassuk, Angel, M.D.
83-CC-2272	Loyola Medical Practice Plan
83-CC-2305	Southwest Pediatrics, Ltd.
83-cc-2311	Express Freight Lines, Inc.
83-cc-2322	Northwestern Memorial Hospital
83cc2321	Northwestern Memorial Hospital
83-CC-2327	Evans, Barbara
83-CC-2330	Xerox Corp.
83-cc-2384	St. Paul Fire & Marine Insurance Co., As Subrogee of Flash Interstate Delivery System, Inc.
83-cc-2109	Northwest Community Hospital
83-CC-2427	Northwest Community Hospital
83-CC-2437	Higgins, Susan
83-cc-2439	Public Aid, Illinois Department of
83-cc-2440	Public Aid, Illinois Department of

83-cc-2447	Saleda, Paula
83-CC-2450	Wolff, Bruce L.
83-CC-2460	Wolff, Bruce L.
83-CC-2463	Fayette County Hospital
83-CC-2475	Loyola Medical Practice Plan
83-cc-2500	Northwest Community Hospital
83-CC-2517	Rathi, Manohar, M.D.
83-CC-2562	Shaw, Richard C., M.D.
83-CC-2620	St. Anthony Hospital
83-cc-2640	Frost, Evelyn
83-CC-2678	Elzainy, Medhat
83-CC-2713	Maywood Associates, Inc.
83–CC-2760	Jackson, Louis
83-CC-2776	Reese, Michael, Hospital
83-CC-2785	MacNeal Memorial Hospital
83-CC-2791	Ravenswood Hospital Medical Center
83-CC-2793	Ravenswood Hospital Medical Center
83-CC-2798	Kudela, Sheila L.
83-cc-2811	Sytsma, John, M.D.
83-CC-2815	St. Anthony Hospital
83–CC-2816	Weiss, Louis A., Memorial Hospital
83-CC-2818	St. Anthony Hospital
83-cc-2819	Weiss, Louis A., Memorial Hospital
83-cc-2825	Xerox Corp.
83-CC-2834	Xerox Corp.
83-CC-2836	Jemison, Ecola
84-CC-0007	MacNeal Memorial Hospital
84-CC-0080	St. Anthony Hospital
84-CC-0081	Weiss, Louis A., Memorial Hospital
84-CC-0082	MacNeal Memorial Hospital
84-CC-0087	Weiss, Louis A., Memorial Hospital
84-CC-0089	St. Anthony's Hospital
84-cc-0106	Children's Hospital Physicians' Office
84-CC-0117	Rock Island Franciscan Hospital
84-cc-0119	Rock Island Franciscan Hospital
84-CC-0143	St. Anthony Hospital
84-cc-0144	Copley Memorial Hospital
84-CC-0192	St. Anthony Hospital
84-CC-0193	Weiss, Louis A., Memorial Hospital
84-CC-0216	St. Anthony Hospital
84-cc-0222	Harris Corp.

84-cc-0239	Boyd, Cleaster
84-cc-0288	St. Anthony Hospital
84-cc-0289	St. Anthony Hospital
84-CC-0291	Weiss, Louis A., Memorial Hospital
84-CC-0297	Bethesda Hospital
84-CC-0307	MacNeal Memorial Hospital
84-CC-0308	St. Joseph Hospital
84-CC-0329	St. Anthony Hospital
84-CC-0337	St. Anthony Hospital
84-CC-0345	Davies, Graham O., D.D.S.
84-cc-0350	St. Anthony Hospital
84-CC-0361	Rock Island Franciscan Hospital
84-CC-0366	Xerox Corp.
84-CC-0367	Woods, Joe
84-CC-0372	Southeastern Aviation (Illinois) Corporation, Individually & as Subrogee of F & W Flying Service
84-CC-0379	Zeller, David
84-cc-0385	Barnes Hospital
84-cc-0386	Barnes Hospital
84-CC-0389	Williams, Joyce
84-CC-0390	Thompson, Mary, Hospital
84-CC-0391	Thompson, Mary, Hospital
84-CC-0393	St. Anthony Hospital
84-CC-0401	Columbus, Cuneo, Cabrini Medical Center
84-cc-0402	Columbus, Cuneo, Cabrini Medical Center
84-CC-0419	St. Anthony Hospital
84-CC-0443	St. Anthony Hospital
84-CC-0476	Northwest Community Hospital
84-CC-0492	Illinois Masonic Medical Center
84-CC-0494	Illinois Masonic Medical Center
84-CC-0542	Jones, Huw Vaughn
84-CC-0581	St. Anthony Hospital
84-CC-0585	Rappe, Tamara L.
84-CC-0600	St. Anthony Hospital
84-cc-0601	Thompson, Mary, Hospital
84-CC-0607	Manes, Fannie M.; Guardian of Carol Sue Hopt, disabled person
84-CC-0624	St. Anthony Hospital
84-CC-0655	Central Community Hospital
84-CC-0656	Norwegian-American Hospital
84-CC-0658	MacNeal Memorial Hospital

84-CC-0680	Hinsdale Sanitarium & Hospital
84-CC-0707	Cox, Marie E.
84-CC-0712	Bethesda Community Hospital
84-CC-0734	Columbus, Cuneo, Cabrini Medical Center
84-CC-0736	Kowalkowski, Robert
84-CC-0746	St. Bernard Hospital
84-CC-0752	Wang Labs, Inc.
84-CC-0775	Victory Memorial Hospital
84-CC-0777	MacNeal Memorial Hospital
84-CC-0780	Northwest Community Hospital
84-CC-0792	Schneider, Barry R., M.D.
84-cc-0833	Miller, Benny L.
84-cc-0835	Helfrich, Timmie Lee
84-cc-0850	Heckman, Melvin F.
84-cc-0852	Copley Memorial Hospital.
84-cc-0853	MacNeal Memorial Hospital
84-cc-0859	St. Bernard Hospital
84-CC-0866	Southern Illinois Hospital Services, d/b/a Memorial Hospital of Carbondale
84-CC-0931	Phillips, Linda K.
84-cc-0959	Illinois, University of
84—cc-0964	Evanston Hospital
84-CC-1007	Gray, Terry D.
84-cc-1022	Aeronautical Radio, Inc.
84-CC-1039	Catholic Social Service
84-CC-1048	Erb Equipment Co.
84-CC-1052	St. Joseph Hospital
84-CC-1053	Evanston Hospital
84-CC-1092	Davis, Gerry
84-cc-1109	Still, N. L.
84-cc-1112	Taylor, Andre
84-CC-1171	Granite City Radiology
84-CC-1173	Granite City Radiology
84-CC-1238	Children's Memorial Hospital
84-cc-1251	Children's Memorial Hospital
84-cc-1269	Young, Dianna R.
84-cc-1270	Rock Island Franciscan Hospital
84-cc-1271	Rock Island Franciscan Hospital
84-CC-1274	Chicago, City of
84-CC-1336	Xerox Corp.
84-CC-1348	Newark Electronics

84-CC-1357	MacNeal Memorial Hospital
84-cc-1368	Home Medical Equipment
84-CC-1372	State Employees' Retirement
84-CC-1375	State Employees' Retirement
84-CC-1421	Schulhof, Robert P.
84-CC-1429	Granite City Radiology
84-cc-1430	Granite City Radiology
84-cc-1441	Savin
84-cc-1442	Savin
84-cc-1443	Savin
84-cc-1444	Savin
84-cc-1445	Savin
84-CC-1446	Savin
84-cc-1453	Willowglen Academy
84-CC-1468	Copley Memorial Hospital
84-cc-1469	Weiss Memorial Hospital
84-CC-1521	Pienkowski, Alma G.
84-CC-1532	Doctors Hospital
84-CC-1536	Rock Island Franciscan Hospital
84-CC-1541	National Auto Supply
84-CC-1553	Northwestern Memorial Hospital
84-CC-1564	Crouch-Walker Corp.
84-CC-1582	Willowglen Academy
84-CC-1586	Willowglen Academy
84-CC-1611	St. Anthony Hospital
84-CC-1628	St. Mary's Hospital
84-CC-1629	St. Mary's Hospital of Kankakee
84-CC-1646	Laskero, James
84-CC-1678	Jackson, Robert L.; Executor of the Estate of Ellen Scott, deceased
84-CC-1704	MacNeal Memorial Hospital
84-CC-1706	Capitol Plumbing & Heating
84-CC-1708	Capitol Plumbing & Heating
84-CC-1710	Capitol Plumbing & Heating
84-CC-1715	Corrections Dept., Correctional Industries
84-CC-1753	Graham, Nelda; Administratrix of the Estate of Ernest Glenn Graham, deceased
84-CC-1759	Chicago, University of, Hospital
84-CC-1762	General Electric
84-CC-1765	Midwest Center for Sports Medicine
84-CC-1778	Xerox

84-CC-1784	Edwards, Luther
84-CC-1791	Wang Labs
84-CC-1796	Shaf, Katherine, & Shaf, John
84-CC-1809	Busch, Alva W.
84-CC-1829	McCoy, Janie
84-cc-1844	Perkin-Elmer Corp.
84-cc-1851	Lakeside Fusee Corp.
84-CC-1891	Reese, Michael, Hospital
84-cc-1923	Braun, Bennett G., M.D.
84-CC-1961	Bismark Hotel
84-CC-1971	Milwaukee Electric Tool
84-CC-1974	Freund Equipment
84-CC-1986	Bacevicius, Algis S.
84-CC-1993	Maslov, Morton R.
84-CC-2007	Dyna Systems
84-cc-2022	Mares, Antoinette
84-CC-2074	Polk, Robert
84-CC-2107	Gremban, D. L., D.D.S.
84-CC-2108	Coleman, Joan
84-cc-2110	Northwestern Memorial Hospital
84-CC-2113	Smith-Perry Medical Assoc.
84-CC-2139	Champaign Children's Home
84-CC-2149	Gottlieb Memorial Hospital
84-CC-2155	Athey, James
84-CC-2170	Target #137
84-cc-2183	Rehabilitation Institute of Chicago
84-cc-2185	Medical Practice Plan
84-CC-2186	Medical Practice Plan
84-CC-2187	Medical Practice Plan
84-CC-2188	Medical Practice Plan
84-CC-2190	Medical Practice Plan
84-CC-2191	Medical Practice Plan
84-CC-2192	Medical Practice Plan
84-CC-2193	Medical Practice Plan
84-CC-2197	Montgomery Ward
84-CC-2198	Montgomery Ward
84-CC-2201	Lepley, Rosalyn, M.D.
84-cc-2202	Lepley, Rosalyn, M.D.
84-cc-2205	Woodruff, Frank
84-cc-2211	Gottlieb Memorial Hospital
84-cc-2235	Governors State University

84-CC-2238	MacNeal Memorial Hospital
84-cc-2242	Patel, K. P., M.D.
84-cc-2247	Production Supplies, Inc.
84-CC-2467	Watkins, Ann & Hamilton, Willie B.
84-cc-2477	Johnson's, Howard, M.L.
84-cc-2484	Air Cleaning Specialists
84-CC-2486	Bokhari, Syed Saeed P., M.D.
84-CC-2488	Weiss, Louis A., Memorial Hospital
84-cc-2490	Good Shepherd Hospital
84-cc-2491	St. Bernard Hospital
84-cc-2499	Bloomington Radiology
84-cc-2502	Illinois Bell Telephone Co.
84-CC-2503	Jamal, Yaphet Kareem
84-CC-2508	St. Mary's Hospital
84-cc-2522	Smith, Angeline
84-CC-2526	Production Supplies, Inc.
84-cc-2530	Kinter, Robert J.
84-cc-2537	C.I.P.S.
84-CC-2546	Holy Cross Hospital
84-cc-2547	Northwest Community Hospital
84-cc-2549	Augustana Hospital
84-CC-2550	Grant Hospital
84-CC-2552	St. Joseph Hospital
84—cc-2556	MacNeal Memorial Hospital
84-cc-2557	Roosevelt University
84-cc-2563	Xerox
84—cc-2564	Xerox
84-CC-2567	Zeitz, Richard R.
84-CC-2572	Medical Practice Plan
84-cc-2573	Medical Practice Plan
84-CC-2576	Ruff, Bud, Electric
84-cc-2591	Fox Industries
84-cc-2643	St. Bernard Hospital
84-cc-2645	Hinsdale Sanitarium
84-cc-2651	Karall, Shawn Joseph
84-cc-2652	Fortney, Charles
84-CC-2655	Franciscan Medical Center
84-CC-2657	Blessing Hospital School of Nursing
84-CC-2659	Free, Moses
84-CC-2683	Lee, David C., M.D.
84-CC-2686	Hill, Jesse

84-CC-2690	A & D Heating Corp.
84-CC-2724	Maoloni, Anthony J., D.D.S.
84-cc-2802	Paxton Community Hospital
84-CC-2813	Bozell &Jacobs
84-CC-2818	Bozell &Jacobs
84-cc-2819	Bozell &Jacobs
84-cc-2826	Allied Health Service
84-CC-2829	Criss, Larry J.
84-CC-2831	Kankakee Industrial Supply
84-cc-2838	Dillow, Stella L.
84-cc-2841	Empire Cooler Service
84-cc-2847	Rehabilitation Institute
84-cc-2849	Rehabilitation Institute
84-cc-2854	Christ Hospital
84-CC-2861	Beyer, Dianna
84-cc-2864	Medical Practice Plan
84-CC-2871	Torres, Persida
84-cc-2875	Rehabilitation Institute of Chicago
84-CC-2901	Illinois Masonic Medical Center
84-CC-2902	Illinois Masonic Medical Center
84-CC-2903	Illinois Masonic Medical Center
84-cc-2904	Illinois Masonic Medical Center
84-CC-2905	Illinois Masonic Medical Center
84-cc-2906	Illinois Masonic Medical Center
84-CC-2910	St. Bernard Hospital
84-CC-2911	St. Anthony Hospital
84-CC-2912	Sheridan, R. Joan
84-CC-2998	Security Mutual Insurance Co., as Subrogee of Markson, M.S. and Andrea
84-CC-2999	Black Hawk College
84-CC-3000	Black Hawk College
84-CC-3007	Indecon, Inc.
84-CC-3059	Hirsh, Kevin P.
84-CC-3063	St. Anne's Hospital
84-CC-3065	St. Anne's Hospital
84-CC-3066	St. Anne's Hospital
84-cc-3067	St. Anne's Hospital
84-CC-3068	St. Anne's Hospital
84-CC-3069	St. Anne's Hospital
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84-CC-3071	St. Anne's Hospital

84-CC-3072 St. **Anne's** Hospital
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84-CC-3154	St. Anne's Hospital
84-CC-3155	St. Anne's Hospital
84-CC-3156	St. Anne's Hospital
84-CC-3157	St. Anne's Hospital
84-CC-3170	Wang Laboratories
84-CC-3173	Cahill, Cathleen
84-CC-3176	Bradley University
84-CC-3179	Johnson, Harold D.
84-CC-3208	Brokaw Hospital
84-cc-3233	Collins, Edward M.
84-cc-3249	Good Shepherd Hospital
84-CC-3271	Community College Dist. 508
84-cc-3284	St. Mary's Hospital
84-CC-3292	Jackson Park Hospital
84-CC-3293	Baptist, E. C., M.D.
84-CC-3296	Kmetz, Daniel W.
84-cc-3302	Pediatric Radiologic Services
84-CC-3305	Ray, Ricky E.
84-CC-3315	Henrotin Hospital
84-CC-3316	Henrotin Hospital
84-CC-3317	Henrotin Hospital
84-CC-3318	Henrotin Hospital
84-cc-3319	Henrotin Hospital
84-cc-3320	Henrotin Hospital
84-cc-3321	Henrotin Hospital
84-cc-3322	Henrotin Hospital
84-cc-3323	Henrotin Hospital
84-CC-3324	Henrotin Hospital
84-cc-3325	Henrotin Hospital
84-cc-3326	Henrotin Hospital
84-CC-3327	Henrotin Hospital
84-cc-3328	Henrotin Hospital
84-CC-3329	Henrotin Hospital
84-cc-3330	Henrotin Hospital
84-cc-3331	Henrotin Hospital
84-cc-3332	Henrotin Hospital
84-cc-3333	Henrotin Hospital
84-cc-3334	Henrotin Hospital
84-cc-3356	LaPlaca, Gerald, M.D.
84-CC-3357	Tucker, Carl
84-CC-3366	St. Anne's Hospital

84-CC-3367	St. Anne's Hospital
84-CC-3368	St. Anne's Hospital
84-cc-3369	St. Anne's Hospital
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84-cc-3389	St. Anne's Hospital
84-CC-3390	Hoddenbach, Keith
84-cc-3391	Flatt, Michael
84-cc-3393	St. Bernard Hospital
84-CC-3403	Children's Mercy Hospital
84-CC-3416	Lucas, Roy S.
84-CC-3417	Colman, Jeffrey D.; a partner acting on behalf of the Law Firm of Jenner & Block
84-CC-3427	Zayre—373
84-CC-3438	Spiller, Michael Anthony
84-cc-3440	Diaz, Johnnie L.
84-CC-3446	Jackson Park Hospital
84-cc-3449	Illinois FWD Truck & Equipment Co.
84-cc-3475	Cairo Public Utility Commission
84-CC-3480	Franciscan Medical Center
84-CC-3481	Franciscan Medical Center
84-CC-3482	Franciscan Medical Center
84-cc-3483	Henrotin Hospital
84-cc-3484	Henrotin Hospital

84-cc-3485	Henrotin Hospital
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84-cc-3526	Henrotin Hospital
84-CC-3527	Henrotin Hospital
84-cc-3528	Henrotin Hospital
84-cc-3540	St. Francis Hospital
84-cc-3547	Barthelman, Willard
84-CC-3548	Coffey, Norman L.
84-CC-3555	Codex Corp.
84-CC-3562	Zukley, Clara
84-CC-3578	Rehabilitation Institute
85-CC-0002	Howard Uniform Co.
85-cc-0011	Holland, Carrie
85-cc-0023	Community College Dist. 508
85-cc-0041	Association House of Chicago
85-cc-0042	Association House of Chicago
85-cc-0044	Association House of Chicago
85-cc-0045	Abusief, Kamal Zaki, M.D.
85—cc-0059	Chicago Steel Tape
85-CC-0061	Chicago Steel Tape
85-CC-0070	Aurora Orthopedic Labs
85-CC-0089	Chicago, University of
85-CC-0097	Adlesick, William E.
85—cc-0110	Brown, Joseph A.
85-CC-0132	Wiedelman, Elvira F.
85—cc-0164	Laing, J. Stephen
85-cc-0166	Decatur Memorial Hospital
85—cc-0167	Decatur Memorial Hospital
85-cc-0168	Decatur Memorial Hospital
85-CC-0169	Decatur Memorial Hospital
85-CC-0170	Decatur Memorial Hospital
85-CC-0171	Decatur Memorial Hospital
85-CC-0172	Decatur Memorial Hospital
85-CC-0173	Decatur Memorial Hospital
85-CC-0174	Decatur Memorial Hospital
85-CC-0175	Decatur Memorial Hospital
85-CC-0176	Decatur Memorial Hospital
85-CC-0177	Decatur Memorial Hospital
85-CC-0178	Decatur Memorial Hospital
85-CC-0179	Decatur Memorial Hospital
85-cc-0181	Decatur Memorial Hospital
85-CC-0189	Moore Business Forms
85-cc-0196	Holtzscher, George

85-cc-0210	Bunce, Alice M.
85-cc-0232	Porcaro, Paul
85-CC-0242	Demakos, Peter
85-CC-0266	MacNeal Memorial Hospital
85-CC-0271	Savin Corp.
85-CC-0275	Brusaws, Alfred
85-CC-0278	Smart, Donald
85-cc-0280	Anderson, Roy & Mamie
85-cc-0283	Arguelles, Rafael
85-CC-0284	Checker Motors & Tom Sovey
85-cc-0286	Weber Farm; John & Barry Weber
85-CC-0309	Kamrowski, Kenneth
85-CC-0312	Co-op Medical Systems
85-CC-0316	Co-op Medical Systems
85-CC-0324	Katzen, Harold, D.O.
85-cc-0338	St. Francis Hospital
85-cc-0341	National Union Life Insurance Company as Subrogee of Advanced Exterminating SVC, Employer of Jack J. Barron
85-cc-0343	Williams, Byron
85-CC-0345	Reese, Michael, Hospital
85-CC-0363	Edsall, Wade R.
85-CC-0368	F & H Construction
85-CC-0370	St. Anthony's Hospital
85-CC-0371	Sears Preschool
85-CC-0373	Chavez, Blas
85-CC-0375	Meyer, K., Landscaping, Inc.
85-CC-0376	Christie Clinic
85-CC-0377	Christie Clinic
85-CC-0382	Carter, Robert G.
85-cc-0384	Girgis, Sabir & Girgis, Aziza
85-cc-0402	Christie Clinic
85-CC-0403	Christie Clinic
85-cc-0404	Christie Clinic
85-cc-0410	Meramec Automated Solutions, Inc.
85-CC-0418	Edward Hospital
85-cc-0436	Bey, Douglas R., Jr., M.D.
85-cc-0437	Bey, Douglas R., Jr., M.D.
85cc0438	Lipps, Inc.
85-CC-0452	Caradonna, Virginia; Adm. of Estate of Rodney M. Hibser, deceased, & Virginia Caradonna

85-CC-0466 Schwartz, Jerrold, D.O.
85-CC-0468 Rajendran, Rosula R., M.D.
85-CC-0472 Williams, Willie
85-CC-0481 Pemberton Oil & Gas
85-CC-0501 Fowler, W. Gerald, Dr.
85-CC-0503 Fowler, W. Gerald, Dr.
85-CC-0508 Reese, Michael, Hospital
85-CC-0526 St. Bernard Hospital
85-CC-0530 St. Francis Hospital
85-CC-0534 Illinois Bell
85-CC-0549 Flesher House of Music
85-CC-0556 Watel, Lucie G.
85-CC-0565 Woodcock, Laura A.
85-CC-0590 Marquette University
85-cc-0640 Jackson, Carol
85-CC-0662 Mendoza, C.
85-cc-0695 St. James Hospital
85-CC-0748 General Electric
85-CC-0753 Vision Correction
85-CC-0766 Central Furniture Mart
85-CC-0781 Holloway, Wayne B.
85-CC-0790 Deserio, Sante
85-CC-0804 Shisler, Charles R.
85-CC-0805 Maxson, Cheryl
85-CC-0807 Hornsby's Stores
85-cc-0833 Morrison Community Hospital
85-cc-0834 Waukegan Steel Sales
85-cc-0838 Warren, Kenneth R.
85-CC-0874 Roseland Community Hospital
85-cc-0925 Reese, Michael, Hospital
85-CC-0932 Sky Harbor Inn
85-cc-0938 Domagala, Alice
85-CC-0979 Norrington, Robert L.
85-CC-0981 OBrien Steel Service
85-cc-1025 General Electric
85-cc-1026 Langston, Eugene
85-CC-1037 Foryst, James & Joyce
85-cc-1044 Sphar, Carla M.
85-CC-1047 Certified Equipment & Mfg. Co.
85-cc-1063 Boester Shoe Store
85-CC-1080 Monmouth Trust & Savings

85-CC-1092	Anderson, J. Joseph & Mary B.
85-CC-1148	Medical Practice Plan
85-CC-1150	Medical Practice Plan
85-CC-1173	Surek, Christopher, D.O.
85-CC-1176	Malen, Paul G., D.O.
85-CC-1177	Medical Practice Plan
85-cc-1212	Tile Specialists
85-CC-1213	Miller, Gayle L.
85-CC-1291	Travis, Bert
85-CC-1309	Reese, Michael, Hospital
85-CC-1314	Reese, Michael, Hospital
85-CC-1315	Reese, Michael, Hospital
85-CC-1317	Reese, Michael, Hospital
85-CC-1329	Foster, Lynne A.
85-CC-1368	Dela Torre, Charito M., M.D.
85-CC-1377	PPG Industries
85-CC-1410	North Shore Association for the Retarded
85-CC-1447	Wheatley, Myra
85-CC-1457	Collection Mgr's Service, Inc.
85-CC-1480	Collins, Willie, Dr.
85-CC-1486	Scapillato, James E., D.D.S.
85-CC-1494	Parraga, Humberto C., M.D.
85-CC-1521	Truck Equipment & Carpenter Body Works
85-CC-1539	IBM
85-CC-1622	Vent, Thomas
85-cc-1659	Amoco Oil
85-CC-1670	Peterson, Kenneth H.
85-CC-1671	Peterson, Kenneth H.
85-CC-1685	Jones, Walter A., Jr.
85-CC-1694	Honeywell
85-CC-1704	Don's Auto Repair
85-CC-1772	Family Medical Center
85-CC-1869	McCree, Marilyn
85-CC-1871	Henson Ambulance
85-CC-1874	Community College Dist. 508
85-CC-1917	Capitol Group
85-cc-1924	Kale Uniforms
85-cc-1925	Kale Uniforms
85-cc-1969	Clark, Melodie
85-CC-1971	Marvy, William, Co.
85-CC-1993	Nickles, Judith M.

85-CC-2025	Greer, Jim
85-CC-2116	Knappier, Melvin
85-CC-2228	Thonander, Arthur D.
85-CC-2278	Leisure Gardens Home
85-CC-2376	Lane, Martha
85-CC-2539	Modem Materials

CASES IN WHICH ORDERS AND OPINIONS OF DENIAL WERE ENTERED-WITHOUT OPINIONS FY 1985

82-CC-0480	Gluckman, Lawrence, M.D.
82-CC-0481	Dependable Ambulance Service
82-CC-1138	Chatham-Avalon Clinical Laboratory
82-CC-1140	Executive Ambulance Service
82-CC-1141	Hope Ambulance Service
82-CC-1143	Norwood Drugs
82-CC-1144	Rescue Ambulance, Inc.
82-CC-1146	Arrow Ambulance Service
83-CC-1824	Wells, Douglas
83-CC-1825	Wells, Douglas
83-CC-1826	Wells, Douglas
85-CC-0322	State Community College of East St. Louis
85-CC-1750	Bea, Steven E.

CONTRACTS—LAPSED APPROPRIATIONS
FY 1985

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

78-CC-0954	Michelotti, Joseph C.	$ 109.00
81-CC-0006	Castelein, Paul T., D.D.S., M.S.	722.50
81-CC-1680	Xerox Corp.	2,988.33
81-CC-1699	Xerox Corp.	128.00
81-CC-1701	Xerox Corp.	1,772.68
81-CC-2946	Xerox Corp.	461.25
82-CC-0169	Xerox Corp.	388.00
82-CC-1798	Xerox Corp.	977.76
82-CC-2124	Gatelys People Store	701.79
82-CC-2442	Xerox Corp.	350.00
82-CC-2734	Production Press, Inc.	6,285.18
83-cc-0235	Treister Orthopaedic Services, Ltd.	212.50
83—cc-0354	Xerox Corp.	125.00
83-cc-0361	Xerox Corp.	175.00
83-CC-0518	Norwegian-American Hospital	2,390.16
83-CC-0827	Xerox Corp.	5,654.04
83-CC-0830	Xerox Corp.	415.05
83-cc-0864	Kranzler, Leonard I.	125.00
83-CC-0878	Pereiro, Francisco	10.50
83-CC-0879	Pereiro, Francisco	3.00
83-CC-1179	Treister Orthopaedic Services, Ltd.	25.00
83-CC-1533	Catholic Social Service	2,337.09
83—cc-1664	Chicago, University of	11,849.60
83-CC-2204	St. Elizabeth Medical Center	59.30
83-cc-2221	Harbor Office Supply, Inc.	377.27
83-CC-2302	Coupet, Jocelyn Gerard	135.17
83-CC-2415	New Hope Living & Learning Center, Inc.	10,522.00
83-CC-2507	Campl, Franz X., M.D.	243.60
83-CC-2570	General Electric Co.	897.00
83-CC-2684	Xerox Corp.	170.66
83-CC-2781	Melam, Howard L., M.D.	73.50
83-CC-2782	Melam, Howard L., M.D.	73.50
83-CC-2783	Melam, Howard L., M.D.	73.50

83-CC-2784	Melam, Howard L., M.D.	21.00
83-cc-2831	Xerox Corp.	241.25
83—cc-2833	Xerox Corp.	160.20
84-CC-0131	McGaw, Foster G., Hospital	644.50
84-cc-0284	Community College Dist. 508	42.60
84-cc-0286	Community College Dist. 508	51.12
84-CC-0311	Visionquest National, Ltd.	29.50
84-CC-0312	Visionquest National, Ltd.	110.50
84-CC-0313	Visionquest National, Ltd.	308.00
84-CC-0314	Visionquest National, Ltd.	174.50
84-CC-0315	Visionquest National, Ltd.	54.00
84-CC-0317	Visionquest National, Ltd.	70.11
84-CC-0318	Visionquest National, Ltd.	40.50
84-CC-0319	Visionquest National, Ltd.	81.46
84-CC-0320	Visionquest National, Ltd.	29.50
84-CC-0321	Visionquest National, Ltd.	28.00
84-cc-0381	Chiapetta, Michael, Psy. D.	165.00
84-CC-0405	Shay, Drs., & Assoc., Ltd.	230.00
84-cc-0410	Northwest Community Hospital	4,022.74
84-cc-0447	Community College Dist. 508	240.00
84-cc-0448	Community College Dist. 508	33.83
84-cc-0449	Community College Dist. 508	33.83
84-cc-0450	Community College Dist. 508	115.00
84-CC-0528	Corbett, Leonardo	3,100.00
84-cc-0673	Akrami, Cyrus, M.D.	11.00
84-CC-0676	Mead Data Central	2,399.00
84-CC-0715	Marohn, Richard C., M.D.	350.00
84-CC-0793	Easter Seal Rehabilitation Center of Will-Grundy Counties, Inc.	76.69
84-CC-0798	Dodd, Robert B., M.D.	414.00
84-CC-0804	Bailen, James L., M.D.	590.00
84-CC-0817	Metro Reporting Service, Ltd.	266.35
84-cc-0849	Thompson, Mary J.	174.00
84-CC-0892	McKinley, Ada S., Community Services, Inc.	7,738.13
84-cc-0893	McKinley, Ada S., Community Services, Inc.	6,599.39
84-cc-0894	McKinley, Ada S., Community Services, Inc.	961.42
84-CC-0925	Randolph County	21,179.20
84-cc-0932	General Electric	22,685.00
84-CC-1018	Sgro, Tony	95.27
84-CC-1037	Catholic Social Service	3,407.78
84-cc-1038	Catholic Social Service	311.84

84-cc-1040	Weber/Ayres Family Physicians	92.00
84-CC-1060	Catholic Social Service	1,508.91
84-cc-1104	Madison Bionics	278.92
84-CC-1178	General Electric	145,104.00
84-CC-1182	General Electric	1,000.00
84-cc-1226	Christie Clinic	170.00
84-cc-1259	Ruiz, Maria	60.00
84-cc-1264	Help at Home	465.00
84-cc-1285	Help at Home	185.50
84-cc-1266	Help at Home	77.00
84-CC-1267	Help at Home	43.00
84-cc-1268	Help at Home	29.00
84-CC-1276	Chicago, City of	5,199.70
84-CC-1291	Community College Dist. 508, Board of Trustees of;	157.85
84-CC-1292	Community College Dist. 508, Board of Trustees of;	57.50
84-cc-1293	Community College Dist. 508, Board of Trustees of;	33.83
84-cc-1294	Community College Dist. 508, Board of Trustees of;	51.00
84-cc-1295	Community College Dist. 508, Board of Trustees of;	67.65
84-cc-1296	Community College Dist. 508, Board of Trustees of;	51.12
84-cc-1297	Community College Dist. 508, Board of Trustees of;	67.65
84-CC-1300	Community College Dist. 508, Board of Trustees of;	51.12
84-cc-1301	Community College Dist. 508, Board of Trustees of;	25.56
84-cc-1302	Community College Dist. 508, Board of Trustees of;	124.03
84-CC-1303	Community College Dist. 508, Board of Trustees of;	45.10
84-cc-1305	Community College Dist. 508, Board of Trustees of;	169.13
84-cc-1306	Community College Dist. 508, Board of Trustees of;	146.58
84-cc-1308	Community College Dist. 508, Board of Trustees of;	90.20

84-CC-1311	Community College Dist. 508, Board of Trustees of;	67.65
84-CC-1314	Community College Dist. 508, Board of Trustees of;	146.58
84-CC-1315	Community College Dist. 508, Board of Trustees of;	435.92
84-CC-1316	Community College Dist. 508, Board of Trustees of;	57.50
84-CC-1317	Community College Dist. 508, Board of Trustees of;	90.20
84-CC-1318	Community College Dist. 508, Board of Trustees of;	101.48
84-CC-1319	Community College Dist. 508, Board of Trustees of;	57.50
84-CC-1329	Catholic Social Service	2,362.07
84-cc-1330	Catholic Social Service	420.00
84-cc-1335	Xerox Corp.	210.00
84-cc-1349	Salvation Army	1,996.91
84-cc-1361	Community College Dist. 508	112.75
84-CC-1416	McMaid, Inc.	10,147.90
84-CC-1422	Domtar Industries	941.13
84-CC-1435	Palmer House Hotel	62.41
84-CC-1461	St. Mary's Hospital	615.35
84-CC-1471	Vulcan Materials	542.71
84-CC-1472	Vulcan Materials	279.74
84-CC-1482	Central Baptist Children's Home	6,682.98
84-cc-1489	Joliet Bridge & Construction	16,980.00
84-CC-1499	M & M Portable Sandblasting	818.00
84-CC-1502	Wipeco, Inc.	117.00
84-CC-1508	Casey Equipment Co.	766.65
84-CC-1509	National Auto Supply	1,797.40
84-CC-1514	Davis, Lessie Bates, Neighborhood House	683.32
84-CC-1515	Clesen, Arthur, Inc.	820.40
84-CC-1516	Clesen, Arthur, Inc.	380.35
84-CC-1517	Complete-Reading Electric	93.17
84-CC-1525	Venture Stores	490.30
84-CC-1530	Davis, Lessie Bates, Neighborhood House	155.40
84-CC-1549	B & H Industries	295.00
84-CC-1573	Illinois Bell Telephone Co.	190.49
84-cc-1602	Excepticon of Illinois, Inc.	1,663.15
84-cc-1605	Community Center Foundation	6,992.02

84-CC-1647	Welsch Red-E-Mix, Inc,	93.90
84-cc-1659	Griffith, David M., & Assoc.	13,000.00
84-cc-1660	Griffith, David M., & Assoc.	5,000.00
84-CC-1664	Community College Dist. 508	206.00
84-CC-1667	Community College Dist. 508	102.25
84-cc-1669	Community College Dist. 508	51.12
84-CC-1670	Consumers Tire & Supply	778.24
84-CC-1682	Franklin Steel	2,820.00
84-CC-1683	Franklin Steel	1,410.00
84-CC-1684	Franklin Steel	705.00
84-cc-1689	Suburban Heights Medical Center	141.00
84-CC-1690	Curtis Industries	93.96
84-CC-1697	Rudolf Express Co.	20.16
84-CC-1698	Lakeside Fusee Corp.	893.76
84-CC-1702	Commonwealth Edison	125.58
84-CC-1720	PCCEO, Inc.	33,000.00
84-CC-1730	Moore & Associates	240.00
84-CC-1733	Country Spring Water Co.	50.60
84-CC-1740	Greene County General Hospital	173.65
84-CC-1742	Tri-Par Systems	1,093.00
84-CC-1757	McLean County	4,433.95
84-CC-1766	McHenry County Fair Assn.	900.00
84-CC-1767	Asphalt Equipment & Supply	151.19
84-CC-1768	Stall, Randall	68.00
84-CC-1775	Curry Court Reporting	37.50
84-CC-1776	Xerox	863.03
84-CC-1787	Molo, Steven F.	61.31
84-CC-1788	Phillips Petroleum	189.26
84-CC-1789	Watkins, Robert C., Jr., M.D.	54.00
84-CC-1790	Saxon, Allen, M.D.	302.00,
84-CC-1795	Freund Equipment	70.98
84-CC-1798	PCCEO, Inc.	708.88
84-CC-1810	Maintenance Coatings Co.	3,200.00
84-CC-1827	American Spanish Institute	4,239.31
84-cc-1831	Holiday Inn	52.50
84-cc-1832	Alvarez, Rosendo	185.42
84-CC-1841	French Rogers Kezelis & Kominiarek	17,810.69
84-cc-1849	Martin Implement Sales, Inc.	66.20
84-cc-1854	Contractors Supply	5,469.75
84-CC-1887	Ed's Welding & Fabricating	370.00
84-CC-1893	Radio TV Reports	18.00

84-CC-1894	W.I.C. Supplemental Food Pgm.	3,961.85
84-cc-1902	Hennessey-Forrestal	700.00
84-CC-1917	Berry Tire	45.93
84-CC-1924	Marchione Electric	1,021.00
84-CC-1929	Copystatics	154.08
84-cc-1934	Portable Tool Sales & Service	270.00
84-cc-1935	Central Steel & Wire	202.92
84-cc-1936	Wilkens-Anderson Co.	34.00
84-cc-1938	Chicago Steel Tape	780.00
84-cc-1940	Films, Inc.	320.00
84-CC-1943	Simpson, John F.	474.90
84-CC-1952	Biondolillo, Mario	189.62
84-CC-1955	Berl, Melvin	96.25
84-cc-1965	Youth in Crisis	10,016.00
84-CC-1966	Doctors House	1,070.57
84-cc-1968	Pratts-Powell, Elmyra	592.50
84-CC-1970	Medical Practice Plan	2.00
84-cc-1983	Reese, Michael, Hospital	70.68
84-CC-1997	Gotham Chemical Co.	166.81
84-cc-1999	Riemer's EGV Testing Lane	47.15
84-CC-2000	Northern Illinois Fence	2,614.00
84-CC-2002	Pienkowski, Alma	26.00
84-CC-2003	Community Care Systems	2,638.92
84-cc-2009	Springfield Hilton	108.00
84-cc-2010	IBM	74.00
84-cc-2012	IBM	109.00
84-CC-2018	Reynolds, Beverly A.	40.99
84-cc-2019	Reynolds, Beverly A.	39.36
84-cc-2020	Reynolds, Beverly A.	23.00
84-CC-2027	Conrin, James, MA	255.00
84-cc-2028	Kennedy, Lt. Joseph P., Jr., School	327.34
84-cc-2033	Hilti, Inc.	172.00
84-cc-2035	Fischback Bros.	4,114.00
84-cc-2042	Greyhound Lines	436.90
84-cc-2047	Hunter, B. D.	8,150.01
84-CC-2057	Gibraltar Blades	19,021.60
84-CC-2058	Datamax Office Systems	293.36
84-cc-2063	Texaco	21.70
84-cc-2068	Universal Safety Equipment	36.60
84-cc-2069	Barnett Union 76	21.75
84-CC-2073	Kankakeeland Community Action Program	2,631.96

84-CC-2086	Spring Align	351.00
84-CC-2092	Milwaukee Electric Tool	72.70
84-cc-2094	Chomhirun, Bud P., M.D.	198.72
84-CC-2096	Patil, Rohidas T., M.D.	735.00
84-cc-2101	Phenix Business Systems	475.00
84-CC-2105	Gallaudet College	324.00
84-cc-2126	Midwest Fence	1,803.00
84-cc-2128	Hancock County Health Department	50.16
84-CC-2129	Mandel, Lipton & Stevenson	2,176.00
84-cc-2135	Springfield Mechanical Corp.	8,591.64
84-CC-2140	Champaign Children's Home	2,551.34
84-CC-2145	North Central Dialysis Centers	13,884.00
84-CC-2152	Golden Circle Senior Citizens	1,466.03
84-CC-2153	Ingalls Memorial Hospital	2,923.75
84-CC-2158	Bradford, Benjamin	43.00
84-CC-2161	Gampl, Franz X., M.D.	40.00
84-cc-2163	Pundy, Joseph	12.00
84-CC-2164	Kim, Chulsoo, M.D.	230.00
84-CC-2169	Kutty, Ahamed V.P., M.D.	100.00
84-CC-2179	American Welding Supply	23.76
84-cc-2184	Medical Practice Plan	12.00
84-cc-2194	Medical Practice Plan	36.00
84-CC-2195	Medical Practice Plan	300.00
84-cc-2199	Evans Construction Co.	1,946.00
84-cc-2203	Stone, Michael E., Dr.	580.00
84-cc-2204	Stone, Michael E., Dr.	580.00
84-CC-2208	Empire Cooler Service	63.00
84-CC-2214	Greenspan, Steven B.	39.48
84-CC-2217	Family Care Services	532.95
84-cc-2221	Ottawa Visiting Nurse Service	85.87
84-cc-2223	Berg, E. Rosemary	108.90
84-cc-2239	Modem Business Systems	295.00
84-cc-2241	Pecatonica High School	21.75
84-cc-2244	Patterson, Norman S., Dr.	90.00
84-CC-2249	Production Supplies, Inc.	591.80
84-cc-2250	Stauder, Lawrence	255.00
84-cc-2251	Universal Home Health Care Assoc. d/b/a Quality Care	12,155.05
84-cc-2252	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)

84-cc-2253 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2254 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2255 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2256 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2257 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2258 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2259 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2260 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2261 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2262 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2263 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2264 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2265 Universal Home Health Care Assoc.
d/b/a Quality Care . (Paid under claim 84-cc-2251)

84-CC-2266 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2267 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2268 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2269 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2270 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2271 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2272 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2273 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2274 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2275 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2276 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2277 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2278 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2279 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2280 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2281 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2282 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2283 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2284 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2285 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2286 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2287 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2288 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2289 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2290 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2291 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2292 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2293 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2294 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2295 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2296 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2297 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84cc-2251)

84-CC-2298 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2299 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-CC-2251)

84-cc-2300 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2301 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2302 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2303 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2304 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2305 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2306 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2307 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-CC-2251)

84-CC-2308 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2309 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-CC-2251)

84-cc-2310 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2311 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2312 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-CC-2251)

84-CC-2313 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2314 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2315 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2316 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2317 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2318	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-cc-2319	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-cc-2320	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-cc-2321	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-cc-2322	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-cc-2323	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-cc-2324	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-cc-2325	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-CC-2326	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-CC-2327	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-CC-2328	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-CC-2329	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-cc-2330	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)

84-cc-2331 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2332 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2333 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2334 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2335 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2336 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2337 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2338 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2339 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2340 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2341 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2342 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2343 Universal Home. Health Care Assoc:
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2344 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2345 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2346 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2347 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2348 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2349 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2350 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2351 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2352 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2353 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2354 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2355 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2356 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2357	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-CC-2358	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-cc-2359	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-CC-2360	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-CC-2361	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-CC-2362	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-CC-2251)
84-CC-2363	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-cc-2364	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-CC-2365	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-CC-2366	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-CC-2367	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-CC-2368	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-CC-2369	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)

84-CC-2370 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2371 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2372 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2373 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2374 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2375 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-CC-2251)

84-CC-2376 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2377 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2378 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2379 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2380 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2381 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2382 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2383 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2384 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2385 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2386 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2387 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2388 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2389 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-CC-2251)

84-cc-2390 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2391 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2392 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2393 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2394 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2395 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2396 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2397 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2398 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2399 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2400 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2401 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-CC-2251)

84-cc-2402 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2403 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2404 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2405 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2406 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-CC-2251)

84-CC-2407 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2408 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2409 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2410 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2411 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2412 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2413 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2414 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2415 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2416 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2417 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2418 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-CC-2251)

84-CC-2419 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2420 Universal Home Health Care Assoc. d/b/a Quality Care . (Paid under claim 84-cc-2251)

84-CC-2421 Universal Home Health Care Assoc. d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2422 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2423 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2424 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2425 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2426 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2427 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2428 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2429 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2430 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2431 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2432 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2433 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2434 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2435 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid'under claim 84-cc-2251)

84-CC-2436 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-CC-2251)

84-CC-2437 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2438 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2439 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2440 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2441 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2442 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-CC-2251)

84-cc-2443 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-CC-2251)

84-cc-2444 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2445 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2446 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2447 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-CC-2251)

84-CC-2448 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2449 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2450 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2451 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-CC-2251)

84-CC-2452 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2453 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2454 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2455 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2456 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2457 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2458 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-cc-2459 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2460 Universal Home Health Care Assoc.
d/b/a Quality Care (Paid under claim 84-cc-2251)

84-CC-2461	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-CC-2462	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-CC-2463	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-cc-2464	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-CC-2465	Universal Home Health Care Assoc. d/b/a Quality Care	(Paid under claim 84-cc-2251)
84-CC-2470	Kraus, Robert R., M.D., S.C.	50.00
84-CC-2472	Mandel, Lipton & Stevenson, Ltd.	2,680.00
84-CC-2480	Ingalls Memorial Hospital	133.05
84-CC-2482	Sure-Fire Auto Parts	130.22
84-cc-2496	West Side Tractor Sales	642.07
84-CC-2498	Bloomington Radiology	90.25
84-cc-2500	Tri-County Human Services Center	105.00
84-cc-2509	St. Joseph Hospital	165.41
84-CC-2513	Medical Practice Plan	10.50
84-CC-2514	Medical Practice Plan	10.50
84-CC-2515	Crest Hill, City of	386.82
84-CC-2518	West Publishing	381.50
84-cc-2519	H & R Refuse Disposal	27.00
84-cc-2520	Office for Family Practice	135.00
84-cc-2523	Norridge, Village of	1,184.80
84-cc-2525	Production Supplies, Inc.	1,050.94
84-cc-2533	Holiday Inn Collinsville	49.36
84-cc-2539	Phillips Petroleum	11.74
84-cc-2542	Hamilton Center	220.00
84-CC-2553	Northwest Community Hospital	65.22
84-cc-2560	General Electric	1,618.00
84—cc-2561	Cotton, Diane	265.00
84-cc-2562	Xerox	14,009.00
84-CC-2568	Medical Evaluation Center	9,281.50
84-CC-2569	Dollar General (formerly P.N. Hirsch)	55.59
84-CC-2570	Arco Publishing	56.88

84-CC-2571	Waukegan Welding Supply	292.94
84-cc-2574	Medical Practice Plan	32.00
84-cc-2575	Ruff, Bud, Electric	814.56
84-CC-2578	Area Truck & Trailer	242.99
84-cc-2579	Northwest Hospital	414.28
84-CC-2582	Randolph County	938.00
84-cc-2590	**Fox** Industries	44.26
84-CC-2592	**Fox** Industries	44.26
84-cc-2593	**Fox** Industries	44.26
84-CC-2594	**Fox** Industries	43.42
84-cc-2595	**Fox** Industries	32.47
84-cc-2596	**Fox** Industries	29.13
84-cc-2597	**Fox** Industries	12.23
84-CC-2598	**Fox** Industries	10.95
84-cc-2599	**Fox** Industries	6.74
84—cc-2601	Glenbrook Dodge	39.66
84-CC-2603	Hope School	2,598.40
84-cc-2604	Diehl, Michael J.	200.00
84-CC-2606	Schinneer, David E.	55.00
84-CC-2608	St. Francis School	1,083.90
84-cc-2612	Lewis, Walter H.	55.03
84-CC-2614	Carlinville Area Hospital	39.00
84-CC-2615	Carlinville Area Hospital	28.53
84-CC-2618	Illinois Department of Public Aid	37.63
84-cc-2623	Shah, Indira, Dr.	15.00
84-cc-2624	Leydig, Stanley M., M.D.	80.00
84-CC-2625	Audio Learning	302.00
84-cc-2626	Berwyn Cicero Council on Aging	11,502.79
84-CC-2627	Berwyn Cicero Council on Aging	490.26
84-cc-2628	Berwyn Cicero Council on Aging	200.00
84-cc-2632	Weir Chevrolet-Olds	104.80
84-cc-2633	Althoff Industries	2,440.00
84-cc-2640	Center on Deafness	292.00
84-cc-2642	Marquis, Robert W.	210.40
84-cc-2649	Huttenbauer, E., & Son	1,209.15
84-cc-2650	Herschberger Truck & Equipment	148.50
84-cc-2654	Berta's True Value	89.64
84-cc-2656	Days Inn	54.00
84-cc-2660	Perkin-Elmer Corp.	405.00
84-cc-2664	Chicago Easter Seal Society	3,054.00
84-CC-2665	Chicago Easter Seal Society	2,825.50

84-cc-2666	Chicago Easter Seal Society	863.00
84-CC-2667	Chicago Easter Seal Society	2,050.00
84-CC-2668	Chicago Easter Seal Society	800.00
84-CC-2669	Chicago Easter Seal Society	60.00
84-CC-2671	Stannard Power Equipment	164.16
84-CC-2672	Driscoll, Thomas, M.D.	43.00
84-CC-2676	Joliet Security Controls	1,500.00
84-CC-2677	Video King	794.00
84-CC-2678	Bowman Distribution	606.09
84-cc-2679	Tennant, E. R.	41.00
84-cc-2684	Squibb, E. R., & Sons	1,604.10
84-CC-2685	Marcus, Spencer, M.D.	110.00
84-cc-2695	LaSalle Dental Laboratory	255.00
84-cc-2696	Paxton/Patterson	261.50
84-cc-2697	Walker Regional Medical Center	721.50
84-CC-2701	Waukesha Memorial Hospital	438.28
84-CC-2702	George, George S., M.D.	246.00
84-CC-2703	George, George S., M.D.	191.00
84-CC-2704	George, George S., M.D.	55.00
84-CC-2705	Hollingsworth, Gene W., M.D.	246.00
84-CC-2706	Freund Bros., Inc.	98.83
84-CC-2707	Hansen, H. L., Lumber	1,631.85
84-CC-2709	Wang Labs	3,420.00
84-CC-2712	Illinois, University of, Board of Trustees of the	3,550.00
84-CC-2713	Illinois, University of, Board of Trustees of the	70.10
84-CC-2717	Rehabilitation Institute of Chicago	39.37
84-CC-2718	Levie, Charles, M.D.	118.50
84-CC-2720	Owen, Richard	13.00
84-CC-2721	Fox Industries	105.58
84-CC-2722	Fox Industries	87.52
84-CC-2723	Fox Industries	78.54
84-CC-2725	Maolonoi, Anthony J., D.D.S.	50.00
84-CC-2726	Southern Illinois University, Board of Trustees of	22,533.25
84-CC-2727	Johnson's, Howard, Motor Lodge	31.50
84-CC-2728	Offord, George T.	17.59
84-CC-2729	Hough, William E., D.O.	317.00
84-CC-2730	Central Office Equipment	721.98
84-CC-2731	Central Office Equipment	562.86

84-CC-2732	Central Office Equipment	398.00
84-CC-2738	Piratanonta, Vinai, M.D.	100.00
84-CC-2739	Grove School	14,162.59
84-CC-2740	Todd Corp.	202.50
84-CC-2741	310 Center	721.60
84-CC-2742	310 Center	429.00
84-CC-2743	310 Center	357.39
84-CC-2745	Daniels, Marlon	106.92
84-CC-2746	Shimer College	925.00
84-CC-2748	Carr, Priscilla	300.00
84-CC-2758	Legner & Sullivan, General Contractor	3,750.00
84-CC-2759	Moon, Florence	979.11
84-CC-2760	Mobil Oil Credit Corp.	53.53
84-CC-2761	Mobil Oil Credit Corp.	48.14
84-CC-2763	Elder Power Professional Home Helps, Inc.	1,113.57
84-CC-2764	Amoco Oil Co.	449.78
84-CC-2765	Amoco Oil Co.	267.90
84-CC-2766	Amoco Oil Co.	54.09
84-CC-2768	Heerbrugg, Wild Instruments, Inc.	453.59
84-CC-2769	Youth Service Bureau of Rock Island County	309.39
84-CC-2770	Christie Clinic	20.00
84-CC-2771	St. Elizabeth Hospital	93.10
84-CC-2773	Niederbrach Truck Service	114.66
84-CC-2782	Cicero, Town of	1,510.01
84-CC-2783	Harris, Vermie	66.49
84-CC-2790	MD Services	813.00
84-CC-2795	Aurora College	325.00
84-CC-2796	Aurora College	325.00
84-CC-2797	Arumugam, S. P., M.D.	470.00
84-CC-2798	LaSalle Co. Youth Services Bureau	1,307.25
84-cc-2804	Xerox	1,738.86
84-cc-2805	Xerox	1,738.86
84—cc-2806	Xerox	504.93
84-CC-2808	Production Supplies, Inc.	1,934.50
84-cc-2810	St. Bernard Hospital	756.51
84-CC-2814	Bozell &Jacobs	1,617.07
84-CC-2815	Bozell & Jacobs	1,527.73
84-CC-2816	Bozell & Jacobs	982.10
84-CC-2817	Bozell &Jacobs	918.00
84-cc-2820	Bozell &Jacobs	201.12
84-cc-2821	Bozell & Jacobs	105.25

84-cc-2822	Bozell &Jacobs	34.75
84-cc-2823	Bozell & Jacobs	24.00
84-cc-2824	Bozell &Jacobs	5.95
84-cc-2825	Hoyleton Childrens Home	4,303.13
84-CC-2827	3 M	724.51
84-CC-2830	Kankakee Industrial Supply	763.20
84-cc-2835	Five Hospital Homebound Elderly Program	3,403.00
84-CC-2836	Five Hospital Homebound Elderly Program	(Paid under claim 84-cc-2835)
84-cc-2837	Hoss Radiology Group	14.00
84-CC-2842	Commonwealth Edison	635.08
84-cc-2850	Blumberg Construction	24.99
84-cc-2853	Evanston Hospital	35,800.86
84cc-2857	Holy Cross Hospital	198.90
84-CC-2858	Star-Courier	6.16
84-CC-2860	IIT Research Institute	1,000.00
84-CC-2862	Tobler Transfer	76.71
84-cc-2863	Elgin Salvage & Supply	73.04
84-CC-2865	Medical Service Plan	703.90
84-CC-2866	Gasca, Francisco	103.17
84-CC-2867	Gasca, Francisco	101.48
84-cc-2868	Gasca, Francisco	76.11
84-CC-2869	Baker, John	411.53
84-CC-2870	Sudha, Shah	33.00
84-CC-2876	Rehabilitation Institute of Chicago	1,258.80
84-CC-2878	Commonwealth Edison Co.	1,548.13
84-cc-2879	Niles Township Sheltered Workshop	1,049.81
84-CC-2880	Human Service Center	2,350.65
84-CC-2881	Chicago Area Project	1,572.38
84-CC-2907	Office for Family Practice	120.00
84-CC-2909	Cleveland Pneumatic Corp.	4,786.00
84-CC-2914	Lee, Young M., M.D.	70.00
84-CC-2919	Xerox	874.56
84-CC-2920	Xerox	694.77
84-CC-2921	Xerox	363.60
84-CC-2922	Xerox	360.68
84-CC-2923	Xerox	264.50
84-CC-2924	Xerox	200.36
84-CC-2925	Xerox	162.66
84-CC-2926	Xerox	155.14

84-CC-2927	Xerox	110.00
84-CC-2929	American Community Services	912.49
84-CC-2931	Citgo Petroleum	16.49
84-CC-2981	Wisconsin, University of, Hospital & Clinic	929.00
84-CC-2987	Rehabilitation Institute of Chicago	2,856.70
84-CC-2991	Mental Health Services of Franklin & Williamson Counties	770.85
84-cc-2992	McKilligan Supply	995.00
84-CC-2993	Cunningham, Jas. L., Co.	2,940.00
84-cc-2994	Weeks Auto Seat Cover	25.00
84-cc-2995	Bhayani, Bipin N., M.D.	1,525.00
84-cc-3001	Black Hawk College	51.70
84—cc-3002	Gaffigan, Terrance C.	98.12
84-cc-3003	Children's Health Center., S.C.	67.00
84-cc-3004	Raynor Garage Door Systems	49.38
84-cc-3019	Rehabilitation Institute	6,721.00
84-cc-3024	Misericordia Home North	425.76
84-cc-3025	Misericordia Home South	104.33
84-CC-3026	Star Courier	26.46
84-CC-3027	Phillips Chevrolet	44.45
84-CC-3028	Marino, John A.	1,547.51
84-CC-3035	Beverly Farm Foundation	3,796.42
84-cc-3036	Bellmore, Deborah	137.18
84-CC-3038	Little City Foundation	171,748.00
84-CC-3054	Wolny, Dennis J., M.D.	53.00
84-CC-3055	Clark, Lila	47.88
84-CC-3056	Holz, Kenneth A., D.D.S.	58.50
84-CC-3058	Buddy Bear's Food Center	100.00
84-cc-3064	St. Anne's Hospital	254.02
84-CC-3160	Rehabilitation Institute of Chicago	19,888.28
84-CC-3171	Central Delta Tire Co.	18.95
84-CC-3172	Levie, Charles, M.D.	185.60
84-CC-3175	Medical Practice Plan	46.30
84-CC-3177	Warehouse Equipment, Inc.	92.88
84-CC-3178	Putman, H. C., M.D.	1,522.00
84-CC-3190	Business Machine Centre, Div. of Oak Brook Office Supply & Equipment Corp.	76.75
84-CC-3192	Commonwealth Edison	8,822.41
84-CC-3195	Moore Business Forms	645.06
84-CC-3196	Oh, Hyun T., M.D.	540.32
84-CC-3197	General Telephone	18,945.99

84-CC-3204	Riemer's EGV Testing Lane	7.20
84-CC-3206	Perkin-Elmer Corp.	4,896.00
84-cc-3207	Ware Klump Oil	179.08
84-CC-3215	Reed-Randle Motors	1,732.34
84-CC-3217	Honeywell, Inc.	3,488.00
84-CC-3218	Community College Dist. 508	146.58
84-CC-3224	ANR Freight System	169.61
84-cc-3227	National Electric Supply	123.22
84-cc-3229	Memorex	425.00
84-cc-3243	Evanston Hospital	4,602.46
84-CC-3250	Economics Laboratory	243.81
84-CC-3258	We Tip, Inc.	696.92
84-cc-3259	Family Care Services	595.12
84-CC-3250	Kallis, M., & Co.	841.62
84-cc-3264	Bettenhausen Motor Sales	23.22
84-CC-3268	Lawson, Walter, Children's Home	343.80
84-cc-3269	Correctional Health Service	1,460.00
84-CC-3270	Community College Dist. 508	101.48
84-CC-3272	Community College Dist. 508	12Q.00
84-CC-3273	Community College Dist. 508	102.00
84-CC-3274	Community College Dist. 508	51.12
84-CC-3275	Community College Dist. 508	33.83
84-CC-3279	Rehabilitation Institute	480.00
84-CC-3285	Scottish Rite Hospital	1,193.85
84-CC-3286	Datapro Research Corp.	695.00
84-cc-3287	Better Boys Foundation	631.53
84-CC-3290	Chicago University Hospital	11,063.61
84-CC-3294	Illinois Bell	2,401.58
84-CC-3295	Illinois Migrant Council	4,923.58
84-CC-3297	Consolidated Freightways	234.55
84-cc-3303	Beatty Televisual	850.00
84-cc-3306	Kropp, Laverne & Arthur	335.23
84-cc-3309	Rehabilitation Institute of Chicago	1,079.75
84-cc-3311	Medical Practice Plan	14.80
84cc-3335	Medical Practice Plan	18.00
84-cc-3337	Cataholic Charities	3,652.05
84-CC-3346	Catholic Social Services	17,194.10
84-cc-3347	Englewood, Hospital of	55.72
84-CC-3348	Atkins, Anthony A.	100.00
84-cc-3351	Bond Buyer, Inc.	1,468.04
84-cc-3352	Institute of Logopedics, Inc.	6,329.60

84-cc-3353	Rehabilitation Institute	426.50
84-cc-3355	Hobart North Welding Supply	29.25
84-CC-3358	Klaus Radio	598.00
84-cc-3365	Rehabilitation Institute	750.00
84-cc-3396	Chicago, University of, Hospital	6,013.90
84-cc-3397	Kutty, Ahamed, V.P., M.D.	70.00
84-cc-3399	Bowker, R. R., Co.	156.20
84-cc-3401	Regal Business Machines	143.45
84-cc-3410	Community College Dist. 508, Board of Trustees	42.60
84-CC-3411	Community College Dist. 508, Board of Trustees	56.38
84-CC-3418	Smith, Betty A.	148.50
84-cc-3419	Goranson, Barbara A.	41.25
84-cc-3421	May, James, Reporting Service	37.40
84-cc-3423	Harvard Ready Mix	361.50
84-CC-3424	Mutual Services	371.00
84-cc-3428	Zayre—373	55.80
84-cc-3430	Pryor Corp.	2,165.22
84-CC-3431	Rehabilitation Institute	108.88
84-cc-3433	Monogram/Fasteners	143.50
84-cc-3434	Anle Paper Co.	42.82
84-cc-3450	ANR Freight System	60.36
84-CC-3452	Xerox Corp.	442.75
84-CC-3453	Xerox Corp.	363.71
84-CC-3454	St. James Hospital	2,916.40
84-CC-3456	St. James Hospital	45.00
84-cc-3457	Woodhaven School, Inc.	302.09
84-CC-3458	Gillespie, William J., M.D.	44.00
84-CC-3469	Production Supplies, Inc.	135.58
84-CC-3470	City of International Trucks, Inc.	81.26
84-cc-3473	Marquis Who's Who	78.00
84-cc-3474	Center for Rehabilitation & Training of the Disabled	903.00
84-CC-3476	Cairo Public Utility Commission	189.77
84-cc-3477	Barrett Hardware	6.26
84-cc-3539	St. Francis Hospital	96.35
84-cc-3541	St. Bernard Hospital	208.57
84-cc-3542	Contel of Illinois	394.49
84-cc-3543	Sheikh, A. R., M.D.	13.90
84-cc-3553	Mebs, Inc.	525.00

84-CC-3554	Smith, John A.	325.49
84-CC-3563	Beal, William, School	66.15
84-cc-3564	Green, Nancy M., petty cash custodian	120.31
84-cc-3566	Children's University Medical Group	87.10
84-CC-3567	Children's University Medical Group	33.80
84-CC-3568	Children's University Medical Group	23.10
84-CC-3583	Goodyear Tire & Rubber	198.93
84-cc-3590	Blackmore & Glunt	2,810.00
84-cc-3591	Sampolinski, A. T., M.D.	75.30
84-CC-3592	Lincoln, Sarah Bush, Health Center	484.38
84-cc-3594	St. Mary of Nazareth Hospital	1,736.56
84-cc-3595	St. Mary of Nazareth Hospital	744.24
84-CC-3603	Chicago University Hospital	406.89
84-CC-3608	Norman Equipment Co.	18.08
84-cc-3609	Action Office Supply	653.08
84-CC-3611	Hinsdale Sanitarium	8,528.40
84-CC-3619	Augustana Hospital	8,345.87
85-CC-0003	Howard Uniform Co.	82.80
85-cc-0004	Rehabilitation Institute	864.00
85-cc-0010	Chicago, University of	5,131.54
85-cc-0012	Anderson, J. Emil, & Son	535.80
85-cc-0022	Community College Dist. 508	195.00
85-CC-0027	Little City Foundation	2,935.74
85-CC-0029	Stoller International	530.31
85-cc-0037	Able Overhead Door & Construction	96.00
85-cc-0043	Association House of Chicago	8,712.73
85-cc-0060	Chicago Steel Tape	135.05
85-CC-0062	Chicago Steel Tape	43.80
85-cc-0063	PAL Business Forms	2,000.00
85-CC-0065	Gowdar, Kusuma, Dr.	214.20
85-CC-0067	Mercy Hospital	7,588.05
85-cc-0068	Schmisseur, Robert R.	60.00
85-cc-0069	American Printing House for the Blind	7.64
85-CC-0071	Lopez, Luz, custodian, petty cash fund	98.63
85-cc-0075	Commonwealth Edison	995.80
85-CC-0098	McHenry Auto Body	305.57
85-cc-0101	Dearborn Travel, Inc.	120.00
85-CC-0107	Air Illinois	140.00
85-CC-0108	Thornton Community College	144.00
85-cc-0109	Caldwell Electric Co.	2,994.00
85-CC-0111	Schultz, Jeannie, Memorial School	360.74

85-cc-0135	Sweeney, J. M., Co.	199.50
85-CC-0139	Corn Belt Electric Cooperative, Inc.	99.00
85-CC-0140	Fletcher Typewriter Co.	39.00
85-CC-0141	Armadillo Tool & Instrument	552.31
85-CC-0142	Proctor Community Hospital	71.22
85-cc-0144	Illinois Department of Public Aid	17.19
85-CC-0147	Inverness Mining Co.	304.04
85-CC-0156	Bard Medsystems	1,691.86
85-CC-0157	Shawnee Development Council	1,797.00
85-CC-0158	Shawnee Development Council	1,242.00
85-CC-0159	Shawnee Development Council	25.00
85-CC-0161	Five Hospital Homebound Elderly Program	97.50
85-cc-0180	Decatur Memorial Hospital	459.75
85-CC-0182	Banks, Patricia	225.00
85—cc-0185	Edward Hospital	52.10
85-cc-0186	Edward Hospital	52.10
85-CC-0193	Mennonite Hospital	328.96
85—cc-0199	United Health Care Services	4,439.50
85—cc-0200	Edward Hospital	17.50
85-cc-0202	Dowd, James J.	104.30
85-CC-0203	Dowd, James J.	40.80
85—cc-0205	ATD American	445.41
85—cc-0206	Fox Industries	186.25
85-CC-0207	Motive Parts Co.	254.34
85-cc-0211	National Police Supply	260.30
85-CC-0220	Bethea, Katherine Shaw, Hospital	20.00
85-cc-0222	Mayer, Brown & Platt	2,303.40
85-cc-0223	Mark I, Inc.	259.20
85-CC-0225	Savin Business Machines	137.37
85-cc-0231	Kasbekar, Vithal, M.D.	264.00
85—cc-0235	Illinois Department of Public Aid	15.55
85-CC-0237	Denecke, Audrey B.	133.75
85-cc-0244	Mostovoy, Judith	192.85
85-CC-0246	Community College Dist. 508	272.00
85-CC-0272	Orthopedic Associates of Kankakee	692.04
85-CC-0273	Easter Seal Rehabilitation Center	270.00
85-CC-0274	Johnson's, Howard, Motor Lodge	63.00
85-CC-0276	Machado, Eduardo, M.D.	532.10
85-CC-0277	Joswick, Christine	79.00
85-CC-0287	Ruff, Joan & Richard	1,410.00

85-CC-0288	Resurrection Hospital	95.38
85-cc-0289	Smithkline Clinical Labs	844.24
85-cc-0290	Shankman Orthogenic School	9,550.46
85-CC-0291	Shankman Orthogenic School	5,624.39
85-cc-0294	Grimaldi, Anthony M., D.O.	36.50
85-CC-0298	Xerox	266.91
85-CC-0299	Xerox	510.04
85-CC-0300	Xerox	216.19
85-cc-0301	Xerox	150.00
85-CC-0311	Co-op Medical Systems	48.92
85-CC-0313	St. James Hospital	75.00
85-CC-0318	Matthews, Mary	4,836.36
85-CC-0319	Lear Siegler, Inc.	403.40
85-CC-0325	Corse, Linda D.	250.00
85-cc-0339	Ushman Communications	3,893.33
85-cc-0350	ZEP Manufacturing	1,482.95
85-cc-0352	Lawrence Medical Supply	243.92
85cc-0353	Lawrence Medical Supply	304.78
85-CC-0356	P.D.Q. One Hour Photo	12.17
85-cc-0358	Children's Home & Aid Society	2,336.45
85-cc-0359	Bartelme, Mary, Homes	1,607.20
85-CC-0367	Squire-Cogswell Co.	1,215.18
85-cc-0369	Federal Express	36.02
85-cc-0383	St. Clair County	70.00
85-CC-0387	Little City Foundation	2,234.52
85-cc-0388	Little City Foundation	2,462.11
85-cc-0389	Little City Foundation	1,820.72
85-CC-0399	Noe, Barbara A.	250.00
85-cc-0401	TRT Telecommunications Corp.	71.70
85-CC-0405	Community College Dist. 508, Board of Trustees of, County of Cook & State of Illinois	67.65
85-cc-0406	Community College Dist. 508, Board of Trustees of, County of Cook & State of Illinois	79.00
85-CC-0407	Community College Dist. 508, Board of Trustees of, County of Cook & State of Illinois	69.00
85-CC-0408	Mohn, Henry	100.00
85-cc-0412	Strickland, Rosa Lee	414.29

85-CC-0415	Community College Dist. 508, Board of Trustees of, County of Cook & State of Illinois	51.12
85-CC-0417	Prousis, Michael T.	172.00
85-cc-0421	St. Therese Hospital	15,501.86
85-cc-0435	Mays, Helen R.	903.15
85-CC-0441	Glenkirk	3,139.73
85-CC-0447	Beam, Longest & Neff	4,990.87
85-CC-0449	Lutheran Home and Service	1,165.67
85-CC-0450	River Oaks Dodge	246.92
85-CC-0453	Mercy Hospital	1,166.60
85-CC-0455	Murray, James, D.O.	33.00
85-CC-0460	Community College Dist. 508	207.00
85-CC-0461	Community College Dist. 508	101.48
85-CC-0462	Community College Dist. 508	115.00
85-cc-0463	Community College Dist. 508	90.00
85-CC-0467	Lombardo, Robert P., D.O.	36.50
85-CC-0469	Illinois Department of Public Aid	10.68
85-CC-0471	Vermilion County Health Dept.	1,142.84
85-cc-0475	Miles Chevrolet	450.00
85-CC-0480	Shover, Jane, Easter Seal Rehabilitation Center	5,224.47
85-cc-0483	Community College Dist. 508	102.25
85-cc-0491	Wisconsin University Hospital	322.65
85-CC-0492	Grube Pharmacy	86.29
85-cc-0493	Firestone Store of St. Charles	64.00
85-CC-0494	Drake, Fenton G., M.D.	1,485.00
85-cc-0495	Drake, Fenton G., M.D.	765.00
85-cc-0496	Fowler, W. Gerald, Dr.	1,045.00
85-cc-0497	Fowler, W. Gerald, Dr.	495.00
85-CC-0498	Fowler, W. Gerald, Dr.	810.00
85-CC-0499	Fowler, W. Gerald, Dr.	705.00
85-CC-0500	Fowler, W. Gerald, Dr.	445.00
85-CC-0502	Fowler, W. Gerald, Dr.	372.50
85-CC-0504	Fowler, W. Gerald, Dr.	305.00
85-CC-0505	Fowler, W. Gerald, Dr.	195.00
85-cc-0512	Xerox	305.79
85-CC-0516	Pritikin, Lorin	47.62
85-CC-0517	Potter, Bill	380.00
85-CC-0518	Community College Dist. 508	135.30
85-CC-0519	Community College Dist. 508	217.00

85-CC-0529	Thompson, Mary, Hospital	155.00
85-CC-0531	Greer, William	47.00
85-CC-0533	KOPCO	3,853.90
85-CC-0543	Gaffney, Denis C.	226.13
85-CC-0546	Orthopedic Assoc. of Kankakee	48.44
85-CC-0547	Coleman Tri-County Services	314.18
85-CC-0550	United States Postal Service, Charles D. Bundy, Supt. of Postal Operations	253.34
85-CC-0552	Anina Travel Service	270.00
85-CC-0553	Hall-Schwartz & Assoc.	932.70
85-CC-0557	Walsh, Carolyn	81.89
85-CC-0559	YWCA of Kankakee	2,584.00
85-CC-0561	Bell Fuels	30.00
85-CC-0564	Mercy Hospital	89,623.M
85-cc-0566	Coal Belt Fire Equipment	3,136.00
85-CC-0567	St. James Hospital	181.48
85-CC-0568	Lanier Business Products	984.72
85-CC-0569	Britton, Joyce S.	537.00
85-CC-0570	Britton, Joyce S.	537.00
85-CC-0571	Britton, Joyce S.	531.00
85-CC-0572	Britton, Joyce S.	531.00
85-cc-0573	Britton, Joyce S.	350.00
85-CC-0574	Britton, Joyce S.	350.00
85-CC-0575	Britton, Joyce S.	318.50
85-CC-0576	Britton, Joyce S.	318.50
85-CC-0577	Britton, Joyce S.	310.00
85-CC-0578	Britton, Joyce S.	310.00
85-CC-0579	Britton, Joyce S.	310.00
85-CC-0580	Britton, Joyce S.	254.00
85-CC-0581	Community College Dist. 508	90.00
85-cc-0583	Kishwaukee Community Hospital	68.50
85-cc-0584	Map Training Center	970.26
85-cc-0585	Lenton, Daphine D.	511.00
85-CC-0587	OBrien Steel Service	3,684.12
85-CC-0588	Sky Harbor Inn	27.00
85-cc-0591	Community Support Services	2,211.60
85-CC-0592	Amoco Oil	676.30
85-cc-0593	Hanger, J. E., Inc.	301.40
85-CC-0594	Zahaitus & Co.	6,375.00
85-CC-0596	O'Neal Printing Co.	3,716.13
85-CC-0597	Hamilton, Alard	251.83

85-CC-0598	Bock, Jeanette R.	49.20
85-CC-0599	Dunkel, William W.	6,600.00
85-CC-0600	Macoupin County Mental Health Center	2,280.00
85-cc-0601	Production Supplies	138.60
85-CC-0603	Fisher, Edward	52.00
85-CC-0605	Alter & Sons	524.10
85—cc-0606	Alter & Sons	323.00
85-CC-0607	Alter & Sons	211.20
85-CC-0608	Giger, John C.	232.83
85-CC-0609	Voelker Enterprises	338.00
85-cc-0610	Snap on Tools Corp.	1,135.08
85-CC-0611	Pedapati, Vijaya	235.00
85-cc-0620	Harris, Arnold D.	470.00
85-cc-0622	Case Power & Equipment	8,750.00
85-CC-0629	Shadid, George P., Sheriff of Peoria County	47.25
85-CC-0632	Northeastern Illinois University	126.92
85-CC-0633	Randolph Hospital Dist.	1,502.60
85-CC-0634	Alter & Sons	319.50
85-CC-0635	Alter & Sons	770.50
85-CC-0645	Curry Court Reporting Agency	30.75
85-CC-0647	Graham, Ray, Association	8,142.28
85-CC-0648	Graham, Ray, Association	2,861.43
85-CC-0649	Graham, Ray, Association	1,732.71
85-CC-0650	Graham, Ray, Association	694.86
85-cc-0651	Graham, Ray, Association	517.80
85-CC-0654	Covey, Michael Eugene	427.04
85-CC-0655	McHenry Co. Glass & Mirror	4,830.00
85-CC-0656	Juday, David W.	182.80
85-cc-0657	Roytype	1,180.00
85-CC-0658	Air Illinois, Inc.	420.00
85-cc-0659	Allen, Jane A.	31.54
85-CC-0660	Washington University, Dept. of Pediatrics	594.00
85-CC-0661	Alexander Travel, Ltd.	209.00
85-CC-0664	Alter & Sons	377.60
85-CC-0665	Union County Hospital	21.00
85-CC-0666	Lewis, William D.	350.00
85-CC-0667	Loyola Medical Practice	25.00
85-CC-0668	Loyola Medical Practice	60.00
85-CC-0670	Habilitative Systems	3,317.40
85-CC-0671	Habilitative Systems	703.50
85-CC-0672	Kaskaskia Sheltered Workshop	2,981.67

85-cc-0673	Hanrahan, Thomas P.	600.00
85-CC-0674	Cohen, Robert S., Partner, Midland Trust IV	331.26
85-CC-0678	Aurora Truck Body	1,953.00
85-cc-0679	Geline, Richard A., M.D.	. 81.00
85-CC-0681	Mendota Community Hospital	86.80
85-CC-0682	Wiethop Truck Sales, Inc.	162.30
85-cc-0683	American Anchor Bolt & Steel Co.	6,750.00
85-cc-0685	Corrections, Dept. of; Illinois Correctional Industries	1,785.00
85-CC-0686	Transportation, Department of; Division of Traffic Safety	124.04
85-cc-0687	Ludwig Lumber, Inc.	1,195.70
85-CC-0689	Olympia Dodge of Countryside	142.00
85-cc-0690	Abad,Emmanuel	136.86
85-cc-0691	Suk, Churl-Soo, M.D.	1,650.00
85-cc-0693	Mercy Hospital	5,694.24
85-cc-0699	Omni-House	1,431.00
85-CC-0701	Fuji Photo Film	644.14
85-CC-0702	Toys "R" Us	141.00
85-CC-0703	Toys "R" Us	27.78
85-CC-0704	Coles County Association for the Retarded	924.22
85-CC-0705	Coles County Association for the Retarded	387.03
85-CC-0706	Coles County Association for the Retarded	387.03
85-CC-0708	Portable Tool Sales	37.00
85-CC-0709	Bolotin, Inc.	1,400.00
85-CC-0710	Brunk, Glenn, Stationers	863.96
85-CC-0711	Brewer, David E.	. 181.64
85-CC-0712	Gosch, Juanita	90.00
85-CC-0713	National Mine Service	85.56
85-CC-0714	Halstead, R. L., Dr.	374.06
85-CC-0718	Community College Dist. 508	253.00
85-CC-0719	Community College Dist. 508	138.00
85-CC-0720	School Dist. U-46	567.57
85-CC-0722	Freeport Clinic	86.00
85-CC-0723	Freeport Clinic	86.00
85-CC-0724	Freeport Clinic	57.50
85-CC-0725	Freeport Clinic	45.00
85-CC-0730	IBM	36,014.20
85-CC-0731	IBM	3,985.80
85-CC-0732	IBM	218.00
85-CC-0733	General Electric	132,402.50

85-CC-0734	General Electric	66,719.00
85-CC-0735	General Electric	41,060.00
85-CC-0736	General Electric	15,443.00
85-CC-0737	General Electric	12,380.00
85-CC-0738	General Electric	11,022.00
85-CC-0739	General Electric	10,952.00
85-CC-0740	General Electric	9,627.00
85-CC-0741	General Electric	8,850.00
85-CC-0742	General Electric	7,448.00
85-CC-0743	General Electric	7,120.00
85-CC-0744	General Electric	4,857.00
85-CC-0745	General Electric	4,425.00
85-CC-0746	General Electric	988.00
85-CC-0747	General Electric	565.00
85-CC-0749	Radio Shack	97.22
85-CC-0750	Pavia, Joseph D.	200.00
85-CC-0751	Alter & Sons	17,121.20
85-GC-0752	Hogan, Christiane M.	250.42
85-CC-0755	OBrien Steel Service	3,933.75
85-CC-0756	O'Brien Steel Service	1,580.76
85-CC-0757	OBrien Steel Service	846.80
85-CC-0758	Wright Line	3,030.00
85-CC-0761	Xerox	711.20
85-CC-0762	Xerox	162.50
85-CC-0764	Bacon & Van Buskirk	2,383.41
85-CC-0765	St. Charles Dodge	133.24
85-CC-0767	American Decal & Mfg.	1,563.81
85-CC-0768	Alter & Sons	1,265.85
85-CC-0769	American Guidance Service	184.10
85-CC-0770	Wynn & Bertinetti	100.00
85-CC-0772	Maple, Robert C.	54.00
85-CC-0773	Springfield Hilton	97.20
85-CC-0779	Jacksonville Assn. for Retarded Citizens	2,395.20
85-CC-0780	Copier Duplicator Specialist	98.58
85-CC-0782	Gibbs, Louise	186.33
85-CC-0783	Air Illinois	280.00
85-CC-0785	Monroe Truck Equipment	69.74
85-CC-0786	Monroe Truck Equipment	69.74
85-CC-0787	Alter & Sons	378.90
85-CC-0789	Hensley Construction Co.	16,707.35
85-CC-0793	Lab Safety Supply	148.46

85-CC-0796	Hugar, Donald W., Dr.	307.00
85-CC-0799	Bilanzic, John P.	211.70
85-CC-0801	Salvation Army Emergency Lodge	11,822.26
85-CC-0802	O'Brien Steel Service	3,241.07
85-CC-0806	Duncan Oil	*45.00*
85-CC-0808	Woodfield Ford Sales	165.99
85-CC-0812	Community College District, No. 508	276.00
85-CC-0813	Community College District, No. 508	60.00
85-CC-0814	Hogan Implement Co., Inc.	1,243.31
85-CC-0815	Great Lakes Printing Equipment	1,890.00
85-CC-0816	Logan, John A., College	108.00
85-CC-0817	Aurora Sanitary District	286.09
85-CC-0819	St. Therese Hospital	356.00
85-CC-0820	Kansas Department of Human Resources	7,500.00
85-CC-0821	Maryville Academy	637.23
85-CC-0823	Midwest-Japan Assn.	5,000.00
85-CC-0824	Doebele, Thomas E.	121.98
85-CC-08%	Doebele, Thomas E.	45.98
85-CC-0827	Robbins, Jack L.	86.00
85-CC-0828	Osborne Construction	951.00
85-CC-0829	Gurnee True Value	45.72
85-cc-0830	Gurnee True Value	40.36
85-cc-0831	Gurnee True Value	25.06
85-cc-0832	Gurnee True Value	8.30
85-CC-0835	American Decal & Mfg.	4,348.05
85-CC-0837	Clement, Hershel F.	9,472.58
85-cc-0839	Wise, Jeffrey B.	83.60
85-cc-0840	Dechovitz, Arthur B., M.D.	23.00
85-cc-0841	Rockford Services Co.	12.00
85-cc-0842	Bullard Safety	1,941.22
85-CC-0843	Bullard Safety	293.73
85-cc-0844	Koveski, Anthony H.	130.53
85-CC-0845	Koveski, Anthony H.	19.38
85-CC-0846	Keyes, Mary, M.D.	98.00
85-CC-0847	Mangold, Harold, II	231.00
85-cc-0849	Allied Auto Body	2,456.48
85-cc-0850	National Mine Service	92.69
85-cc-0854	Schapiro, Joseph S., M.D.	33.00
85-CC-0855	Halper, Mitchell R., M.D.	475.00
85-CC-0856	Tucker, Rosalyn	58.63
85-CC-0857	Joseph, Oliver C., Inc.	144.94

85-CC-0858	Shapiro, Joseph S., M.D.	33.00
85-cc-0859	Stokes, Harold W.	94.00
85-CC-0860	Horan, Daniel E., M.D.	182.00
85-CC-0861	Alter & Sons, Inc.	3,424.24
85-cc-0862	Alter & Sons, Inc.	1,208.55
85-CC-0863	Beverly Farm Foundation	133.56
85-CC-0867	Sfena Corp.	3,648.27
85-CC-0868	Meier's Masterbuilt Manufacturing Co., Inc.	530.00
85-CC-0876	Holiday Inn, Marion	126.00
85-CC-0877	Public Stenographic Service	102.25
85-CC-0878	Princeton Orthopedic Clinic	210.00
85-CC-0879	Yancy, Clarence R.	67.25
85-CC-0880	Svendson, John	75.43
85-CC-0882	Northern Illinois University, Board of Regents of Regency Universities on behalf of,	582.51
85-cc-0883	Concept Media	330.00
85-cc-0884	Savin Corp.	1,320.00
85cc0885	Roytype	42.72
85-CC-0887	ABC Day Care Center	378.00
85-cc-0888	Central Furnace Supply	28.54
85-CC-0890	Chawla, Bhuvan, M.D.	1,595.00
85-CC-0891	Chawla, Bhuvan, M.D.	85.00
85-CC-0892	Chawla, Bhuvan, M.D.	85.00
85-CC-0893	Carey's Furniture Co., Inc.	7,102.00
85-CC-0895	Ross Bus Sales	178.42
85-CC-0900	Tennessee Secretary of State	3.50
85-cc-0901	Bender, Matthew, Co.	131.50
85-cc-0902	IBM Corporation	71.24
85-cc-0904	Riverside Radiologists	8.60
85-CC-0905	American Executive Coffee Service	60.00
85-cc-0906	Shover, Jayne, Easter Seal Rehabilitation Center	423.97
85-CC-0908	Production Supplies, Inc.	831.60
85-cc-0909	Ushman Communications	44.95
85-cc-0910	Tots & Toddlers Day Care Center	1,954.00
85—cc-0911	Air Illinois	19.95
85-cc-0912	Kanweld Welding Equipment & Supplies	585.60
85-CC-0918	Oak Park, Village of	3,194.81
85-cc-0919	Egizii Electric	15,348.00
85-cc-0920	Safford Industries	20.65

85-CC-0921	Econo-Car of Chicago	61.70
85-cc-0922	Collins, Virginia D.	202.45
85-cc-0923	Harold Motors	413.17
85-cc-0926	Excepticon of Illinois, Inc.	289.00
85-CC-0927	Excepticon of Illinois, Inc.	104.20
85-cc-0933	Sky Harbor Inn	64.80
85-cc-0934	Panek, Paul	250.00
85-cc-0937	Fisch, Robert E., Dr.	25.00
85-cc-0940	Serby, Elizabeth L.	119.32
85—cc-0941	Southern Illinois Airport Authority	392.46
85-cc-0943	Community College District 508	121.23
85-CC-0959	Biggers Chevrolet	14,295.00
85-CC-0960	Northwest Mental Health Center, Inc.	162.50
85-cc-0961	Flir Systems, Inc.	2,350.00
85-cc-0962	Field & Shorb Co.	6,863.75
85-cc-0965	Overend, Jan	101.08
85-cc-0966	Deloitee Haskins & Sells	1,615.00
85-CC-0967	Deloitee Haskins & Sells	1,600.00
85cc-0968	Deloitee Haskins & Sells	1,600.00
85-cc-0969	Bullard Safety	1,483.94
85-CC-0970	Laskaris, Joan	123.77
85-CC-0971	Dykeman, Dorothy	120.77
85-CC-0972	Pandya, Bakul, M.D.	55.00
85-cc-0973	Shirantana, Ltd.	67.00
85-CC-0975	Shirantana, Ltd.	36.50
85-cc-0980	Uddin, Mohammad N.	43.89
85-cc-0986	Petrolane Gas	20.96
85-CC-0987	Petrolane Gas	224.00
85-cc-0988	Petrolane Gas	168.00
85-CC-0989	Petrolane Gas	140.00
85-cc-0990	Smith, Lawrence W.	52.50
85-CC-1000	Hughes, Larry G.	271.50
85-cc-1001	Hughes, Larry G.	90.90
85-cc-1002	Metropolitan Ophthalmology	165.00
85-cc-1003	Clinical Counseling	595.00
85-CC-1005	Logan Ave. One-Stop	60.39
85-CC-1008	MCC Powers	263.00
85-cc-1009	Lake Bluff/Chicago Homes for Children	609.29
85-cc-1010	1230 Communications Corp.	393.45
85-cc-1011	Gollin, Pearl, M.D.	48.00

85-cc-1012	Baukus, Erwin J., Ph.D.	478.00
85-CC-1013	Jordan, Terrence M.	2,920.83
85-CC-1015	Maloof Real Estate	361.67
85-CC-1016	General Electric	91,782.25
85-CC-1017	General Electric	20,680.00
85-CC-1018	General Electric	20,408.00
85-cc-1020	General Electric	3,547.00
85-cc-1021	General Electric	2,344.00
85-cc-1022	General Electric	1,589.00
85-cc-1023	General Electric	1,598.00
85-CC-1024	General Electric	1,589.00
85-CC-1029	Throckmorton, Randy	148.00
85-CC-1030	Ford Hotel Supply	39.30
85-CC-1032	Peoria Mineral Springs	185.50
85-cc-1033	Harris Corp.	3,303.98
85-cc-1034	General Electric	77,447.00
85-cc-1035	Crampton, Inc.	23,892.00
85-CC-1036	Gill, Frank S.	78.28
85-cc-1038	Office Store Company	50.49
85-cc-1042	Abad, Emmanuel	69.54
85-CC-1043	Douglass, Rebecca S.	263.55
85-CC-1045	Schweppe & Sons, Inc.	3,658.00
85-cc-1049	Corrections, Department of; Illinois Correctional Industries	21,091.11
85-CC-1050	Corrections, Department of; Illinois Correctional Industries	17,719.44
85-CC-1051	Corrections, Department of; Illinois Correctional Industries	7,639.12
85-CC-1052	Corrections, Department of; Illinois Correctional Industries	85.01
85-CC-1053	Airport 76 Service	144.35
85-CC-1055	Sierzega, Robert J.	101.27
85-CC-1059	K's Merchandise Mart	27.04
85-cc-1061	Weeco, Ltd.	187.81
85-cc-1064	High School Dist. 205	1,350.00
85-cc-1066	Days Inn	410.20
85-CC-1067	Days Inn	22.97
85-cc-1068	Ingalls Memorial Hospital	2,713.80
85-cc-1069	Ingalls Memorial Hospital	76.85
85-CC-1070	Ingalls Memorial Hospital	49.38
85-CC-1072	Elim Christian School	485.88

85-CC-1073	Elim Christian School	314.76
85-CC-1075	Leeds & Northrup	773.50
85-CC-1076	Illinois Department of Public Aid	51.91
85-CC-1077	Illinois State University	350.30
85-CC-1079	S & S Arts & Crafts	60.86
85-cc-1085	Bozell & Jacobs	1,157.50
85-CC-1086	Silver Cross Hospital	20.00
85-CC-1087	Fayette Service Co.	23.20
85-CC-1089	Northeastern Illinois University	1,120.50
85-cc-1090	Northeastern Illinois University	1,323.25
85-cc-1091	Brooks Rosemont Pharmacy	8.44
85-CC-1093	Surma, Jon	58.00
85cc-1098	Holiday Inns, Inc.	1,509.04
85—cc-1112	Hewlett Packard	3,432.00
85-CC-1116	Casey, Donald E., Jr., M.D.	350.00
85-CC-1117	Huff, Ernestine	176.80
85-cc-1120	University Orthopedics	2,303.20
85-cc-1121	Devry, Inc.	596.28
85-cc-1123	Ludwig Lumber	110.90
85-CC-1124	Winnebago County Health Department	616.00
85cc-1125	Econo-Car of Chicago	130.00
85-cc-1126	Motorola, Inc.	3,030.00
85-CC-1127	Motorola, Inc.	1,212.00
85-cc-1128	Motorola, Inc.	847.25
85-CC-1129	Motorola, Inc.	606.00
85cc-1130	General Electric Co.	47,888.00
85-CC-1131	A-1 Mechanical Engineers, Inc.	16,666.36
85-CC-1132	Bazuin, Charles H., M.D.	30.00
85cc-1134	Ziebart	47.00
85cc-1135	Warner's Office Equipment	444.00
85-cc-1136	Kinder-Care Learning Centers, Inc.	990.37
85cc-1138	Heritage House Restaurants, Inc.	1,767.73
85-CC-1140	St. Mary of Providence School	2,202.90
85-CC-1141	St. Anthony's Medical Center	295.99
85-CC-1142	Superamerica, Div. of Ashland Oil, Inc.	31.62
85-cc-1144	Greenview Clinical Lab	19.90
85-CC-1145	Adam Sales & Service	267.50
85-CC-1146	Modem Contract Furniture	27,219.50
85-CC-1147	Modem Contract Furniture	500.00
85-CC-1152	UARCO, Inc.	4,403.03
85-CC-1153	Goodwill Industries	459.52

85-CC-1154	Illinois Beach Resort	547.44
85-CC-1155	Northeastern Illinois University	15.50
85-CC-1156	Carle Clinic	1,970.75
85-CC-1157	Carle Clinic	(Paid under case 85-CC-1156)
85-CC-1158	Carle Clinic	(Paid under case 85-CC-1156)
85-CC-1159	Carle Clinic	(Paid under case 85-CC-1156)
85cc-1160	Illinois Bell	6,071.98
85-CC-1162	Needham Reporting Service	43.89
85-cc-1163	C & H Sheet Metal	1,532.20
85cc-1164	Jewish Hospital	4,988.75
85cc-1165	Elliott, Marlene	2.12
85-CC-1166	Williams, White & Co.	5,740.00
85-CC-1167	Chicago Steel Tape	32.50
85-CC-1168	Copley Memorial Hospital	1,898.14
85-CC-1169	Copley Memorial Hospital	(Paid under case 85-CC-1168)
85-CC-1170	Copley Memorial Hospital	(Paid under case 85-CC-1168)
85-CC-1171	Copley Memorial Hospital	(Paid under case 85-CC-1168)
85-CC-1172	Copley Memorial Hospital	(Paid under case 85-CC-1168)
85-CC-1178	St. James Hospital	690.68
85-CC-1179	Easter Seal Rehabilitation Center	360.00
85cc-1185	Xerox	931.67
85-CC-1187	Xerox	829.09
85-CC-1188	Xerox	520.96
85-CC-1193	Gallagher Travel Service	1,574.00
85-cc-1194	Union Carbide	1,451.00
85-CC-1195	Chevron USA, Inc.	7.18
85-CC-1197	Sorensen Chevrolet	130.56
85-CC-1198	Suburban Heights Medical Center	217.00
85-cc-1199	Brandywine Towing	240.45
85-cc-1201	Conroy, John T.; Guardian ad litem for George Wiley	350.00
85-cc-1202	Conroy, John T.; Guardian ad litem for Estella Desmond	350.00
85-CC-1203	Peoria Assn. for Retarded Citizens	29,544.24

85-CC-1205	Jacobs, Mary Margaret	1,374.94
85-CC-1207	Chicago Steel Tape	415.00
85-CC-1208	Steel Warehousing	10,854.66
85-cc-1211	Tile Specialists	24,750.00
85-CC-1214	Melvin Electronics	267.93
85-CC-1215	Melvin Electronics	19.57
85-CC-1217	Parraga, Humberto C., M.D.	1,280.00
85-CC-1218	Parraga, Humberto C., M.D.	(Paid under case 85-CC-1217)
85-CC-1219	Parraga, Humberto C., M.D.	(Paid under case 85-CC-1217)
85-CC-1220	Parraga, Humberto C., M.D.	(Paid under case 85-CC-1217)
85-cc-1222	Lipschutz, Harold, M.D.	63.00
85-cc-1224	Martin, Judith K.	43.32
85-cc-1226	Omni/Dunfey Hotels	213.12
85-CC-1227	Maulella Pharmacy	63.75
85-CC-1229	OSP Management	28.40
85-cc-1232	Carey's Furniture	6,315.00
85-cc-1233	Safety Shoe Dist.	14,506.58
85-cc-1235	Washington University	76.00
85-CC-1238	CHICORP Financial Services	1,059.96
85-cc-1239	Hope School	13,043.21
85-cc-1240	Hope School	12,481.70
85-cc-1241	Hope School	1,077.71
85-cc-1242	Corrections Department, Illinois Correctional Industries	3,342.22
85-CC-1243	Corrections Department, Illinois Correctional Industries	2,244.93
85-CC-1245	Corrections Department, Illinois Correctional Industries	1,351.92
85-CC-1246	Corrections Department, Illinois Correctional Industries	450.00
85-CC-1247	Production Supplies	1,046.74
85-CC-1248	Production Supplies	785.40
85-cc-1249	Production Supplies	138.60
85-cc-1250	Beckman Instruments	300.00
85-cc-1254	Mercy Center for Health Care Services	22,192.22
85-cc-1259	Atherton, Robert B.	69.18
85-CC-1260	Honeywell	280.14
85-CC-1262	Kutty, Ahamed V.P., M.D.	70.00

85-cc-1263	Kutty, Ahamed V.P., M.D.	51.26
85-CC-1268	Virco Mfg.	300.30
85-CC-1270	St. Therese Hospital	35.00
85-CC-1271	Fechheimer Bros.	21,124.80
85-CC-1272	Barton, Erma M.	50.00
85-CC-1274	McHenry Electric	18,290.00
85-CC-1276,	Blackmore & Glunt	22,362.00
85-CC-1277	IBM	840.00
85-CC-1279	Valley Glass Co.	235.94
85-cc-1281	Stewart, Claudia	100.73
85-cc-1283	Family Care Svcs of Metro Chicago	24.96
85-CC-1286	Franquelli, John L.	600.00
85-CC-1287	Howard Uniform Co.	1,760.00
85-cc-1288	United Healthcare Services	1,263.36
85-cc-1290	Wilson Hardware	6,798.40
85-CC-1293	Xerox Corp.	233.37
85-cc-1294	Johnson Controls, Inc.	1,398.49
85-cc-1296	Community College Dist. 508	69.00
85-CC-1298	**Roloff Truck Safety Lane**	**32.85**
85-CC-1300	Joliet Junior College	90.00
85-CC-1303	Althoff Industries, Inc.	445.28
85-CC-1305	Ginders Hospital Supply Co.	245.71
85-CC-1306	Reese, Michael, Hospital	666.00
85-CC-1316	Reese, Michael, Hospital	87.00
85-CC-1319	Duncan Oil Co.	16.20
85-CC-1323	Trust #421, First Trust & Savings Bank of Taylorville	1,831.32
85-CC-1324	Healthco Krause Dtl Supply	210.00
85-CC-1325	Mulkins, Lois	50.00
85-CC-1327	Ramada Hotel O'Hare	156.51
85-cc-1331	Dixon Evening Telegraph	194.10
85-cc-1332	Alter & Sons	1,303.75
85cc1333	Assn. of American Railroads	870.00
85-cc-1334	Carron's Auto & Truck Body Repair	844.75
85-cc-1335	American Executive Coffee Service	27.50
85-cc-1336	Samuelson, Lila & Keith	208.83
85-CC-1337	Baber, Riaz A., M.D.	191.00
85-cc-1338	Fechheimer Bros.	22,005.00
85-cc-1339	Airco Welding Supply	24.50
85-cc-1342	Brokaw Hospital	7,838.49
85-CC-1343	3M	10,890.00

85-cc-1344	Henson Ambulance	220.00
85cc-1345	Vega International Travel	220.00
85-CC-1347	Richards, Randolph C.	222.00
85-CC-1348	Hanlin, Anthea K.	500.00
85-cc-1349	Yoder, Michael P., M.D.	10.50
85-cc-1350	Flink Co.	553.01
85cc-1351	Medical Art Clinic of Dixon	416.75
85cc-1353	Fireside Chrysler Plymouth	393.49
85-cc-1354	Fireside Chrysler Plymouth	157.78
85-CC-1355	Fireside Chrysler Plymouth	135.28
85-CC-1356	Fireside Chrysler Plymouth	40.00
85-CC-1357	Meilahn Manufacturing Co.	10,144.76
85-CC-1358	Reese, Michael, Hospital & Medical Center	82.00
85-cc-1361	Soedler's Contracting Co. of Peru	11,320.00
85-CC-1364	New Life Development Corp.	32,000.00
85-CC-1373	Lakeview Medical Center	66.00
85-CC-1374	Mannery, Linda	327.00
85-CC-1375	Mallquist Butter & Egg Co.	467.64
85-CC-1376	Owings, Doris	50.00
85-CC-1378	Riverside Radiologists, S.C.	112.30
85-CC-1380	3M	268.80
85-CC-1381	3M	193.40
85-cc-1382	3M	103.41
85-CC-1383	Dalrymple, Lawrence D.	168.50
85-cc-1384	Jones, Mrs. Henry	137.94
85cc-1385	Springfield Electric	127.74
85-CC-1387	Truck Equipment Co. & Carpenter Body Works, Inc.	30,891.00
85-CC-1388	Hammett, J. L., Co.	11.15
85-CC-1389	Carey's Furniture Co., Inc.	20,770.00
85-CC-1390	Carey's Furniture Co., Inc.	16,500.00
85-CC-1392	Carey's Furniture Co., Inc.	2,978.00
85-CC-1393	Carey's Furniture Co., Inc.	2,580.00
85-CC-1394	La Salle Co.	729.40
85-CC-1395	Medical Art Clinic of Dixon	5,411.15
85-CC-1398	Proviso Association for Retarded Citizens	6,307.20
85-CC-1400	Bozell & Jacobs	2,000.00
85-CC-1401	Bozell & Jacobs	481.00
85-CC-1402	Bozell & Jacobs	464.00
85-CC-1403	Bozell & Jacobs	162.13
85-CC-1404	Bozell & Jacobs	140.00

85-CC-1405	Bozell &Jacobs	139.85
85-CC-1406	Bozell & Jacobs	50.00
85-CC-1407	Bozell &Jacobs	42.20
85-CC-1408	Bozell & Jacobs	31.00
85-CC-1409	Bozell &Jacobs	15.66
85-CC-1411	Econo-Car of Chicago	82.92
85-CC-1416	South Suburban Cardiology, Ltd.	2.60
85-CC-1417	South Suburban Cardiology, Ltd.	3.86
85-CC-1420	Golden Oil Co., Inc.	635.85
85-CC-1421	Riverside Medical Center	78.00
85-CC-1422	Riverside Medical Center	78.00
85-CC-1423	Riverside Medical Center	15.00
85-CC-1425	Sears, Roebuck & Co.	3,418.50
85-CC-1429	Riverside Medical Center	4,098.38
85-CC-1430	Hub Clothiers	259.20
85-cc-1435	Effingham Builders Supply	3,271.50
85-CC-1436	Miles Chevrolet, Inc.	21,708.00
85-CC-1438	Suburban Cook County Area Agency on Aging	215.27
85—cc-1439	Lutheran Center for Substance Abuse	6,875.00
85-cc-1440	Lutheran Center for Substance Abuse	2,200.00
85-CC-1443	Hinckley & Schmitt	288.00
85-cc-1444	Thomas, Rick	414.00
85-CC-1446	Todd Corp.	39.60
85-CC-1448	Instructional Design Associates	350.00
85-CC-1450	Scientific Games, Inc.	1,103,198.71
85-CC-1451	Beck, S., Meat Co., Inc.	1,899.74
85-CC-1452	Beck, S., Meat Co., Inc.	2,175.80
85-cc-1453	Kellner, M. J., Co.	465.80
85-cc-1454	Johnston Properties, Inc.	1,013.64
85cc-1456	Hamill, James P.	36.25
85-cc-1458	Lawson's, Walter, Children's Home	289.00
85-CC-1461	Effingham Builders Supply	241.00
85-CC-1462	Eastern Illinois University	305.95
85-cc-1463	Banks, Patricia	250.00
85-CC-1468	Lestikow, James M.	2,647.30
85-CC-1474	Rodriguez, Guillermo	2,365.00
85-CC-1479	Federal Express	82.25
85-CC-1481	Freedom Oil	25.53
85-cc-1484	Roberts, Devorah	87.70
85-CC-1485	Roberts, Devorah	13.09

85-CC-1490	Logan County Hardware	72.09
85-CC-1506	Hinsdale Sanitarium	7,136.06
85-CC-1515	Holiday Inn of Jacksonville	31.50
85-CC-1517	Hoffman, H., Co.	54.48
85-CC-1518	McGough, Thomas K.	138.62
85-CC-1519	Ballard, William B., Jr.	200.00
85-CC-1526	Pantagraph Printing	41,623.39
85-CC-1528	Carey's Furniture	27,360.00
85-CC-1529	Douglas, William R., M.D.	18.00
85-CC-1530	Econo-Car of Chicago	76.30
85-CC-1532	Wisnosky, August P., Jr.	108.00
85-CC-1533	Phillips Petroleum	34.52
85-CC-1534	Little City Foundation	306,479.58
85-CC-1535	Insurance Risk Managers	61.00
85-CC-1542	General Electric	14,169.00
85-CC-1543	General Electric	13,279.00
85-CC-1544	General Electric	1,589.00
85-CC-1545	General Electric	1,460.00
85-CC-1546	General Electric	135.00
85-CC-1547	AT&T Information Systems	2,430.90
85-CC-1548	Southern Illinois University	849.01
85-CC-1549	Southern Illinois University	468.80
85-CC-1550	Depke Welding Supplies	36.02
85-CC-1551	Alexander's Office Equipment	304.00
85-CC-1552	Alexander's Office Equipment	155.00
85-CC-1553	Conroy, John Timothy	350.00
85-CC-1554	Fechheimer Bros.	77,409.15
85-CC-1567	Kellner, M. J., Co.	88.20
85-CC-1568	Kellner, M. J., Co.	88.00
85-CC-1569	Kellner, M. J., Co.	30.27
85-CC-1570	National Power Rodding	4,990.00
85-CC-1571	Boston University	257.73
85-CC-1572	Conoco	38.33
85-CC-1573	Public Aid, Illinois Department of,	48.56
85-CC-1578	McGuire's Reporting Svc.	208.50
85-CC-1581	Virco Mfg. Corp.	1,631.65
85-CC-1582	Certified Labs	353.11
85-CC-1583	Tractor Supply Co.	184.05
85-CC-1585	Blauer Mfg.	7,192.50
85-CC-1587	Carroll's Pharmacy	154.57
85-CC-1591	Green Knolls Auto Parts	23.06

85-CC-1592	Mt. Vernon Hospital	2,930.50
85-CC-1593	Paxtons, Inc.	198.00
85-CC-1595	Illinois Bell	38.89
85-CC-1597	Chicago Steel Tape	160.00
85-CC-1601	D & L Furniture Co.	181.00
85-CC-1607	Mayberry, Dorothy	43.96
85-CC-1611	Federal Express	23.50
85-CC-1612	Meyer, Sharlene	127.20
85-CC-1615	Ruiz, Robert J.	202.90
85-CC-1616	McMaster-Carr Supply	378.90
85-CC-1617	Dubsky, David A.	273.98
85-CC-1621	Spaeth Welding	437.00
85-CC-1624	Galesburg Sanitary Dist.	14,592.31
85-CC-1626	Harris Corp.	11,411.47
85-CC-1627	National Mine Service Co.	121.21
85-CC-1628	Sunrise Preschool	833.27
85-cc-1631	Rosenstrock, Philip, & Co.	2,175.00
85-CC-1634	Menley & James Laboratories, Ltd.	373.65
85-CC-1639	Catholic Social Service	1,994.94
85-cc-1641	Schnell, Francis & Audrey	90.00
85-CC-1654	Reese, Michael, Hospital	27.00
85-CC-1655	Reese, Michael, Hospital	12.00
85-CC-1656	Reese, Michael, Hospital	24.00
85-CC-1660	Amoco Oil	78.93
85-cc-1661	Amoco Oil	76.54
85-CC-1664	Glenkirk	814.74
85-CC-1668	Savitski, Peter A.	168.75
85-CC-1669	Champaign Children's Home	72.08
85-CC-1672	Xerox	2,922.15
85-CC-1673	Xerox	1,587.24
85-CC-1679	Xerox	241.94
85-CC-1681	Randolph County Coroner	2,916.75
85-CC-1682	Lake County Community Action Project	4,971.00
85-CC-1687	Blackhawk Family Physicians	18.00
85-CC-1691	Nichols Flowers & Greenhouses	74.12
85-CC-1692	Gandhi, Asha, M.D.	297.84
85-CC-1700	Weaver, Thomas	34.50
85-CC-1702	K-Mart #7168	295.00
85-CC-1703	Community College Dist. 508	25.56
85-CC-1706	Sieman Medical Systems	181.33
85-CC-1707	Production Supplies	37.98

85-CC-1709	Hollerud, Gene A.	92.53
85-CC-1712	Thiel, Sandra L.	275.00
85-CC-1714	Community College District 508	153.00
85-CC-1715	Midwestern Balfour Co.	2,135.30
85-CC-1718	Elkins-Sinn, Inc.	23.16
85-CC-1729	Hernandez, Pablo	44.31
85-CC-1738	Kiwanis Camp Wyman	100.00
85-CC-1745	Modem Contract Furniture, Inc.	15,122.75
85-CC-1748	Slifer, James C.	149.10
85-CC-1751	Shipping Utilities, Inc.	831.77
85-CC-1753	IBM	930.50
85-CC-1754	McFarlin, Leslie E.	2,950.00
85-CC-1755	Meyer Reporting	20.40
85-CC-1756	Flaghouse, Inc.	176.88
85-CC-1757	Williams, Carlton	27.00
85-CC-1758	Mueller Sales Corp.	82.32
85-CC-1770	Drake, Thomas	135.25
85-CC-1771	Law Enforcement Equipment Co.	39.75
85-CC-1773	Universal, Inc.	190.24
85-CC-1775	Mercer County Hospital	260.55
85-CC-1777	Winterburn, Larry C.	413.51
85-CC-1779	Progress Resources Center	2,653.92
85-CC-1780	Eastman Kodak	802.40
85-CC-1782	Illinois State University	283.45
85-CC-1793	Chileda Institute	904.48
85-CC-1799	Associated Supply Co.	2,786.55
85-CC-1800	Associated Supply Co.	151.40
85-CC-1802	Capitol Group	3,575.89
85-CC-1803	Honeywell, Inc.	3,614.00
85-CC-1804	Progress Resources Center	1,352.77
85-CC-1805	Progress Resources Center	590.86
85-CC-1806	Progress Resources Center	78.34
85-CC-1808	Kaleidoscope, Inc.	2,192.44
85-CC-1811	Lakeview Medical Center	60.00
85-CC-1814	Field & Shorb	617.12
85-CC-1820	Jewell Central Air	1,068.32
85-CC-1821	Jewell Central Air	270.24
85-CC-1822	Jewell Central Air	121.86
85-CC-1824	Harcourt Brace Jovanovich	419.07
85-CC-1825	Advance Transportation Co.	44.96
85-cc-1832	Resurrection Hospital	422.50

85-CC-1833	Jet America Airlines	258.00
85-cc-1844	General Electric	6,792.00
85-CC-1845	Ford Motor Co.	84,668.00
85-CC-1846	Ford Motor Co.	75,242.00
85-CC-1847	Ford Motor Co.	69,064.00
85-CC-1848	Ford Motor Co.	30,922.00
85-cc-1849	Ford Motor Co.	28,890.00
85-cc-1850	Ford Motor Co.	24,885.00
85cc-1851	Ford Motor Co.	24,567.00
85-cc-1852	Ford Motor Co.	23,577.00
85-CC-1853	Ford Motor Co.	23,544.00
85-CC-1854	Ford Motor Co.	23,428.00
85-cc-1855	Ford Motor Co.	12,415.00
85-CC-1856	Ford Motor Co.	10,372.00
85-CC-1857	Ford Motor Co.	6,109.00
85-CC-1858	Misericordia North	6,304.04
85-cc-1859	Misericordia South	4,312.72
85-CC-1861	Bekta Management	2,145.89
85-CC-1863	Mine Safety Appliances	2,460.00
85-CC-1872	Tingue, Brown & Co.	1,745.44
85-CC-1875	Community College Dist. 508	194.00
85-CC-1880	Law Enforcement Equipment	838.50
85-CC-1887	Chancellor Datacom	708.00
85-CC-1888	Chancellor Datacom	372.00
85-CC-1889	Chancellor Datacom	139.67
85-CC-1890	Moore Business Forms	13,628.62
85-CC-1891	Flaghouse, Inc.	3,190.00
85-CC-1893	Quilty, Robert H., Dr.	34.00
85-CC-1906	Fechheimer Brothers Co.	9,675.00
85-cc-1911	Walking Horse Supply	30.55
85-CC-1915	Minnesota Pollution Control	99.36
85-CC-1916	Capitol Group	2,780.24
85-CC-1918	Browning Co.	10,772.71
85-cc-1923	Dunbar Mfg.	11,869.10
85-cc-1926	L & W Heating	1,750.00
85-CC-1927	Veratex Corp.	204.00
85-CC-1931	Protective Apparel Corp.	810.00
85-CC-1932	NM Industries	2,542.00
85-cc-1934	ICL-Midwest	656.00
85-CC-1935	Corrections Dept., Correctional Industries	7,227.33
85-CC-1936	Law Enforcement Equipment Co.	144.15

85-CC-1937	Multigraphics	2,327.50
85-CC-1938	Bethea, Katherine Shaw, Hospital	1,073.21
85-CC-1939	K's Merchandise Mart	47.29
85-CC-1954	Smith, Robert & Nancy C.; formerly d/b/a Countryside Inn Motel	27.00
85-CC-1955	Brodhead-Garrett Co.	1,287.25
85-cc-1961	Kellner, M. J., Co.	1,735.30
85-CC-1962	Kellner, M. J., Co.	695.00
85cc-1964	C & H Sheet Metal, Inc.	97.80
85-CC-1967	Terrace Fence Co., Inc.	81.25
85-CC-1978	Modem Contract Furniture, Inc.	36,384.00
85-CC-1979	Modem Contract Furniture, Inc.	15,847.50
85-CC-1982	Interroyal Corp.	11,654.79
85-cc-1985	Penn, Thad W., M.D.	73.00
85-CC-1997	Getson, Carol	494.67
85-cc-2010	Little City Foundation	3,572.44
85-CC-2017	Glenkirk	7,110.22
85-cc-2021	Kennedy, Lt. Joseph P., Jr., School	582.23
85-CC-2087	Ebsco Subscription Svcs	3,053.61
85-cc-2088	Ebsco Subscription Svcs	207.67
85-CC-2089	Ebsco Subscription Svcs	122.58
85-CC-2099	Barnes Group	54.05
85-CC-2108	K & R Delivery	32.70
85-cc-2110	Bertolini, Jerry E., M.D.	135.00
85-CC-2117	Farlik, James E., Dr.	16.00
85-CC-2119	Wentling, Tim L.	4,452.00
85-CC-2120	Legler, John B.	6,877.78
85-cc-2126	Lake & Associates	36.99
85-CC-2137	Merola, Guy	3,617.50
85-CC-2143	Xerox	1,299.01
85-CC-2155	Corrections Dept., Correctional Industries	36,166.57
85-CC-2195	YMCA of Metro Chicago	871.20
85-CC-2197	IBM	10,500.00
85-CC-2231	Johnson Controls	3,614.00
85-CC-2253	Illinois, University of, College of Medicine	40.00
85-CC-2255	Pilapil, Virgilio R., M.D.	15.15
85-cc-2280	Buckstaff, Peter	1,570.00
85-CC-2286	Crampton, Inc.	35,771.00
85-CC-2290	NCR Corp.	32,338.50
85-cc-2291	NCR Corp.	23,883.50
85-CC-2368	Haier Plumbing & Heating	45,137.00

85-cc-2393	Key Buick-Pontiac-AMC	410.13
85-CC-2417	Crampton, Inc.	28,120.00
85-CC-2453	Mayo Clinic	9,612.42
85-CC-2486	Ogg, Richard L.	523.26
85-CC-2487	Exxon Office Systems	1,558.00
85-cc-2488	Exxon Office Systems	498.00
85-CC-2491	Exxon Office Systems	1,325.00
85-cc-2495	Exxon Office Systems	678.00
85-CC-2496	Exxon Office Systems	636.00
85-CC-2498	Exxon Office Systems	636.00
85-CC-2500	Exxon Office Systems	636.00
85-cc-2502	Exxon Office Systems	636.00
85-CC-2503	Exxon Office Systems	636.00
85-CC-2506	Exxon Office Systems	318.00
85-CC-2507	Exxon Office Systems	318.00
85-cc-2509	Exxon Office Systems	318.00
85-cc-2510	Exxon Office Systems	318.00
85-cc-2511	Exxon Office Systems	318.00
85-cc-2519	Exxon Office Systems	25.00
85-cc-2521	Randolph Hospital District	67.18

PRISONERS AND INMATES MISSING PROPERTY CLAIMS FY 1985

The following list of cases consists of claims brought by prisoners and inmates of State correctional facilities against the State to recover the value of certain items of personal property of which they were allegedly possessed while incarcerated, but which were allegedly lost while the State was in possession thereof or for the State was allegedly otherwise responsible. Consistent with the cases involving the same subject matter appearing in full in previous Court of Claims Reports, these claims were all decided based upon the theories of bailments, conversion, or negligence. Because of the volume, length, and general similarity of the opinions the full texts of the opinions were not published, except for those claims which may have some precedential value.

81-CC-1013	King, Z. L.	$ 30.00
81-CC-1014	King, Z. L.	122.50
82-CC-0478	Douglas, Isaac	11.46
83-CC-2709	Castro, Sammy	119.50
83-CC-2719	Cole, Larry	75.00
84-cc-0940	Godinez, Richardo A.	532.96
84-CC-1325	Stanley, Anthony	51.60
84-cc-2037	Stephenson, Kenneth	100.00
84-cc-2583	Morgan, Frank	95.00
84-cc-2622	Sandoval, Robert	160.00
84-cc-2636	Jeffreys, Nailer	45.00
84-CC-2779	Stanley, Anthony	20.00
84-cc-3253	Field, Truxton K.	300.00
84-cc-3304	Lawrence, Clifford L.	60.00
84-cc-3341	Marzette, Michael	100.00
84-cc-3538	Moore, Thomas	55.00

84-CC-3581	Jones, Anthony	55.00
85-CC-0040	Clevenger, Jerry L.	30.00
85-CC-0072	Orange, Eugene	30.00
85-CC-0187	Cox, Billy	100.00
85-CC-1046	Smith, Adolph	12.00

STATE EMPLOYEES' BACK SALARY CASES
FY 1985

Where as a result of lapsed appropriation, miscalculation of overtime or vacation pay, service increase, or reinstatement following resignation, and so on, a State employee becomes entitled to back pay, the Court will enter an award for the amount due, and order the Comptroller to pay that sum, less amounts withheld properly for taxes and other necessary contributions, to the Claimant.

82-CC-0414	Draves, Donald D.	$ 299.64
82-CC-1933	Patheal, Shirley Rae	37.91
83-cc-0423	Inendino, Catherine A.	277.00
83-CC-0596	Hankins, Patricia S.	106.61
83-CC-0625	Shelton, Daisy M.	142.78
83cc-1801	Thurman, Mary E.	1,339.25
83cc-1964	Thomas, William Paul	256.45
83-CC-2779	Leemhuis, David L.	130.46
84-cc-0269	Mears, Chester	197.92
84-CC-0398	Pape, Roberta D.	327.81
84-CC-0465	McSchooler, Norma J.	155.31
84-CC-0764	Cato, Thomas R., Jr.; Cato, Peter W.; Bernard, Leza; & Bernard, Annadelle Cato	660.44
84-CC-0880	McKnight, Billie	168.87
84-cc-0912	Housel, Lauren	1,286.22
84-CC-0913	Dorn, Virginia	1,297.86
84-CC-0914	Summers, Lorraine	1,179.04
84-CC-0915	Schreck, William	835.14
84-CC-0916	Full, Sharon	437.08
84-CC-0917	Wiles, Thomas	1,081.55
84-CC-0918	Reische, Ronald	110.39
84-cc-0919	Kopatz, John	866.32
84-CC-0990	Johnson, Melvin	108.07
84-CC-0991	Crowell, Nettie	120.36
84-CC-1006	Verstynen, Kim	5,657.47

84-CC-1141	Leggans, Curtis	1,249.70
84-cc-1143	Riggs, Kathleen R.	295.57
84-cc-1231	Kocio, Philip A.	579.47
84-CC-1328	Barthelemy, Virgil E., Jr.	72.24
84-cc-1333	Valentine, John L.	12,068.56
84-CC-1403	Rushing, Randall L.	243.00
84-CC-1528	Siebert, Foster I.	79.50
84-cc-1544	Wentworth, James B.	301.96
84-CC-1579	Russman, Rick	102.48
84-cc-1600	Booth, Neil M.	675.69
84-cc-1661	Brown, Kathryn	96.91
84-CC-1774	Meylor, William	553.49
84-CC-1792	Hawkins, Hilma L.	781.17
84-cc-1802	Burris, George L.	168.60
84-cc-1858	Reveliotis, Demetrios	520.99
84-cc-1888	Lelys, Constantine	935.87
84-cc-1889	Miller, Jim	922.36
84-cc-1898	Sheridan, Joan	48.15
84-CC-1915	Gleason, Mark K.	76.64
84-cc-1920	Hawking, Louis F.	39,344.50
84-CC-1932	Mackey, Sharon; Adm'rx of the Estate of Ollie C. Whittemore, Deceased	5,012.02
84-CC-1957	Spray, James	35,192.81
84-CC-1958	Newsom, Kathy	38,245.66
84-cc-1959	Cresswell, Richard H.	160.80
84-CC-2008	Dodson, Larry F.	4,846.53
84-CC-2032	Powell, Charles E.	699.89
84-CC-2036	Tolan, Douglas M.	1,079.60
84-CC-2052	McKeever, Linsley L.	48,700.85
84-CC-2070	Reiff, Shirley M.	156.10
84-cc-2088	Lenox, Aldrea	7.93
84-cc-2098	Biggs, Harold G.	1,864.87
84-CC-2132	Cacpal, Pacita	1,724.68
84-cc-2133	Cacpal, Pacita	409.48
84-cc-2168	Neely, Frances	1,024.76
84-CC-2174	Handy, Edward	420.32
84-cc-2182	Kulpa, George	377.59
84-CC-2209	Carmona, Hiliaria	2,090.35
84-cc-2474	Turek, Joseph	413.69
84-CC-2476	Yoder, Klaus	38.79
84-cc-2531	Willens, Nathan	720.90

84-cc-2605	Duckworth, Marilyn	77.17
84-CC-2616	Wallace, Joyce	276.33
84-cc-2631	Reside, Kermit G.	259.99
84-cc-2634	Burton, Rubin	1,790.68
84-cc-2635	Sibley, Charles	562.76
84-CC-2898	Bishop, Gene	1,758.91
84-CC-2719	Eagleton, John R.	1,875.09
84-CC-2792	Hawkins, Joseph	1,387.30
84-CC-2793	Howell, Charles	734.83
84—cc-2839	Krah, Nancy Lynn	367.01
84-cc-2840	Amoldi, Pauline B.	90.93
84-CC-2908	Parks, Sylvia E.	841.36
84-CC-2939	Durbin, Daryl	859.52
84-cc-2941	Sparks, Karen	633.00
84-CC-2942	Goebel, Patricia	358.48
84-cc-2943	Howard, Shirley	296.07
84-cc-2990	Driskell, Carol	469.96
84-cc-3006	Wesley, Linda R.	804.04
84-cc-3009	Jazo, James	550.97
84-CC-3053	Till, Elmer J.	34,428.00
84-CC-3210	Daraskevich, Joann	162.52
84-CC-3282	Brown, Walter R.	434.12
84-cc-3420	Cook, Benita K.	60.99
84-CC-3429	Holterhaus, Thomas A.	351.48
84-cc-3438	Johnson, Norma	12,229.66
84-cc-3439	Burton, Julia A.	314.01
84-CC-3478	Bone, Robin S.	65.05
84-cc-3607	Hams, Olin J.	156.00
85-CC-0013	Moist, Ellen C.	1,719.74
85-cc-0230	Buckley, Elda	54.12
85-CC-0314	Lee, Tamara M.	45,303.26
85-CC-0317	Parkhurst, Richard	2,320.01
85-cc-0366	Reveliotis, Demetrios	284.52
85-CC-0379	Strauss, Richard	3,163.25
85-CC-0391	Twyman, Earl	7,687.19
85-CC-0457	Jones, Donna	4,091.10
85-CC-0458	Sumpter, Dorothy	4,316.50
85-CC-0459	Ball, Alice	3,940.24
85-CC-0614	Ramel, Gregory J.	1,089.54
85-CC-0615	DeGrazio, Joseph	15,433.57
85-CC-0631	Klopcic, Mark	424.31

85-cc-0639	Glenzinski, Terry	143.04
85-CC-0775	Leinen, Victor	3.10
85-CC-0777	Thomas, Fannie	67.33
85-CC-0778	Walker, Gail	227.48
85-cc-0935	Wegner, Mark	110.23
85-cc-0991	Campbell, Hazel	179.84
85-cc-0996	Shaw, Robert B.	605.30
85-CC-1031	McClatchey, Frank S.	4,153.26
85-cc-1143	Nathenson, Bernice	37.24
85-CC-1266	Applewhite, Stella	103.54
85-CC-1267	Fisher, David	345.90
85-CC-1269	Fehr, Debra	116.66
85-CC-1318	Stone, Merrell J., Jr.	32.11
85-cc-1330	Smith, Willie B.	85.15
85-cc-1363	Stilt, Frederick J.	680.97
85-CC-1489	Small, Joseph	422.69
85-cc-1658	Justice, Ronald V.	354.43
85-CC-1759	Weakley, Phyllis C.	252.78
85-CC-1795	Glynn, Julie A.	60.10
85-CC-1809	Hartlieb, Maurice	108.46
85-CC-1837	Strait, Alpha	65.73
85-CC-1952	Hartline, Curtis	137.50
85-CC-2016	Scott, William E.	100.44
85-cc-2095	Schell, Mike	102.00
85-CC-2114	Bell, Charles E.	5,389.74

REFUND CASES
FY 1985

The claims listed below arise out of audits by the Secretary of State and certain other states and Canadian provinces on prorated license fees paid by the Claimants in accordance with certain reciprocal compacts known as the International Registration Plan and the Uniform Prorate Compact. Following the audits, adjustments are made to the amounts due and previously paid. The awards made in the claims listed below are refunds for overpayment of the fees which were found due and owing the Claimants but which the Secretary of State was unable to make the payments directly due to the exhaustion of available funds.

83-cc-2336	Sterling Custom Homes Corp.	$ 344.62
83-cc-2337	Erickson Transport Corp.	74.36
83-cc-2338	Flanagan Bros., Inc.	153.30
83-cc-2339	Flanagan Bros., Inc.	16.08
83-CC-2345	Arctic Air Transport	1,746.80
83-CC-2348	Erickson Transport Corp.	151.64
83—cc-2349	Erickson Transport Corp.	17.64
83-cc-2350	Hub City Foods, Inc.	285.12
83-cc-2380	Heyman Trucking Co.	102.23
83-cc-2389	7-S Truck Leasing Co.	634.16
83-cc-2391	O.H. & F., Inc.	747.60
83-CC-2392	Tri State Associates	456.50
83-cc-2397	Ryder Truck Rental, Inc.	28.64
83-cc-2405	Hannibal Quincy Truck Lines	20.71
83-CC-2406	Hannibal Quincy Truck Lines	19.44
83-cc-2407	Avnet, Inc.	4,709.28
83-CC-2418	Buckeye Metals Co.	219.14
83-cc-2419	O'Boyle Tank Lines	11.16
83—cc-2420	Safeguard Engine Parts	10.35
83-cc-2421	Hester Leasing Co.	89.28
83-cc-2422	G & R Transport, Inc.	22.08
83-CC-2423	G & R Transport, Inc.	13.58

83-cc-2425	Graebel Moving & Storage	918.00
83-CC-2429	Bradford Transfer Co.	28.60
83-CC-2430	Woodbine Corp.	174.65
83—cc-2431	Gottry Corp.	6,974.78
83-cc-2432	Higgins Transportation, Ltd.	443.02
83-cc-2433	Milwaukee Marble Co., Inc.	20.18
83-cc-2434	R & R Cartage, Div. of Red Wing	20.24
83—cc-2435	Central Transport, Inc.	12.26
83—cc-2436	Zimmerman Mink Foods, Inc.	64.78
83-cc-2465	Werch Trucking Co., Inc.	26.95
83—cc-2466	R E B Transportation	291.53
83—cc-2467	Newman & Pemberton Corp.	152.19
83—cc-2468	Gopher Shooters Supply	29.38
83-cc-2469	Hennessey, Leo, & Sons, Inc.	448.46
83-CC-2470	Hennessey, Leo, & Sons, Inc.	374.76
83-CC-2471	Hennessey, Leo, & Sons, Inc.	294.88
83-CC-2476	Mid American Charter Lines	428.01
83—cc-2480	Franck, Maurice V.	501.52
83-CC-2483	J & W Transfer & Storage, Inc.	637.87
83-cc-2484	North American Van Lines	35.46
83-CC-2486	Lisa Motor Lines, Inc.	40.40
83-CC-2490	Kolbeck, Robert	783.81
83-CC-2492	Smalley Package Co., Inc.	20.96
83—cc-2493	Dubuque Packing Co.	2,516.96
83-CC-2494	Kazimour, Robert F.	139.76
83—cc-2495	Williams, T. J., Trailer Sales, Inc.	21.80
83—cc-2498	Chester Concrete Co., Inc.	409.28
83—cc-2502	D.S.I. Transports, Inc.	20.38
83-CC-2503	Schjoneman Leasing, Inc.	69.90
83—cc-2506	Bush-Hog Div. of Allied Products Corp.	17.90
83—cc-2509	Schnowske By-products, Inc.	54.20
83—cc-2510	Anamoso Silos, Inc.	55.89
83—cc-2511	L & W Transportation	183.85
83—cc-2512	Voncille Truck Leasing	445.15
83-CC-2513	Niederbrach Truck Service	180.70
83-CC-2514	Ryder Truck Rental, Inc.	510.89
83-CC-2515	Ryder Truck Rental, Inc.	39.90
83-CC-2516	Tri-State Transport, Inc.	1,935.29
83-CC-2518	Williams, D. L., Trucking, Inc.	40.85
83—cc-2519	Harlyn Industries, Inc.	288.44
83—cc-2522	Rollins Leasing Corp.	218.42

83-cc-2523	Rollins Leasing Corp.	162.76
83-cc-2524	Southwestern Cariers	43.52
83-cc-2525	McClendon, Glenn, Trucking, Co., Inc.	220.58
83-CC-2527	Miller Trucking Co.	42.12
83-cc-2555	Ruan Leasing Co., Div. of RFC	1,182.53
83-CC-2556	Anderson & Webb Trucking Co., Inc.	16.74
83-cc-2561	Parsons, G. G., Trucking Co.	45.60
83-CC-2563	Hunt Super Service	49.89
83-cc-2573	Lend Lease, Div. of National Car Rental Systems, Inc.	97.49
83-cc-2574	Ward, Ken, D/B/A Ken Ward Co.	27.76
83-CC-2577	W-I Canteen Service, Inc.	95.37
83-CC-2578	National Super Markets	233.19
83-CC-2579	Intermodal Systems, Inc.	19,751.80
83-CC-2580	Stewart Hybrids, Inc.	115.56
83—cc-2581	Goldston, Inc.	96.38
83-cc-2582	H & W Motor Express	683.81
83-cc-2583	Chemco Products, Inc.	14.86
83-CC-2604	Blumer, Kenneth J.	53.81
83-cc-2805	Greenheck Fan Corp.	203.43
83-CC-2618	United Parcel Service	2,290.74
83-CC-2636	Ryder Truck Rental, Inc.	22.13
83-cc-2637	Ryder Truck Rental, Inc.	12.36
83-cc-2638	Interstate Contract Carrier Corp.	4,069.85
83-cc-2842	Turner, Mary B., D/B/A Turner Trucking	78.75
83-cc-2643	Our Best Canning Co., Inc.	53.28
83-cc-2644	Conveyors, Inc.	14.50
83-cc-2649	Universal Foods Corp.	11.41
83-cc-2650	Kobacker Stores, Inc.	100.05
83-CC-2671	Pulley Freight Lines, Inc.	2,101.56
83-cc-2675	Excalibur Automobiles Corp.	39.71
83-cc-2682	Phil Mar Rentals	221.89
83-cc-2697	American Trailers, Inc.	15.72
83-cc-2699	Arkansas Plastics, Inc.	28.80
83-CC-2700	Foremost-McKesson	35.50
83-CC-2704	Bucks Fish Transfer Co., Inc.	80.81
83-CC-2705	Lantex Hydraulics	283.36
83-CC-2710	Bruno's Scrap Metal	750.00
83-CC-2717	Wilson, E.W.	18.22
83-CC-2718	Mastercraft Casket Co., Inc.	96.02
83-CC-2724	Walker, B. F., Inc.	478.22

83-CC-2725	Bagley Produce, Inc.	6.89
83-CC-2726	Skrezeczkoski, Duane & Dennis, d/b/a Skrezeczkoski Bros.	102.99
83-CC-2727	Campbell Tractor Service	198.21
83-CC-2728	Bushke, Donald	150.71
83-CC-2729	Webster, Francis	129.45
83-CC-2738	Hunter, Virgil, & Sons Grain Co.	25.87
83-CC-2753	Sargento Cheese Co.	45.60
83-CC-2754	Sargento Cheese Co.	20.53
83-CC-2757	Branstiter Brothers, Inc.	35.74
83-CC-2769	Square D Co.	1,719.05
83-CC-2774	Columbus Motor Lines, Inc.	19.43
83-CC-2775	Nautilus Equipment, Inc.	21.70
83-CC-2789	Baginski, Ted, & Sons, Inc.	17.59
83-CC-2802	Manfredi Motor Transit	154.53
84-CC-0005	Schnuck's Distributing Co.	573.08
84-cc-0085	Kraemer, Edward, & Sons, Inc.	287.49
84-cc-0100	Acme Moving & Storage Co.	16.09
84-cc-0101	Gripp, Lee, Transfer Co., Inc.	405.18
84-cc-0102	Gripp, Lee, Transfer Co., Inc.	56.42
84-CC-0107	Schirz Concrete Prod.	38.10
84-CC-0108	Garrett, R. L., Inc.	148.31
84-CC-0153	Coffman Sales Co., Inc.	146.45
84-CC-0154	Jones Trucking, Inc.	339.43
84-CC-0155	Adrian Carriers, Inc.	244.93
84-CC-0158	Graese, Willard	74.22
84-cc-0165	Wenger Truckline, Inc.	5,383.52
84-CC-0218	M. H. Equipment, Inc.	519.91
84-CC-0219	Funk Seeds International	384.99
84-CC-0227	Indiana Aluminum Extrusion Corp.	99.80
84-CC-0229	Milligan, Tom O.	12.02
84-cc-0232	WLD, Ltd.	810.54
84-cc-0243	Schaper Poultry Co.	469.83
84-cc-0244	Hansen Brothers	115.31
84-cc-0294	Three I Truck Lines, Inc.	522.04
84-CC-0347	Bushman Enterprises, Inc.	21.44
84-cc-0356	Standard Forwarding Co., Inc.	784.72
84-cc-0362	Brown, Eunice	145.90
84-CC-0399	Tucker, Earl, Inc.	34.58
84-cc-0436	Star Delivery & Transfer	602.00
84-cc-0440	Murdock, Russell F.	30.00

84-CC-0469	R & J Transport, Inc.	86.68
84-CC-0471	McVey Trucking, Inc.	783.39
84-CC-0501	Kreider Truck Service, Inc.	896.20
84-CC-0504	Express Freight Lines	660.48
84-CC-0514	Penda Corp.	35.09
84-CC-0522	Taylor, James P., Trucking	11.14
84-CC-0525	Gabeline, Robert L.	133.89
84-CC-0526	Duffy Brothers, Inc.	18.74
84-CC-0527	Barneveld Implement, Inc.	32.22
84-CC-0531	General Leaseways, Inc.	433.04
84-CC-0532	General Leaseways, Inc.	242.13
84-cc-0539	Merrill Iron & Steel, Inc.	78.31
84-CC-0540	C & W Equipment, Inc.	15.13
84-cc-0543	Van Natta Trucking, Inc.	18.24
84-CC-0545	Boesdorfer Trucking, Inc.	192.69
84-cc-0547	G & B Produce, Inc.	42.02
84-CC-0548	Hamric Transportation, Inc.	39.09
84-CC-0549	Bennett-Daniels Lumber Co.	96.48
84-cc-0550	International Multifoods Corp.	139.12
84-CC-0552	Tree-0-Lumber Co.	60.34
84-cc-0584	D & C Express, Inc.	96.47
84-CC-0565	Wisconsin Film & Bag, Inc.	24.66
84-CC-0572	Gorman Brothers Asphalt Co.	406.13
84-CC-0573	Creekwood Farms, Inc.	105.81
84-CC-0574	Picked, Van, & Son	14.07
84-CC-0576	Merchant's Truck Line, Inc.	429.76
84-CC-0577	Wick Building Systems, Inc.	11.59
84-cc-0578	Johnson Fish Co.	60.78
84-CC-0583	Powerlab, Inc.	51.68
84-CC-0596	Nevlin, H. A., Moving & Transfer Co.	10.08
84-cc-0608	Prochnow Farms, Inc.	95.76
84-CC-0616	Binyon O'Keefe Moving & Storage, Inc.	71.96
84-cc-0625	Refrigerated Transport Co., Inc.	49,317.96
84-cc-0626	Refrigerated Transport Co., Inc.	309.16
84-cc-0660	Crystal Print, Inc.	30.59
84-cc-0668	Mitchell, Gene, Co.	145.42
84-CC-0703	Zim's Cheese, Inc.	164.15
84-CC-0704	Zim's Cheese, Inc.	115.77
84-CC-0716	Draco Truck Leasing	292.08
84-CC-0717	Knudsen Trucking, Inc.	69.98
84-CC-0720	M & D Transportation, Inc.	38.00

84-CC-0737	Coastal Transport & Trading Co.	347.28
84-CC-0738	Refrigerated Transport Co., Inc.	104.56
84-CC-0739	Larson, W. F., Inc.	83.50
84-CC-0759	Luger, Faye, D/B/A Luger Farms	167.37
84-CC-1047	Ryder Truck Rentals	15.10
84-CC-1407	Independent Stove Co.	356.15
84-CC-1529	Moore, Walter, Jr.	16.50
84-CC-1531	Coleman Sausage Co.	88.14
84-CC-1562	Harris, Gerald A.	185.14
84-CC-1967	Washburn, Roland & Sandra	69.05
84-CC-2747	Western States Fleet & Farm	17.90

CRIME VICTIMS COMPENSATION ACT

Where person is victim of violent crime as defined in the Act; has suffered pecuniary loss of $200.00 or more; notified and cooperated fully with law enforcement officials immediately after the crime; the victim and the assailant were not related and sharing the same household; the injury was not substantially attributable to the victim's wrongful act or substantial provocation; and his claim was filed in the Court of Claims within one year of the date of injury, compensation is payable under the Act.

OPINIONS PUBLISHED IN FULL
FY 1985

(Claim denied.)

***In re* PETITION OF LOUELLA REAVES.**

Order on petition for extension of time filed September 7,1984.
Opinion filed September 20,1985.

LOUELLA REAVES, pro **se, for** Claimant.

NEIL F. HARTIGAN, Attorney General (ALISON BRESLAUER, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION Am—son ***killed—untimely notice of claim—claim denied.*** A mother's claim arising from the killing of her son was denied, since her claim was not timely filed, and she offered no oral or documentary evidence which would have justified an extension of the normal deadline for filing a claim under the Crime Victims Compensation Act other than the contention that she was upset over her son's death and was unaware of the Act, and that was insufficient.

ORDER ON PETITION FOR EXTENSION OF TIME

ROE, C.J.

This cause coming on to be heard on the petition of applicant, Louella Reaves, for an extension of time to file necessary documents in submission of her application for benefits under the Crime Victims Compensation Act;

Based upon the information contained in said petition and the discretion vested in us by the Crime Victims Compensation Act, we find that Claimant has failed to state good and sufficient cause for an extension of the filing deadline.

Petition denied.

OPINION

HOLDERMAN, J.

The Claimant in this cause had filed a petition seeking a hearing on the Court's order of September 7, **1984,** for an extension of time in which to file a notice under the Crime Victims Compensation Act and was denied. The commissioner's report indicates that a hearing was scheduled and presided over on March **13, 1985,** at **10:00** a.m. The commissioner's report is to the effect that the Claimant did not offer any oral or documentary evidence at that time to establish good and sufficient cause as is required by the Act to allow for an extension of the filing deadline.

The record in this case indicates that the incident in question took place on February **25,1983.** The notice of intent to file the claim was filed on June 7, **1984.**

The explanation of the late filing was that the

Claimant, who was the mother of the individual killed, was hurt and upset over her son's death and that she was not aware of the Crime Victims Compensation Act.

This petition was filed some 18 months after the date of the incident in question.

The court is of the opinion that the explanation given for the late filing is not sufficient and therefore the petition is denied. Case dismissed.

(No. 82-CV-0377—Claimant awarded $15,000.00.)

In re APPLICATION OF MARGARET GIDDINGS **and** FLOYD GIDDINGS.

Opinion filed January 24, 1983.

Amended opinion filed *January* 11, 1984.

Amended opinion filed September 19, 1984.

MARGARET GIDDINGS and FLOYD GIDDINGS, pro *se*, for Claimants.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALSBURG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION ACT—***factors* considered in determining** loss **of earnings.** The loss of earnings for purposes of a claim under the Crime Victims Compensation Act is determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on $750.00 per month, whichever is less (Ill. Rev. Stat. 1983, ch. 70, par. 72(h)).

SAME—aggrauated battery—no lost ***earnings—claim* denied.** Since the business of a self-employed victim of an aggravated battery had suffered a net operating loss prior to the incident, and the victim was receiving Social Security disability benefits as a result of his injuries, the victim failed to establish any right to an award for loss of earnings.

SAME—deductions *allowed* from *all claims*. The amount of benefits,

payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 of life insurance, and $200, except in the case of victims 65 years of age or older, must be deducted from all claims.

SAME—aggravated battery—medical expenses awarded. The victim of an aggravated battery was granted an award for medical expenses less only the statutory $200.00 deduction, since there had been no other reimbursements that could be counted as applicable deductions, and leave was granted to petition for additional expenses as they are incurred.

Poch, J.

This claim arises out of an incident that occurred on March 18,1981. Margaret Giddings and Floyd Giddings, Claimants, seek compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat., 1979, ch. 70, par. 71 et *seq.*

This Court has carefully considered the application for benefits submitted on November 4, 1981, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant, Floyd Giddings, age 37, was a victim of a violent crime, as defined in section 2(c) of the Act, to wit: aggravated battery. Ill. Rev. Stat., 1979, ch. 38, par. 12—4.

2. That on March 18, 1981, Claimant Floyd Giddings and two other people were struck in the head with an axe during the course of an armed robbery by an unknown offender. The incident occurred in a hardware store located at 1500 South Grand Avenue East,

Springfield, Illinois. The Claimant was initially taken to St. John's Hospital for treatment of his injuries.

3. That the Claimants seek compensation for medical/hospital expenses and the Claimant, Floyd Giddings, seeks compensation for loss of earnings.

4. That the Claimant, Floyd Giddings, was self-employed as operator of Giddings & Son Sewing Machine Repair. Upon request, the Claimants submitted a copy of the Federal income tax return for 1980 to substantiate his earnings. This return shows that the Claimant's business suffered a net loss of **$657.00** for the year. Adding on non-cash deductions of $108.00 listed on the return results in a net loss of $549.00 for the year.

5. That section 2(h) of the Act states that loss of earnings shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on **$750.00** per month, whichever is less.

6. That as the business of the Claimant, Floyd Giddings, suffered a net operating loss prior to the incident, the Claimant has not shown that he had earnings upon which to base loss of earnings pursuant to section 2(h) of the Act. The Claimant is receiving Social Security disability benefits as a result of the injuries suffered in this incident.

7. That the Claimant, Floyd Giddings, has not met a required condition precedent for loss of earnings under the Act.

8. That the Claimants have submitted medical/ hospital expenses in the amount of $41,223.40, **$27,447.87** of which was paid by insurance and $6,591.62 of which is currently pending consideration by Medicare, and

$200.00 of which was written off as an adjustment by one of the medical providers, leaving a balance of $6,983.91 for which the Claimant has thus far been responsible.

9. That pursuant to section 10.1(e) of the Act, this Court must deduct $200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant.

10. That the Claimants have received no reimbursements that can be counted as applicable deductions.

11. That the Claimants may incur additional medical/hospital expenses in the future as a result of the incident and may petition the Court for additional compensation for those expenses pursuant to section 16 of the Act.

12. That the Claimants are entitled to an award based on the following:

Net Medical Expenses	$6,983.91
Less $200.00 Deductible	− 200.00
Total	$6,783.91

It is hereby ordered that the sum of $6,783.91 (six thousand seven hundred eighty-three dollars and ninety-one cents) be and is hereby awarded to Margaret

Giddings and to Floyd Giddings, an innocent victim of a violent crime.

AMENDED OPINION

HOLDERMAN, J.

This claim arises out of an incident that occurred on March **18, 1981.** The Claimants, Margaret Giddings and Floyd Giddings sought compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. (Ill. Rev. Stat. **1979,** ch. **70,** par. **71** et *seq.*) The Claimants were awarded compensation by order of the court issued on January **24,1983.** At the time of that award, the Court found that the Claimants may require additional compensation under the provisions of section **16** of the Act. This claim is now before the Court pursuant to a request by the Claimants for additional compensation.

The Court has carefully reviewed its prior order in this cause and the Claimants' request for additional compensation. Furthermore, an investigation regarding the Claimants' request for additional compensation was conducted by the Attorney General's Office. Based upon the evidence of that investigation now before the Court, the Court finds:

1. That the Claimant, Floyd Giddings, age **37,** was a victim of a violent crime, as defined in section 2(c) of the Act, to wit: aggravated battery (Ill. Rev. Stat. **1979,** ch. **38,** par. **12—4).**

2. That on November **4, 1981,** the Claimants filed an application for medical/hospital expenses in the Illinois Court of Claims pursuant to the provision of the Act.

3. That on January 24, **1983,** the Court of Claims entered an order awarding the Claimants **$6,783.91** for medical/hospital expenses, with a provision that the Claimants could petition the Court for additional compensation pursuant to section **16** of the Act in the event that additional medical/hospital expenses were incurred.

4. That on September **8, 1983,** the Claimants requested the Court to reopen their claim for additional compensation for medical/hospital expenses.

5. That the Claimants incurred an additional net amount of **$7,404.96** in medical/hospital expenses for which they seek compensation at this time.

6. That the Claimants have received no additional reimbursements that can be counted as applicable deductions.

7. That the Claimants may incur additional medical/hospital expenses in the future as a result of the incident and may petition the Court for additional compensation for those expenses pursuant to section **16** of the Act, up to the maximum compensable award of $15,000.00. As of this time, a total amount of **$14,188.87** has been considered for compensation.

8. That the Claimants are entitled to a supplemental award based on the following:

Additional Medical/Hospital Expenses	$7,404.96

It is hereby ordered that the sum of **$7,404.96** (seven thousand four hundred four dollars and ninety-six cents) be and is hereby awarded to Margaret Giddings and to Floyd Giddings, an innocent victim of a violent crime.

AMENDED OPINION

POCH, J.

This claim arises out of an incident that occurred on March 18, 1981. The Claimants, Margaret Giddings and Floyd Giddings, sought compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 *et seq*.

The Claimants were awarded compensation by orders of the Court issued on January 24, 1983, and on January 11,1984. At the time of these awards, the Court found that the Claimants may require additional compensation under the provisions of section 16 of the Act. This claim is now before the Court pursuant to a request by the Claimant for additional compensation.

The Court has carefully reviewed its prior orders in this cause and the Claimants' request for additional compensation. Furthermore, an investigation regarding the Claimants' request for additional compensation was conducted by the Attorney General's Office. Based upon the evidence of that investigation now before the Court, the Court finds:

1. That on March 18, 1981, the Claimant, Floyd Giddings was a victim of a violent crime, as defined in section 2(c) of the Act, to wit: aggravated battery. Ill. Rev. Stat. 1979, ch. 38, par. 12—4.

2. That on November 4, 1981, the Claimants filed an application for medical/hospital expenses in the Illinois Court of Claims pursuant to the provisions of the Illinois Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 *et seq*.

3. That on January 24, 1983, the Court of Claims entered an order awarding the Claimants $6,783.91 for medical/hospital expenses which the Claimants had incurred up to that point with a provision that the Claimants could petition the Court for additional compensation pursuant to section 16 of the Act when additional medical/hospital expenses were incurred.

4. That on September 3, 1983, the Claimants petitioned the Court to reopen their claim for additional compensation for medical/hospital expenses.

5. That on January 11, 1984, the Court of Claims entered a supplemental order awarding the Claimants $7,404.96 for medical/hospital expenses which the Claimants had additionally incurred with a provision that the Claimants could petition the Court for additional compensation pursuant to section 16 of the Act when additional medical/hospital expenses were incurred.

6. That on February 2, 1984, the Claimants again petitioned the Court to reopen their claim for additional compensation for medical/hospital expenses.

7. That the Claimants incurred additional medical/hospital expenses in the amount of $811.13, none of which was covered by insurance, leaving a balance of $811.13 for which they now seek compensation.

8. That the Claimants have received no additional reimbursements that can be counted as applicable deductions.

9. That the Claimants are entitled to a supplemental award based on the following expenses:

Additional Medical/Hospital Expenses $811.13

10. That with an additional award of $811.13, the

pecuniary loss resulting from Floyd Giddings' injuries is $15,000.00 which is the maximum allowed under section 10.1(f) of the Act.

11. That the Claimants have complied with all of the provisions of the Crime Victims Compensation Act and are entitled to compensation thereunder.

It is therefore, hereby ordered that the sum of $811.13 (eight hundred eleven dollars and thirteen cents) be and is hereby awarded to Margaret Giddings and to Floyd Giddings, an innocent victim of a violent crime.

(No. 82-CV-0796—Claimant awarded $1,783.00.)

In re APPLICATION OF MABLE TIGNER.

Opinion filed September 24, 1982.

Supplemental opinion filed July 9, *1984.*

MONICA HYMAN BULLOCK, and LAUREN B. SIMON, of Legal Assistance Foundation of Chicago, for Claimant.

TYRONE C. FAHNER and NEIL F. HARTIGAN, Attorneys General (FAITH S. SALSBURG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION ACT—*factors* **considered in determining loss of earnings.** The loss of earnings for purposes of a claim under the Crime Victims Compensation Act is determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on $750.00 per month, whichever is less (Ill. Rev. Stat. 1983, ch. 70, par. 72(h)).

SAME—*Social* **Security benefits do not constitute earnings.** In determining the **loss** of support for purposes of an award under the Crime Victims Compensation Act, Social Security benefits received by the victim do not constitute earnings upon which to base **loss** of support, since "earnings" have uniformly been defined to be compensation for labor or the use of capital.

SAME—deductions allowed from all claims. The amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 of life insurance, and $200, except in the case of victims 65 years of age or older, must be deducted from all claims.

SAME—*voluntary* ***manslaughter—funeralexpenses awarded.*** A mother was granted an award for the funeral expenses incurred for her son who was the victim of a voluntary manslaughter which occurred during an attempted robbery, and the statutory $200.00 deductible was appliedto that award, but she was denied an award for loss of support, since the victim had no earnings during the six months immediately preceding the incident, because he was unemployed and received Social Security benefits during that time, and the Claimant received cash assistance from the Department of Public Aid since the date of the incident.

POCH, J.

This claim arises out of an incident that occurred on September 6, 1981. Mable Tigner, mother of the deceased victim, Willie Tigner, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. **1979,** ch. **70,** par. **71** et ***seq***.

This Court has carefully considered the application for benefits submitted on April 21, 1981, on the form prescribed by the Court, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That Willie Tigner, age 22, was a victim of a violent crime as defined in section 2(c) of the Act, to wit: voluntary manslaughter. Ill. Rev. Stat. 1979, ch. 38, par. 9—2.

2. That on September 6, 1981, the victim was shot by an unknown offender during an attempted robbery

of the victim's motor bike. The incident occurred as the victim and several friends were walking through a playground at 1847 West Lake Street, Chicago, Illinois, where they encountered the offender, who was armed with a gun. The offender demanded that the victim relinquish his motor bike, and when the victim refused, a struggle ensued during which the offender produced his gun and shot the victim. The victim was pronounced dead at Cook County Hospital.

3. That the Claimant seeks compensation for funeral expenses and loss of support for herself.

4. That the Claimant incurred funeral and burial expenses as a result of the victim's death in the amount of $1,983.00.

5. That pursuant to section 2(h) of the Act, loss of support shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or death, or on $750.00 per month, whichever is less.

6. That the victim was not employed during the six months immediately preceding the date of the incident out of which this claim arose. The victim had been receiving monthly Social Security benefits during the six months prior to the incident. However, Social Security benefits do not constitute earnings of the victim upon which to base loss of support as required by section 2(h) of the Act.

In addition, the Claimant currently receives cash assistance from the Illinois Department of Public Aid, and has received such assistance since the date of the incident.

7. That pursuant to section 10.1(e) of the Act, this Court must deduct $200.00 from all claims (except in

the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant.

8. That the Claimant has not received any reimbursements as a result of the victim's death that can be counted as applicable deductions.

9. That the Claimant is entitled to an award based on the following.

Paid funeral expenses	**$1,983.00**
Less $200.00 deductible	− 200.00
Total	**$1,783.00**

It is hereby ordered that the sum of **$1,783.00** (one thousand seven hundred eighty-three dollars) be and is hereby awarded to Mable Tigner, mother of Willie Tigner, an innocent victim of a violent crime.

SUPPLEMENTAL OPINION

POCH, J.

This claim arises out of an incident that occurred on September 6, **1981.** Claimant seeks compensation pursuant to the provisions of the Illinois Crime Victims Compensation Act; hereafter referred to as the "Act." Ill. Rev. Stat., ch. **70,** par. **71** et *seq*.

On September 24,1982, Claimant was awarded the sum of $1,783.00 (one thousand seven hundred eighty three dollars) for funeral expenses, but was denied compensation for the loss of support on the basis that the deceased, Willie Tigner, was not employed for the six months immediately preceding the date of the incident out of which this claim arose and therefore Claimant suffered no loss of earnings compensable under section 2(h) of the Act.

Pursuant to section 9 of the Act, Claimant moved for a hearing.

The hearing was conducted by Commissioner Robert E. Cronin on September 13, 1983, where the following was established by stipulation and other documentary proof:

1. That Willie Tigner, age 22, was a victim of a violent crime as defined in section 2(c) of the Act, to-wit: voluntary manslaughter. Ill. Rev. Stat., ch. 38, par. 9—2.

2. That on September 6, 1981, the victim was shot by an unknown offender during an attempted robbery of the victim's motor bike. The offender demanded that the victim relinquish his motor bike; when the victim refused, a struggle ensued during which the offender shot the victim. The victim was pronounced dead at the Cook County Hospital.

3. That the Claimant seeks compensation for funeral expenses and loss of support.

4. That the deceased, Willie Tigner, was not employed during the six months immediately preceding the date of the incident. The victim had been receiving monthly Social Security benefits during the six months prior to the incident.

The sole issue in this case is whether Social Security benefits constitute earnings which may form the basis of an award for loss of earnings within the meaning of section 2(h) of the Act.

Section 2(h) of the Act, in pertinent part provides as follows:

". . . Loss of earnings, loss of future earnings and loss of support shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or death or on $750.00 per month, whichever is less . . ."

It is clear from section 2(h) of the Act that as a condition to the right of a Claimant to recover for loss of support in the case of death, the loss of support must be established, and it must further be established that the victim had some earnings during the six-month period preceding his death. It will be noted that the statute provides that loss of support "shall be determined" on the basis of the victim's average monthly earnings for that period.

The record is clear that the deceased had been unemployed for six months preceding his death. Claimant argues that the deceased was the recipient of Social Security benefits during said period, and that the Social Security benefits were "earnings" within the meaning of the Act.

This court has uniformly held that the word "earnings" is something earned as compensation for labor or the use of capital. (***In re Cooper,*** 32 Ill. Ct. Cl. 400; In ***re Chandler,*** 32 Ill. Ct. Cl. 1084; ***In re Smith,*** No. 83-CV-0312, opinion ***5-8-84).*** Social Security benefits cannot be considered as "earnings" within the meaning of the Act. The Act specifically states that the amount of any award for loss of support be determined solely upon

the basis of the victim's "earnings" for the six months preceding his death, and since Willie Tigner did not have earnings within that six-month period, the request for loss of support will be denied.

It is hereby ordered that the claim of Mable Tigner for compensation for loss of support be and the same is denied, and that the award to Mable Tigner, on September 24, 1982, in the sum of **$1,783.00** (one thousand seven hundred eighty three dollars) for funeral expenses remain in full force and effect.

(No. 83-CV-0089—Claim denied.)

In re **APPLICATION OF GARY C. FORD.**

Order filed January *11,1984.*

Order on denial of rehearing filed January *24,1985.*

GARY C. FORD, pro se, for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALSBURG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION ACT—*cooperation* with authorities prerequisite to award. In order to be entitled to the grant of an award under the Crime Victims Compensation Act a claimant must show that the appropriate law enforcement officials were notified of the crime which is the basis of the claim, and that the claimant has cooperated fully with the officials in the apprehension and prosecution of the assailant.

SAME—shooting victim—no cooperation with police—claim denied. The victim of a shooting was denied an award for the injuries he sustained, since the evidence established that he knew the offender, but declined to cooperate fully with the law enforcement officials in apprehending and prosecuting the assailant.

ROE, J.

This claim arises out of an incident that occurred on

September 23, **1981.** Gary C. Ford, Claimant, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. **1979,** ch. 70, par. **71** ***etseq.***

This Court has carefully considered the application for benefits submitted on July **27, 1982,** on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That on September 23, **1981,** the Claimant was shot by an offender who was known to him. The incident allegedly occurred on the street at **1733** East 75th Street, Chicago, Illinois. The Claimant originally reported to police that the incident had occurred within his automobile and that a struggle for the weapon took place after which the offender exited the vehicle. The Claimant later stated that the struggle for the weapon continued on the street outside his automobile. A search of the Claimant's automobile revealed no evidence of blood or of bullet damage to the vehicle despite the fact that three bullets struck and then exited the Claimant. The police were unable to find any evidence of a crime occurring at the scene. The Claimant identified the offender as an acquaintance whose address was unknown. During later questioning he identified another man as the offender and provided the police with the offender's address. However, the Claimant refused to prosecute this individual.

2. That sections 6.1(c) and (d) of the Act state that a person is entitled to compensation under the Act if the appropriate law enforcement officials were notified of the perpetration of the crime and the applicant has

cooperated fully with law enforcement officials in the apprehension and prosecution of the assailant.

3. That it appears from the police report that the Claimant declined to cooperate fully with law enforcement officials in the apprehension of the assailant, in that he made conflicting statements to police investigating regarding the circumstances surrounding the incident and refused to prosecute the assailant whom he identified.

4. That by reason of the Claimant's refusal to fully cooperate with law enforcement officials in the apprehension and prosecution of the assailant as required by the Act he is *not* eligible for compensation thereunder.

It is hereby ordered that this claim be, and is hereby denied.

ORDER ON DENIAL OF REHEARING

HOLDERMAN, J.

On February 14, 1984, Claimant filed a petition for rehearing of the Court's order of January 11, 1984, wherein the Court denied Claimant an award. Subsequent to the order denying award, the commissioner set a rehearing for November 13, 1984. Claimant was advised of the rehearing but failed to appear.

It appearing to the Court that Claimant has failed to cooperate in the procedures of this cause, the petition for rehearing is denied and the Court's original order denying Claimant an award is hereby affirmed.

(No. 83-CV-0939—Claim denied.)

In re APPLICATION OF NANCY L. HENERT.

Opinion filed August 29,1984.

Order on request for review filed December 6,1984.

NANCY L. HENERT, pro *se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALSBURG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION ACT—*basis for determining* loss *of earnings.* The loss of earnings for purposes of a claim under the Crime Victims Compensation Act is determined on the basis of the victim's average net monthly earnings for the *six* months immediately preceding the date of the injury or on $750.00 per month, whichever is less (Ill. Rev. Stat. 1983, ch. 70, par. 72(h)).

SAME—*deductions allowed from all claims.* The amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 of life insurance, and $200, except in the case of victims 65 years of age or older, must be deducted from all claims.

SAME—*aggravated arson—net loss less than $200—claim denied.* The Claimant suffered a loss as the victim of aggravated arson, but her claim for compensation was denied, since her net loss was less than $200, and the Crime Victims Compensation Act limits the right of compensation to persons who have suffered a pecuniary loss of $200 or more attributable to a violent crime.

POCH, J.

This claim arises out of an incident that occurred on October 21, 1982. Nancy L. Henert, Claimant, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 *et seq.*

This Court has carefully considered the application

for benefits submitted on April 11, 1983, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant, Nancy L. Henert, age 25, was a victim of a violent crime, as defined in section 2(c) of the Act, to wit: aggravated arson. Ill. Rev. Stat. 1979, ch. 38, par. 20—1.

2. That on October 21, 1982, the victim was overcome by smoke due to a fire which was set in her apartment building. The incident had occurred at the victim's residence Iocated at 1416 East State, Rockford, Illinois. Police and fire investigators had classified the fire as aggravated arson. The victim was taken to Saint Anthony Hospital for treatment. The offender in this case was apprehended and convicted of aggravated arson.

3. That the Claimant seeks compensation for loss of earnings only. All medical bills were paid by insurance.

4. That the Claimant was employed by Walter Lawson Children's Home prior to the injury and her average monthly earnings were $667.47. Claimant was disabled and unable to work from October 21, 1982, to November 12,1982, for a period of 16 working days.

5. That section 2(h) of the Act states that loss of earnings shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on $750.00 per month, whichever is less.

6. That based on $667.47 per month, the maximum

compensation for loss of earnings for 16 working days is $485.43.

7. That the Claimant has complied with all pertinent provisions1 of the Act and qualifies for compensation thereunder.

8. That pursuant to section 10.1(e) of the Act, this Court must deduct $200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant.

9. That the Claimant has received $285.71 in disability benefits.

10. That the Claimant's net loss for which she seeks compensation is $199.72.

11. That section 10.1(e) of the Act limits the right of compensation to persons who have suffered a pecuniary loss of $200.00 or more attributable to a violent crime resulting in the injury or death of the victim.

12. That this claim does not meet a required condition precedent for compensation under the Act.

It is hereby ordered that this claim be, and is hereby denied.

ORDER ON REQUEST FOR REVIEW

POCH, J.

This cause comes on to be heard on the petitioner's request for a review of our decision of August 29,1984.

On November 10, 1984, Claimant informed Commissioner Simpson that she did mot wish to pursue this matter any further.

It is hereby ordered that said request be, and hereby is, denied.

(No. 83-CV-0959—Claimant awarded $300.00.)

In re APPLICATION OF RICHARD G. HUTCHINS.

Opinion filed *July* 9,1984.

RICHARD G. HUTCHINS, pro se, for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITH' S. SALSBURG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION Am—reckless conduct—random shooting—award granted. The minor victim of a random shooting was granted an award for the balance of his medical bills remaining after his insurer's payments, but no award was granted for loss of earnings, since the victim was not employed for the *six* months prior to the incident.

POCH, J.

This claim arises out of an incident that occurred on July 4, 1982. Richard' G. Hutchins, father of Eric Hutchins, Claimant, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 *et seq.*

This Court has carefully considered the application for benefits submitted on April **15, 1983,** on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois 'which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant, Richard G. Hutchins, father of the minor victim, Eric Hutchins, age 2, was a victim of a violent crime, as defined in section 2(c) of the Act, to wit: reckless conduct. Ill. Rev. Stat. **1979,** ch. **38,** par. **12—5.**

2. That on July **4, 1982,** the victim was shot during a random shooting incident. The incident had taken place in the middle of the State Street Bridge, Rockford, Illinois. The victim and his family were watching the fireworks display, when the victim was struck by a stray bullet. The victim was taken to Swedish American Hospital where he was treated and released. The offender in this case was never apprehended.

3. That the Claimant seeks compensation for hospital expenses only.

4. That section 2(h) of the Act states that loss of earnings shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on $750.00 per month, whichever is less.

5. That the Claimant was not employed for the six months immediately preceding the date of the incident out of which this claim arose and therefore suffered no loss of earnings compensable under the Act.

6. That the Claimant incurred medical/hospital

expenses in the amount of $7,118.12, $6,618.12 of which was paid by insurance, leaving a balance of $500.00.

7. That the Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

8. That pursuant to section 10.1(e) of the Act, this Court must deduct $200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant.

9. That the Claimant has received no reimbursements that can be counted as applicable deductions.

10. That the Claimant is entitled to an award based on the following:

Net medical expenses	$500.00
Less $200.00 Deductible	– 200.00
Total	$300.00

It is hereby ordered 'that the sum of $300.00 (three hundred dollars) be and is hereby awarded to Richard G. Hutchins, father of Eric Hutchins, an innocent victim of a violent crime.

(No. 83-CV-0977—Claimant awarded $11,218.38.)

In re APPLICATION OF NORMAN HAMILTON.

Opinion filed April 18,1985.

NORMAN HAMILTON, pro **se,** for Claimant.

NEIL F. HARTIGAN, Attorney General (ALISON P. BRESLAUER, Assistant Attorney General, of counsel), for Respondent.

CRIME **VICTIMS** COMPENSATION ACT—*Claimant must inform Attorney General of outcome of civil actions.* When the applicant for compensation under the Crime Victims Compensation Act files a civil action arising from the same'incident and informs the Attorney General of that pending action, the applicant acknowledges his responsibility to notify the Attorney General of the final disposition of the civil action (Ill. Rev. Stat. 1979, ch. 70, par. 87).

Smm—awards may be made payable jointly to Claimant and provider of services. Section 18(c) of the Crime Victims Compensation Act allows the **Court** of **Claims to** order **that all** or **a portion of an award be paid jointly to** the applicant and the provider of services (Ill. Rev. Stat. 1979, ch. 70, par. **88(c)).**

Smm—aggravated assault—fractured spine—award granted. While **a** passenger on a train, the Claimant suffered a fracture of his cervical spine when he attempted to protect his son from shots being fired at the train by an unknown offender, and the Claimant was granted an award, after the appropriate statutory deductions, for his loss of earnings during his full-time absence from work and for his medical expenses which were not covered by insurance, and the award was made jointly to Claimant and the providers of medical services.

POCH, J.

This claim arises out of an incident that occurred on March 13, 1983. Norman Hamilton, Claimant, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 et *seq.*

This Court has carefully considered the application for benefits submitted on April 19, 1983, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which

substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant, Norman Hamilton, age 45, was a victim of a violent crime, as defined in section 2(c) of the Act, to wit: aggravated assault. Ill. Rev. Stat. 1979, ch. 38, par. 12—2.

2. That on March 13, 1983, 'the' Claimant was injured while he was a passenger aboard a Chicago Transit Authority train. The incident occurred on an eastbound train near 530 South Kedzie, Chicago, Illinois. Police investigation revealed that an unknown offender fired several shots at the passing train. The Claimant received a fracture of the cervical spine when he pulled his son to the floor of the train in an attempt to protect him. The Claimant was initially taken to Rush Presbyterian-St. Lukes Medical Center for treatment of his injuries.'

3. That the Claimant seeks compensation for loss of earnings and for medical/hospital expenses.

4. That the Claimant incurred medical/hospital expenses in the amount of $4,579.10, $3,225.80 of which was paid by insurance, leaving a balance of $1,353.30. To date, the Claimant has paid $271.00 towards this balance.

5. That section 2(h) of the Act states that loss of earnings shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on $750.00 per month, whichever is less.

6. That the Claimant was employed by the U.S. Postal Service prior to the injury, and his average

monthly earnings were $1,523.54. Claimant was disabled and unable to work from March 13,1983, to September 4, 1984. On September 4,1984, the Claimant's physician released the Claimant to work on a part-time basis. The Claimant was then able to return to work on a full-time basis as of October 1, 1984.

7. That the Claimant's net earnings following his return to work on a part-time basis exceeded $750.00, the maximum amount compensable per month for loss of earnings under the Act. Therefore, the Claimant did not incur a net loss of earnings during his part-time absence.

8. That the Claimant is eligible for loss of earnings during his full-time absence, from March 13, 1983, to September 4, 1984, a period of 17 months and 16 working days.

9. That based on $750.00 per month, the maximum compensation for loss of earnings for 17 months and 16 working days is $13,295.44.

10. That the Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

11. That pursuant to section 10.1(e) of the Act, this Court must deduct $200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal Social Security payments payable to depend-

ents of the victim and the net proceeds of the first **$25,000.00** (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant.

12. That the Claimant has received **$3,230.36** in sick pay reimbursements that can be counted as an applicable deduction.

13. That the Claimant's net loss of earnings can be determined as follows:

Compensable loss *of* earnings	**$13,295.44**
Less disability benefits	**– 3,230.36**
Total	**$10,065.08**

14. That the Claimant, Norman Hamilton, has filed a civil action, ***Hamilton v. Chicago Transit Authority,*** No. 84 L **4494,** in the Circuit Court of Cook County, Illinois, as a result of the incident. The Claimant, by informing the Attorney General of his pending civil suit, has acknowledged his responsibility to further notify the Attorney General of the final disposition of the civil action, pursuant to section **17** of the Act.

15. That pursuant to section 18(c) of the Act, the Court may order that all or a portion of an award be paid jointly to the applicant and provider of services. In the instant case, the Court finds this section applicable and orders that joint payment be made.

16. That. the amount of the **$200.00** deductible should be prorated respectively in accordance with the percentage of the compensable loss.

17. That after considering the applicable deductions, the Claimant's loss for which he seeks compensation is **$11,218.38,** based upon the following:

	Compensable Amount	Less % of $200.00 Deductible	Total
Net Loss of Earnings and Paid Medical/Hospital Expenses	$10,336.08	90.5%	$10,155.08
Lutheran General Hospital	402.30	3.5%	395.30
Victory V. Roman, M.D.	360.00	3.2%	353.60
Northwest Internal Medicine	150.00	1.3%	147.40
J. Ralph Seaton, M.D.	170.00	1.5%	167.00
Total	$11,418.38	100%	$11,218.38

It is hereby ordered that the sum of **$10,155.08** (ten thousand one hundred fifty-five dollars and eight cents) be and is hereby awarded to Norman Hamilton, an innocent victim of a violent crime.

It is further ordered that the sum of **$395.30** (three hundred ninety-five dollars and thirty cents) be and is hereby awarded to Norman Hamilton and Lutheran General Hospital.

It is further ordered that the sum of **$353.60** (three hundred fifty-three dollars and sixty cents) be and is hereby awarded to Norman Hamilton and Victory V. Roman, M.D.

It is further ordered that the sum of **$147.40** (one hundred forty-seven dollars and forty cents) be and is hereby awarded to Norman Hamilton and Northwest Internal Medicine.

It is further ordered that the sum of **$167.00** (one hundred sixty-seven dollars) be and is hereby awarded to Norman Hamilton and J. Ralph Seaton, M.D.

(No. 84-CV-0041—Claim denied.)

In re APPLICATION OF ANNE BECKER.

Order filed October 30, 1984.

ANNE BECKER, pro se, for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALSBURG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION ACT—***compensation will* not be granted unless pecuniary** loss **exceeds $200.** The Crime Victims Compensation Act limits the right of compensation to persons who suffer a pecuniary loss which is attributable to a violent crime resulting in injury or death and the loss exceeds $200.00 (Ill. Rev. Stat. 1979, ch. 70, par. 76.1(b)).

Sam—assault—no *loss of* earnings—medical expenses paid by insurance—no pecuniay loss—claim denied. The Claimant was denied an award for the medical expenses she incurred as the result of an assault in which she was struck in the face by a bottle thrown by an unknown assailant, since she sought compensation only for her medical and hospital expenses, and those expenses were all paid by insurance leaving no balance due.

POCH, J.

This claim arises out of an incident that occurred on August 13, 1982. Anne Becker, Claimant, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 et *seq*.

This Court has carefully considered the application for benefits submitted on July 15, 1983, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant, Anne Becker, age 28, was a victim of a violent crime as defined in section 2(c) of the Act, to wit: assault. Ill. Rev. Stat. 1979, ch. 38, par. 12—1.

2. That on August 13,1982, the Claimant was struck in the face by a bottle thrown at her while driving from a baseball game. The incident occurred at 3700 State Street, Chicago, Illinois. The Claimant was taken to Mercy Hospital for treatment of her injuries. The offender has not been apprehended.

3. That the Claimant seeks compensation for medical/hospital expenses only.

4. That the Claimant incurred medical/hospital expenses in the amount of $995.44, all of which was paid by insurance, leaving no balance due.

5. That pursuant to section 10.1(e) of the Act, this Court must deduct $200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant.

6. That the Claimant has received no reimbursements that can be counted as applicable deductions.

7. That the Claimant has not suffered a pecuniary loss compensable under the Act.

8. That section 6.1(b) of the Act limits the right of compensation to persons who have suffered a pecuniary loss of $200.00 or more attributable to a violent crime resulting in the injury or death of the victim.

9. That this claim does not meet a required condition precedent for compensation under the Act.

10. That in the event that the Claimant suffers a pecuniary loss of over $200.00 as a result of this incident in the future, she may petition the Court to reopen her case pursuant to section 16 of the Act.

It is hereby ordered that this claim be, and is hereby denied.

(No. 84-CV-1233—Claimant awarded $9,560.73.)

In re APPLICATION OF BRETT HARVEY.

Opinion filed August 29,1984.

DAVID K. GROUNDS, for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALSBURG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION Am—basis *for determining loss of earnings.* The loss of earnings for purposes of a claim under the Crime Victims Compensation Act is determined on the basis of the victim's average net monthly earnings for the *six* months immediately preceding the date of the injury or on $750.00 per month, whichever is less (Ill. Rev. Stat. 1983, ch. 70, par. 72(h)).

Sam—deductions allowed from all claims. The amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 of life insurance, and $200, except in the case of victims 65 years of age or older, must be deducted from all claims.

SAME—*awards may be made payable jointly to Claimant and provider of services.* Section 18(c) of the Crime Victims Compensation Act allows the Court of Claims to order that all or a portion of an award be paid jointly to

the applicant and the provider of services (Ill. Rev. Stat. 1979, ch. 70, par. 88(c)).

SAME—reckless conduct—shooting at party—no loss of earnings—medical expenses awarded. Claimant was shot while attending a party when he engaged in a struggle to disarm another person at the party who had produced a rifle and fired it, and Claimant was granted an award, after the appropriate statutory deductions, payable jointly to Claimant and the providers of his medical services, since the evidence established that Claimant suffered no loss of earnings because he had not been employed for the six months prior to the incident, the assailant was convicted of reckless conduct, and Claimant had complied with all pertinent provisions of the Crime Victims Compensation Act to be qualified for compensation.

POCH, J.

This claim arises out of an incident that occurred on September 25, 1983. Brett Harvey, Claimant, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 ***et seq.***

This Court has carefully considered the application for benefits submitted on June 12, 1984, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant, Brett Harvey, age 19, was a victim of a violent crime, as defined in section 2(c) of the Act, to wit: reckless conduct. Ill. Rev. Stat. 1979, ch. 38, par. 12—5.

2. That on September 25, 1983, the victim was shot by an offender known to him. The incident occurred at 1125 East Loop Road, Bethalto, Illinois, where the victim and offender were attending a party. During this party, the offender produced a rifle and fired it into the air. The victim attempted to disarm the offender, and during this struggle the rifle discharged, striking the

victim. The victim was taken to Alton Memorial Hospital for treatment of his injuries. The offender was apprehended and was convicted of reckless conduct.

3. That the Claimant seeks compensation for medical/hospital expenses only.

4. That section 2(h) of the Act states that loss of earnings shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on **$750.00** per month, whichever is less.

5. That the Claimant was not employed for the six months immediately preceding the date of the incident out of which this claim arose and therefore suffered no loss of earnings compensable under the Act.

6. That the Claimant incurred medical/hospital expenses in the amount of **$9,760.73,** none of which was paid by insurance, leaving a balance of **$9,760.73.**

7. That the Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

8. That pursuant to section 10.1(e) of the Act, this Court must deduct $200.00 from all claims (except in the case of an applicant **65** years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first **$25,000.00** (twenty-five thousand dollars) of life

insurance that would inure to the benefit of the applicant.

9. That the Claimant has received no reimbursements that can be counted as applicable deductions.

10. That pursuant to section 18(c) of the Act, the Court may order that all or a portion of an award be paid jointly to the applicant and provider of services. In the instant case, the Court finds this section applicable and orders that joint payment be made.

11. That after applying the applicable deductions, the Claimant's loss for which he seeks compensation is **$9,560.73,** based upon the following:

	Compensable Amount	Less % of $200.00 Deductible	Total
Alton Memorial Hospital	**$8,358.20**	**85.7%**	**$8,186.80**
Wood River Township Hospital	**167.40**	**1.7%**	**164.00**
Daniel W. Platt, M.D.	**184.00**	**1.9%**	**180.20**
Alton Orthopedic Clinic, Ltd.	**151.13**	**1.5%**	**148.13**
Alton Surgical Clinic	**900.00**	**9.2%**	**881.60**
Total	**$9,760.73**	**100%**	**$9,560.73**

It is hereby ordered that the sum of **$8,186.80** (eight thousand one hundred eighty-six dollars and eighty cents) be and is hereby awarded to Brett Harvey and Alton Memorial Hospital.

It is further ordered that the sum of **$164.00** (one hundred sixty-four dollars) be and is hereby awarded to Brett Harvey and Wood River Township Hospital.

It is further ordered that the sum of **$180.20** (one hundred eighty dollars and twenty cents) be and is

hereby awarded to Brett Harvey and Daniel W. Platt, M.D.

It is further ordered that the sum of **$148.13** (one hundred forty-eight dollars and thirteen cents) be and is hereby awarded to Brett Harvey and Alton Orthopedic Clinic, Ltd.

It is further ordered that the sum of **$881.60** (eight hundred eighty-one dollars and sixty cents) be and is hereby awarded to Brett Harvey and Alton Surgical Clinic.

(No. 85-CV-0015—Claim denied.)

***In re* APPLICATION OF EUGENE B. FINEGAN.**

Opinion filed August 29, 1984.

EUGENE B. **FINEGAN,** ***pro se***, for Claimant.

NEIL F. HARTIGAN, Attorney General **(FAITH** S. **SALSBURG,** Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION Am—deductions allowed from all claims. The amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 of life insurance, and $200, except in the case of victims 65 years of age or older, must be deducted from all claims.

SAME—*reckless* homicide—no ***loss*** after statutory deductions—claim denied. The Claimant's request for compensation for the medical, hospital and funeral expenses incurred on behalf of his deceased wife, the victim of a reckless homicide, was denied, since he suffered no net loss in view of the fact that her medical and hospital expenses were totally paid by insurance and the statutory deduction based on the proceeds of her life insurance

policies and the standard $200.00 deduction exceeded the maximum funeral award.

POCH, J.

This claim arises out of an incident that occurred on October 18, 1983. Eugene B. Finegan, husband of the deceased victim, Charlotte S. Finegan, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71, *et seq*.

This Court has carefully considered the application for benefits submitted on July 9, 1984, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters, set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant's deceased wife, Charlotte S. Finegan, age 59, was a victim of a violent crime as defined in section 2(c) of the Act, to wit: reckless homicide. Ill. Rev. Stat. 1979, ch. 38, par. 9—3.

2. That on October 18, 1983, the victim received multiple injuries when her vehicle was hit by another vehicle. The incident occurred at Wabash and Eighteenth Streets, Chicago, Illinois. The victim was taken to Michael Reese Hospital where she expired. The driver of the other vehicle was charged with reckless homicide.

3. That the Claimant seeks compensation under the Act for medical/hospital expenses and for funeral expenses. The Claimant was not dependent upon the victim for support.

4. That the victim incurred medical/hospital expenses in the amount of $3,952.78, which was paid by insurance, therefore leaving no amount due.

5. That funeral and burial expenses were paid by the Claimant in the amount of $4,769.20. Pursuant to section 2(h) of the Act, funeral and burial expenses are compensable to a maximum amount of $2,000.00.

6. That pursuant to section 10.1(e) of the Act, this Court must deduct $200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 (twenty-five thousand dollars) of life insurance. that would inure to the benefit of the applicant.

7. That the Claimant has received $61,647.07 from life insurance policies as a result of the victim's death, $36,647.07 of which can be counted as applicable deductions.

8. That the Claimant's net loss for which he seeks compensation is as follows:

Maximum funeral award	$ 2,000.00
Less applicable insurance deduction	– 36,647.07
Less $200.00 deductible	– 200.00
Total	— 0 —

9. That after making all the applicable deductions under section 10.1(e) of the Act, the Claimant did not suffer a pecuniary loss compensable under the Act.

10. That this claim does not meet a required condition precedent for compensation under the Act.

It is hereby ordered that this claim be, and is hereby denied.

(No. 85-CV-0110—Claim denied.)

In re APPLICATION OF LORINE BLACKMAN.

Order filed October *30,1984.*

LORINE BLACKMAN, pro se, for Claimant.

NEIL F. HARTIGAN, Attorney General (FAITH S. SALSBURG, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION ACT—*award* will be reduced according to victim's contribution to injury. The Crime Victims Compensation Act provides that any award of compensation shall be reduced according to the extent to which the victim's prior criminal conviction or conduct may have directly or indirectly contributed to the victim's injury or death (Ill. Rev. Stat. 1979, ch. 70, par. 80.1).

SAME—*shooting* death—victim fired first—claim denied. A mother of a victim of a shooting incident between the victim and a police officer was denied compensation for the son's funeral and burial expenses, since the evidence established that the son possessed a weapon, and was shooting into a crowd of people when he was shot by the police officer who was attempting to protect himself and the other people in the area of the shooting, and therefore the son's criminal conduct directly contributed to his death, and precluded the award of compensation.

POCH, J.

This claim arises out of an incident that occurred on July 30, 1983. Lorine Blackman, mother of the victim, Iverson J. Blackman, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 et *seq.*

This Court has carefully considered the application for benefits submitted on July 27, 1984, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based on these documents and other evidence submitted to the Court, the Court finds:

1. That on July 30, 1983, the victim was shot on the street at 5135 South Federal, Chicago, Illinois. The victim was pronounced dead on arrival at Provident Hospital. Police investigation revealed that the victim was involved in an altercation just prior to the incident. During the course of the altercation, the victim produced a gun and apparently threatened to shoot the other participants. A friend of the victim was able to wrestle the gun from the victim and they then left the scene together.

After the victim left, the other participants reported the incident and threat to police officers who were making an arrest in an unrelated incident. While they were speaking to the officers, the victim approached and began shooting. One of the officers then produced his service revolver and returned the victim's fire. During this exchange the victim was shot. The State's Attorney's office found no basis for criminal charges against the police officer.

2. That the Claimant seeks compensation for funeral and burial expenses only.

3. That section 10.1 of the Act indicates factors used to determine entitlement to compensation. Specifically, section 10.1(d) of the Act states that an award shall be reduced according to the extent to which any prior criminal conviction or conduct of the victim may have

directly or indirectly contributed to the injury or death of the victim.

4. That it appears from the investigatory report and the police report that the victim's conduct directly contributed to his death. The victim possessed a gun and was shooting into a crowd of people when he was shot by a police officer who was attempting to protect himself and others in the immediate area of the shooting.

5. That the Claimant incurred funeral and burial expenses in the amount of $600.00 which was assumed by the Illinois Department of Public Aid. The Claimant, therefore, has sustained no pecuniary loss.

It is hereby ordered that this claim be, and is hereby, denied.

(No. 85-CV-0166—Claimant awarded $95.60.)

***In re* APPLICATION OF NONA NASH.**

Opinion filed October 31, 1984.

NONA NASH, pro **se,** for Claimant:

NEIL F. HARTIGAN, Attorney General **(FAITH** S. **SALSBURG,** Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION ACT—*factors* considered in determining loss *of* earnings. The loss of earnings for purposes of a claim under the Crime Victims Compensation Act is determined on the basis of the victim's average net monthly earnings for the *six* months immediately preceding the date of the injury or on $750.00 per month, whichever is less (Ill. Rev. Stat. 1983, ch. 70, par. 72(h)).

SAME—deductions allowed from *all claims.* The amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits,

health insurance, or any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 of life insurance, and $200, except in the case of victims 65 years of age or older, must be deducted from all claims (Ill. Rev. Stat. 1979, ch. 70, par. 80.1(e)).

SAME—assault—victim 74 years old—no lost earnings—unpaid medical expenses awarded. An assault victim who was 74 years old was granted an award for her medical expenses which were not covered by insurance, without application of the standard $200.00 deduction, but no award was made for loss of earnings, since she was not employed for the six months immediately preceding the date of the incident and therefore suffered no loss of earnings.

POCH, J.

This claim arises out of an incident that occurred on May 17, 1984. Nona Nash, Claimant, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 et *seq*.

This Court has carefully considered the application for benefits submitted on August 15, 1984, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant, Nona Nash, age 74, was a victim of a violent crime, as defined in section 2(c) of the Act, to wit: assault. Ill. Rev. Stat. 1979, ch. 38, par. 12—1.

2. That on May 17, 1984, the Claimant fell to the ground as a group of unknown offenders were attempting to rob her. The incident occurred on the street at 2800 North Cambridge, Chicago, Illinois. The Claimant was treated for her injuries at the nearby Diversey Clinic. The offenders were not apprehended.

3. That the Claimant seeks compensation for medical/hospital expenses only.

4. That section 2(h) of the Act states that loss of earnings shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on $750.00 per month, whichever is less.

5. That the Claimant was not employed for the six months immediately preceding the date of the incident out of which this claim arose and therefore suffered no loss of earnings compensable under the Act.

6. That the Claimant incurred medical/hospital expenses in the amount of $288.00, $192.40 of which was paid by insurance, leaving a balance of $95.60.

7. That the Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

8. That pursuant to section 10.1(e) of the Act, this Court must deduct $200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant.

9. That the Claimant has received no reimbursements that can be counted as applicable deductions.

10. That under section 6.1(b) of the Act, the $200.00 minimal loss requirement is waived for those applicants 65 years of age or older who meet the income eligibility requirement contained in subsection (f) of section 4 of the "Senior Citizens and Disabled Persons Property Tax Relief Act." The Claimant meets those requirements and the deductible is, therefore, waived in this instance.

11. That the Claimant is entitled to an award based on her net medical expenses of $95.60.

It is hereby ordered that the sum of $95.60 (ninety-five dollars and sixty cents) be and is hereby awarded to Nona Nash, an innocent victim of a violent crime.

(No. 85-CV-0317—Claimant awarded $15,000.00.)

In re APPLICATION OF JOYCE A. COLLINS.

Opinion filed December 11, 1984.

JOYCE A. COLLINS, pro *se*, for Claimant.

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

CRIME VICTIMS COMPENSATION ACT—factors considered in determining loss of earnings. The loss of earnings for purposes of a claim under the Crime Victims Compensation Act is determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on $750.00 per month, whichever is less (Ill. Rev. Stat. 1983, ch. 70, par. 72(h)).

SAME—*deductions* allowed from *all claims*. The amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and

the net proceeds of the first $25,000.00 of life insurance, and $200, except in the case of victims 65 years of age or older, must be deducted from all claims (Ill. Rev. Stat. 1979, ch. 70, par. 80.1(e)).

SAME—muximum death award—$15,000.00.

SAME—installment payment of awards is permitted. The Crime Victims Compensation Act provides for the installment payment of awards under certain circumstances (111. Rev. Stat. 1979, ch. 70, par. 81.1).

SAME—reckless homicide—victim was police officer—maximum award granted surviving spouse and child. A police officer was killed when the offender he was pursuing forced the officer's vehicle into a parked truck, and the officer's surviving wife and child were granted the maximum death award payable in installments, since the net loss of support and funeral expenses exceeded the maximum award of $15,000.00 after the applicable statutory deductions were taken.

POCH, J.

This claim arises out of an incident that occurred on February 7,1984. Joyce A. Collins, wife of the deceased victim, John J. Collins, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 et *seq*.

This Court has carefully considered the application for benefits submitted on September 28, 1984, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant's deceased husband, age 41, was a victim of a violent crime as defined in section 2(c) of the Act, to wit: reckless homicide. Ill. Rev. Stat. 1979, ch. 38, par. 9—3.

2. That on February 7, 1984, the victim was fatally injured as the result of a hit-and-run accident. The incident occurred on the street at 2919 West Van Buren, Chicago, Illinois. Police investigation revealed that the

victim, a Chicago police sergeant, was in pursuit of the offender when that offender forced the victim's vehicle into a parked truck. The offender managed to flee the scene and has not been apprehended to date. The victim was pronounced dead at Mt. Sinai Hospital.

3. That the Claimant seeks compensation for funeral expenses and for loss of support for herself and her minor son, Todd M. Collins, age 15.

4. That the Claimant incurred funeral and burial expenses in the amount of $1,012.00. Pursuant to section 2(h) of the Act, funeral and burial expenses are compensable to a maximum award of $2,000.00.

5. That the Claimant and her minor son were totally dependent upon the victim for support.

6. That prior to his death, the victim was employed by the Chicago Police Department and his average monthly earnings were $2,000.95.

7. That section 2(h) of the Act states "* * * loss of support shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on $750.00 per month, whichever is less."

8. That the victim was 41 year of age at the time of the crime. According to the U.S. Department of Health, Education and Welfare, ***Vital Statistics of the United States,*** 1978, Life Tables, volume 11, his life expectancy would have been 73.3 years. The projected loss of support for 32.3 years is $290,700.00, which is in excess of $15,000.00, which is the maximum amount compensable under section 10.1(f) of the Act.

9. That this claim complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

10. That pursuant to section 10.1(e) of the Act, this Court must deduct $200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant.

11. That the Claimant has received the following in reimbursements as a result of the victim's death that can be counted as an applicable deduction under section 7.1(7) of the Act.

Applicable life insurance deduction	$ 9,302.00
Public Safety Officers Benefit Act	50,000.00
Law Enforcement Officers and Firemen's Compensation Act	50,000.00
Total	$109,302.00

12. That the Claimant's net loss may be computed as follows:

Paid funeral expenses	$ 1,012.00
Compensable loss of support	290,700.00
Total	291,712.00
Less reimbursements	– 109,302.00
Less $200.00 deductible	– 200.00
Total	$182,210.00

13. That after making all the applicable deductions under the Act, the pecuniary loss resulting from the victim's death is in excess of $15,000.00 maximum allowed in section 10.1(f) of the Act.

14. That the Claimant's interest would be best served if the award hereunder would be paid pursuant to the installment provision of section 11.1 of the Act.

It is therefore, hereby ordered that the sum of $15,000.00 (fifteen thousand dollars) be and is hereby awarded to Joyce A. Collins, wife of John J. Collins, an innocent victim of a violent crime, to be paid and disbursed to her as follows:

(a) $1,500.00 (one thousand five hundred dollars) to be paid to Joyce A. Collins;

(b) eighteen (18) equal monthly payments of $750.00 (seven hundred fifty dollars) each to be paid to Joyce A. Collins for the use and benefit of Joyce A. Collins and her minor son, Todd M. Collins;

(c) In the event of the death or marriage of the Claimant or the Claimant's children, it is the duty of the personal representative of the Claimant to inform this Court in writing of such death or marriage for the purpose of the possible modification of the award.

(No. 85-CV-0451—Claimant awarded $15,000.00.)

In re APPLICATION OF MALAKEH E. MUFARREH.

Opinion **filed January 14, 1985.**

MALAKEH E. MUFARREH, pro se, for Claimant.

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

CRIME VICTIMS COMPENSATION ACT—factors considered in determining loss of earnings. The loss of earnings for purposes of a claim under the Crime Victims Compensation Act is determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on $750.00 per month, whichever is less (Ill. Rev. Stat. 1983, ch. 70, par. 72(h)).

SAME—*deductions allowed* from *all claims*. The amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 of life insurance, and $200, except in the case of victims 65 years of age or older, must be deducted from all claims (Ill. Rev. Stat. 1979, ch. 70, par. 80.1(e)).

SAME—*installment* payment of awards is permitted. The Crime Victims Compensation Act provides for the installment payment of awards under certain circumstances (Ill. Rev. Stat. 1979, ch. 70, par. 81.1).

Sam—voluntary manslaughter—victim *tavern* operator—maximum death award granted surviving wife and children. An operator of a tavern was stabbed to death by a patron who had caused a disturbance and was being asked to leave, and the deceased operator's surviving wife and children were granted the maximum death award provided by the Crime Victims Compensation Act, since their net loss of support and funeral expenses exceeded the maximum award of $15,000.00 after all the statutory deductions were taken, and the award was made payable pursuant to the installment provision of the Act.

POCH, J.

This claim arises out of an incident that occurred on July 12, 1984. Malakeh E. MuFarreh, wife of the deceased victim, Essam N. MuFarreh, seeks compensation pursuant to the provisions of the Crime Victims

Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 et *seq*.

This Court has carefully considered the application for benefits submitted on November 1, 1984, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant's deceased husband, Essam N. MuFarreh, age 30, was a victim of a violent crime as defined in section 2(c) of the. Act, to wit: voluntary manslaughter. Ill. Rev. Stat. 1979, ch. 38, par. 9—2.

2. That on July 12,1984, the victim was stabbed by the offender when he requested that the offender leave his establishment. The incident occurred in a tavern operated by the victim at 5001 North Broadway, Chicago, Illinois. After the offender and his brother created a disturbance in the tavern, the victim asked them to leave. During an ensuing scuffle, the offender stabbed the victim several times. The victim was taken to Weiss Hospital for treatment and expired shortly after arrival. The offender was apprehended and is presently being prosecuted for voluntary manslaughter.

3. That the Claimant seeks compensation for funeral expenses and for loss of support for herself and her minor children, Ramme MuFarreh, age 4, and Ghassan MuFarreh, 4 months of age.

4. That the Claimant incurred funeral and burial expenses in the amount of $3,445.00. Pursuant to section 2(h) of the Act, funeral and burial expenses are compensable to a maximum award of $2,000.00.

5. That the Claimant, Malakeh MuFarreh, and her minor children, Ramme and Ghassan MuFarreh, were totally dependent upon the victim for support.

.6. That prior to his death, the victim was self-employed and his average monthly earnings were $650.00.

7. That section 2(h) of the Act states "* * * loss of support shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on $750.00 per month, whichever is less."

8. That the victim was 30 years of age at the time of the crime. According to the U.S. Department of Health, Education and Welfare, ***Vital Statistics of the United States,*** 1978, Life Tables, volume II, his life expectancy would have been 75.7 years. The projected loss of support for 45.7 years is $356,460.00, which is in excess of $15,000.00 which is the maximum amount compensable under section 10.1(f) of the Act.

9. That this claim complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

10. That pursuant to section 10.1(e) of the Act, this Court must deduct $200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State Public Aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal Social Security payments payable to depend-

ents of the victim and the net proceeds of the first $25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant.

11. That the Claimant has received $100,000.00 in reimbursements from a life insurance policy as a result of the victim's death, $75,000.00 of which can be counted as an applicable deduction under section 7.1(7) of the Act.

12. That after making all the applicable deductions under the Act, the pecuniary loss resulting from the victim's death is in excess of $15,000.00 maximum allowed in section 10.1(f) of the Act.

13. That the Claimant's interest would be best served if the award hereunder would be paid pursuant to the installment provision of section 11.1 of the Act.

It is therefore, hereby ordered that the sum of $15,000.00 (fifteen thousand dollars) be and is hereby awarded to Malakeh E. MuFarreh, wife of Essam N. MuFarreh, an innocent victim of a violent crime, to be paid and disbursed to her as follows:

(a) $2,000.00 (two thousand dollars) to be paid to Malakeh E. MuFarreh in a lump sum;

(b) twenty (20) equal monthly payments of $650.00 (six hundred fifty dollars) each to be paid to Malakeh E. MuFarreh for the use and benefit of herself and minor children, Ramme and Ghassan MuFarreh;

(c) In the event of the death or marriage of the Claimant or the Claimant's children, it is the duty of the personal representative of the Claimant to inform this Court in writing of such

death or marriage for the purpose of the possible modification of the award.

(No. 85-CV-0530—Claimant awarded $15,000.00.)

In re APPLICATION OF MARIA PEREZ.

Opinion filed May 16,1985.

WARREN C. DULSKI, for Claimant.

NEIL F. HARTIGAN, Attorney General (ALISON P. BRESLAUER, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION ACT—*factors* considered in determining *loss of* earnings. The loss of earnings for purposes of a claim under the Crime Victims Compensation Act is determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on $750.00 per month, whichever is less (Ill. Rev. Stat. 1983, ch. 70, par. 72(h)).

SAME—*maximum award—$15,000.00.*

SAME—deductions allowed from *all claims.* The amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 of life insurance, and $200, except in the case of victims 65 years of age or older, must be deducted from all claims (Ill. Rev. Stat. 1979, ch. 70, par. 80.1(e)).

SAME—*installment* payment of awards is permitted. The Crime Victims Compensation Act provides for the installment payment of awards under certain circumstances (Ill. Rev. Stat. 1979, ch. 70, par. 81.1).

SAME—murder—victim shot by estranged husband—maximum award granted for support of surviving child. The mother of a murder victim was granted the maximum award in installments as compensation for the deceased's funeral expenses and the loss of support for the victim's surviving minor child, incurred after the deceased's estranged husband shot and killed her and then committed suicide, since the evidence established that the Claimant had adopted the minor child and the net loss, after taking the statutory deductions, exceeded the maximum allowable award of $15,000.00.

PATCHETT, J.

This claim arises out of an incident that occurred on June 17, 1984. 'Maria Perez, mother of the deceased victim, Alexia Concepcion, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 et *seq*.

This Court has carefully considered the application for benefits submitted on November 20, 1984, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant's deceased daughter, Alexia Concepcion, age 28, was a victim of a violent crime as defined in section 2(c) of the Act, to wit: murder. Ill. Rev. Stat. 1979, ch. 38, par. 9—1.

2. That on June 17,1984, the victim was shot by her estranged husband. The incident occurred in an apartment located at 7035 North Sheridan, Chicago, Illinois. Police investigation revealed that prior to the incident, the victim and offender were involved in a verbal dispute over their recent divorce. During this dispute, the offender produced a handgun and shot the victim in the head. The offender then turned the weapon upon himself and committed suicide. The victim was taken to Edgewater Hospital, where she was pronounced dead on arrival.

3. That the Claimant seeks compensation for 'funeral expenses and for loss of support for the victim's minor child, Robert Concepcion, age 6 years, 7 months, at the time of the incident.

4. That the Claimant incurred funeral and burial expenses in the amount of $3,523.70. Pursuant to section 2(h) of the Act, funeral and burial expenses are compensable to a maximum award of $2,000.00.

5. That the minor child, Robert Concepcion, was totally dependent upon the victim for support.

6. That under a judgment order for adoption filed in the Circuit Court of Cook County, Illinois, County Department, County Division, No. 84 Co 1281, the victim's minor child, Robert Concepcion, was legally adopted by the Claimant, Maria Perez.

7. That the minor child, Robert Concepcion, born November 12,1977, was 6 years, 7 months of age at the time of the incident. Robert Concepcion will attain the age of majority on November 12, 1995, which is 137 months after the incident.

8. That prior to her death, the victim was employed by the Chicago Transit Authority and her average monthly earnings were $1,214.75.

9. That section 2(h) of the Act states "* * * loss of support shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on $750.00 per month, whichever is less."

10. That based on $750.00 per month, the maximum compensation for loss of support for 137 months is $102,750.00, which is in excess of $15,000.00, the maximum amount compensable under section 10.1(f) of the Act.

11. That this claim complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

12. That pursuant to section 10.1(e) of the Act, this Court must deduct $200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State Public Aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant.

13. That the Claimant has received no reimbursements as a result of the victim's death that can be counted as an applicable deduction under section 7.1(7) of the Act.

14. That after making all the applicable deductions under the Act, the pecuniary loss resulting from the victim's death is in excess of the $15,000.00 maximum allowed in section 10.1(f) of the Act.

15. That the Claimant's interest would be best served if the award hereunder would be paid pursuant to the installment provision of section 11.1 of the Act.

It is therefore, hereby ordered that the sum of $15,000.00 (fifteen thousand dollars) be and is hereby awarded to Maria Perez, mother of Alexia Concepcion, an innocent victim of a violent crime, to be paid and disbursed to her as follows:

(a) $2,250.00 (two thousand two hundred fifty dollars) to be paid to Maria Perez in a lump sum;

(b) 17 (seventeen) equal monthly payments of $750.00 (seven hundred fifty dollars) each to be paid to Maria Perez for the use and benefit of Robert Concepcion;

(c) In the event of the death or marriage of the Claimant or the Claimant's children, it is the duty of the 'personal representative of the Claimant to inform this Court in writing of such death or marriage for the purpose of the possible modification of the award.

(No. 85-CV-0608—Claim denied.)

In re APPLICATION OF THEOTIS JENNINGS.

Order filed March *18,1985.*

THEOTIS JENNINGS, pro se, for Claimant.

NEIL F. HARTIGAN, Attorney General (ALISON P. BRESLAUER, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION Am—factors considered in determining *loss of* earnings. The loss of earnings for purposes of a claim under the Crime Victims Compensation Act is determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on $750.00 per month, whichever is less (Ill. Rev. Stat. 1983, ch. 70, par. 72(h)).

SAME—deductions *allowed* from *all claims.* The amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 of life insurance, and $200, except in the case of victims 65 years of age or older, must be deducted from all claims (Ill. Rev. Stat. 1979, ch. 70, par. 80.1(e)).

SAME—*pecuniary loss must* exceed $200.00. The Crime Victims Compensation Act allows compensation only to those persons who suffer a pecuniary loss in excess of $200.00 attributable to a violent crime resulting in injury or death (Ill. Rev. Stat. 1979, ch. 70, par. 76.1(b)).

SAME—*battery—no pecuniary* loss—award denied. A battery victim was not entitled to any award, since the evidence established that he lost no earnings because he was not employed for the six months immediately preceding the incident, and his medical and hospital expenses were assumed by the Department of Public Aid.

POCH, J.

This claim arises out of an incident that occurred on August 5, 1984. Theotis Jennings, Claimant, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 et *seq*.

This Court has carefully considered the application for benefits submitted on December 19, 1984, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant, Theotis Jennings, age 27, was a victim of a violent crime as defined in section 2(c) of the Act, to wit: battery. Ill. Rev. Stat. 1979, ch. 38, par. 12—3.

2. That on August 5, 1984, the Claimant was beaten for no apparent reason by unknown offenders. The incident occurred in a theater at 25 Madison, Chicago, Illinois. After the initial incident, the Claimant was taken by an unknown person to 2600 East 87th Street where he was found by police. The Claimant was taken to South Shore Hospital for treatment of his injuries. The offenders have not been apprehended.

3. That the Claimant seeks compensation for medical/hospital expenses only.

4. That section 2(h) of the Act states that loss of earnings shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury. or on *$750.00* per month, whichever is less.

5. That the Claimant was not employed for the six months immediately preceding the date of the incident out of which this claim arose and therefore suffered no loss of earnings compensable under section 2(h) of the Act.

6. That the Illinois Department of Public Aid has assumed the responsibility for the medical/hospital expenses which the Claimant incurred as a result of the incident.

7. That pursuant to section 10.1(e) of the Act, this Court must deduct $200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State Public Aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant.

8. .That the Claimant has received no reimbursements that can be counted as applicable deductions.

9. That the Claimant did not suffer a pecuniary loss as a result of the incident.

10. That section 6.1(b) of the Act limits the right of compensation to persons who have suffered a pecuniary loss of $200.00 or more attributable to a violent crime resulting in the injury or death of the victim.

11. That this claim does not meet a required condition precedent for compensation under the Act.

It is hereby ordered that this claim be, and is hereby, denied.

(No. 85-CV-0709—Claimant awarded $15,000.00.)

In re **APPLICATION OF MALINDA WILSON.**

Opinion filed April 15,1985.

MALINDA WILSON, pro *se*, for Claimant.

NEIL F. HARTIGAN, Attorney General (**ALISON P. BRESLAUER,** Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION Am—factors considered in determining loss of earnings. The loss of earnings for purposes of a claim under the Crime Victims Compensation Act is determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on $750.00 per month, whichever is less (Ill. Rev. Stat. 1983, ch. 70, par. 72(h)).

SAME—deductions allowed *from* all *claims*. The amount of benefits, payments or awards payable under the Workers'.Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Adminisbation burial benefits, Veterans Administration burial benefits, health insurance, or any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 of life insurance, and $200, except in the case of victims 65 years of age or older, must be deducted from all claims (Ill. Rev. Stat. 1979, ch. 70, par. 80.1(e)).

SAME—installment payment of awards is permitted. The Crime Victims Compensation Act provides for the installment payment of awards under certain circumstances (Ill. Rev. Stat. 1979, ch. 70, par. 81.1).

SAME—victim killed when vehicle struck by intoxicated driver—maximum award granted surviving wife and children. A surviving wife and her children were granted the maximum award for funeral expenses and loss of support where the husband was killed when his vehicle was struck by a car being driven by an intoxicated person and that driver was convicted of driving while under the influence of intoxicating liquor, since the evidence established that the net loss after the statutory deductions exceeded the maximum allowable award of $15,000.00, and the payments were ordered to be made in installments.

POCH, J.

This claim arises out of an incident that occurred on April 22, 1984. Malinda Wilson, wife of the deceased victim, Ronald Wilson, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 et *seq.*

This Court has carefully considered the application for benefits submitted on January 21, 1985, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant's deceased husband, Ronald Wilson, age 26, was a victim of a violent crime as defined in section 2(c) of the Act, to wit: driving under the influence of intoxicating liquor, where the offender has been convicted of this offense. Ill. Rev. Stat. 1979, ch. 38, par. 11—501.

2. That on April 22, 1984, the victim was fatally injured when the car he was driving was struck head-on by a car driven by the offender, who was intoxicated. The incident occurred at 113th and State Streets,

Chicago, Illinois. The victim was taken to Roseland Community Hospital where he expired a short time after arrival. The offender was apprehended and convicted of driving under the influence of alcohol.

3. That the Claimant seeks compensation for funeral expenses and for loss of support for herself and her minor children; Shawn Wilson, age **5,** Jermaine Wilson, age **2,** and Rachel Wilson, age **1.**

4. That the Claimant incurred funeral and burial expenses in the amount of **$4,358.85.** Pursuant to section 2(h) of the Act, funeral and burial expenses are compensable to a maximum award of **$2,000.00.**

5. That the Claimant and her minor children, Shawn, Jermaine and Rachel Wilson, were totally dependent upon the victim for support.

6. That prior to his death, the victim was employed by Spring/Borg Warner Corporation and his average monthly earnings were **$1,078.08.**

7. That section 2(h) of the Act states"* * * loss of support shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on **$750.00** per month, whichever is less."

8. That the victim was **26** years of age at the time of the crime. According to the U.S. Department of Health, Education and Welfare, ***Vital Statistics of the United States,* 1978,** Life Tables, volume II, his life expectancy would have been **72** years. The projected loss of support for **46** years is **$414,000.00,** which is in excess of **$15,000.00** which is the maximum amount compensable under section 10.1(f) of the Act.

9. That this claim complied with. all pertinent

provisions of the Act and qualifies for compensation thereunder.

10. That pursuant to section 10.1(e) of the Act, this Court must deduct $200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State Public Aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant.

11. That the Claimant has received $27,000.00 in reimbursements from a life insurance policy as a result of the victim's death, $2,000.00 of which can be counted as an applicable deduction under section 7.1(a)(7) of the Act.

12. That after making all the applicable deductions under the Act, the pecuniary loss resulting from the victim's death is in excess of the $15,000.00 maximum allowed in section 10.1(f) of the Act.

13. That the Claimant's interest would be best served if the award hereunder would be paid pursuant to the installment provision of section 11.1 of the Act.

It is therefore, hereby ordered that the sum of $15,000.00 (fifteen thousand dollars) be and is hereby awarded to Malinda Wilson, wife of Robert Wilson, an innocent victim of a violent crime to be paid and disbursed to her as follows:

(a) $2,250.00 (two thousand two hundred fifty dollars) to be paid to Malinda Wilson in a lump sum;

(b) Seventeen (17) equal monthly payments of $750.00 (seven hundred fifty dollars) each to be paid to Malinda Wilson for the use and benefit of herself and minor children, Shawn, Jermaine and Rachel Wilson;

(c) In the event of the death or marriage of the Claimant or the Claimant's children, it is the duty of the personal representative of the Claimant to inform this Court in writing of such death or marriage for the purpose of the possible modification of the award.

(No. 85-CV-0740—Claim denied.)

In re APPLICATION OF LINDA HUTCHERSON.

Order filed February *15,1985.*

LINDA HUTCHERSON, pro *se,* for Claimant.

NEIL F. **HARTIGAN,** Attorney General, for Respondent.

CRIME VICTIMS COMPENSATION Am—notice *of* intent to file claim must be filed within six months of incident. The Crime Victims Compensation Act provides that a notice of intent to file a claim must be filed with the Attorney General within six months of the occurrence of the crime, and that an application for compensation be filed with the Court of Claims within one year of the occurrence of the crime upon which the claim'is based (Ill. Rev. Stat. 1979, ch. 70, par. 76.1).

SAME—untimely notice of intent to file claim—claim denied. An award was denied where the Claimant's excuse for failing to file her notice of intent to file a claim within the statutory period was her ignorance of the Crime Victims Compensation Act, since the Claimant'slack of knowledge is not an exception provided for under the rules of the Act for the tardy filing of claims.

POCH, J.

This matter comes before the Court upon Claimant's notice of intent to file a claim and petition for extension of time in which to file claim under the Illinois Crime Victims Compensation Act.

The incident occurred on December 17, 1980, and Claimant's notice of intent and motion for extension of time were filed on January 8,1985.

Section 6.1 of the Crime Victims Compensation Act (Ill. Rev. Stat., ch. 70, par. 76.1) states that a Claimant is entitled to compensation under this Act if "within 6 months of the occurrence of the crime he files a notice of intent to file a claim with the Attorney General and, within one year of the occurrence of the crime upon which the claim is based, he files an application, under oath, with the Court of Claims . . ." The statute further states "upon good cause shown, the Court of Claims may extend the time for filing the notice of intent to file a claim and application for a period not exceeding one year."

The Crime Victims Compensation Act was enacted by the legislature to aid and assist crime victims under certain circumstances to receive compensation to help pay for the damage they sustained. The legislature also provided the rules under which proceedings must be had to claim the benefit. The legislature further provided that the hearing agency in crimes of this nature was the Court of Claims. The Court of Claims is bound by the acts of the legislature and all procedures set forth by the legislature must be followed by the Court before benefits can be awarded.

The reason given by Claimant for failure to file within the period set forth in the statute is that she was

unaware of the Crime Victims Compensation Act and only recently became aware of it. It is the Court's opinion that lack of knowledge on the part of Claimant is not an exception provided for under the rules of the Crime Victims Compensation Act.

Claimant, having failed to abide by the rules provided in the Crime Victims Compensation Act, is not entitled to an award. Award is hereby denied.

(No. 85-CV-0897—Claimant awarded $2,000.00.)

In re **APPLICATION OF MARIA MARQUEZ.**

Opinion filed **May *15,1985.***

MARIA MARQUEZ, pro **se,** for Claimant.

NEIL F. HARTIGAN, Attorney General (ALISON P. BRESLAUER, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION Am—limit on funeral expenses. The Crime Victims Compensation Act limits awards for funeral and burial expenses to a maximum of $2,000.00 (Ill. Rev. Stat. **1979,** ch. **70,** par. 72(h)).

SAME—*deductions allowed* from *all claims.* The amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 of life insurance and $200, except in the case of victims 65 years of age or older, must be deducted from all claims (Ill. Rev. Stat. **1979,** ch. **70,** par. 80.1(e)).

SAME—murder victim—funeral expenses awarded. The brother of a murder victim was granted the maximum award of $2,000.00 for the funeral expenses incurred for the victim, since the expenses actually paid exceeded the $2,000.00 limit and the Claimant complied with all the pertinent provisions of the Crime Victims Compensation Act necessary to qualify for compensation.

PATCHETT, J.

This claim arises out of an incident that occurred on June 2, 1984. Maria Marquez, sister of the deceased victim, Alfonso Castro, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 et seq.

This Court has carefully considered the application for benefits submitted on March 19, 1985, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant's deceased brother, Alfonso Castro, age 32, was a victim of a violent crime as defined in section 2(c) of the Act, to wit: murder (Ill. Rev. Stat. 1979, ch. 38, par. 9—1).

2. That on June 2,1984, the victim was shot by an offender who was not known to him. The incident occurred at the Matchualas Social Club, 1511 West Irving Park, Chicago, Illinois. Police investigation revealed that following a dispute between the offender and another individual, the offender produced a gun and fired it several times. Two of the gunshots struck the man with whom the offender was arguing. Another shot passed through a wall and struck the victim in the chest. The victim was taken to Illinois Masonic Hospital where he was pronounced dead on arrival. The alleged offender has been apprehended and is presently being prosecuted for murder.

3. That the Claimant seeks compensation under the

Act for funeral expenses only. The Claimant was not dependent upon the victim for support.

4. That funeral and burial expenses were paid by the Claimant in the amount of $2,985.00. Pursuant to section 2(h) of the Act, funeral and burial expenses are compensable to a maximum amount of $2,000.00. Ill. Rev. Stat. 1979, ch. 70, par. 72(h).

5. That the Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

6. That pursuant to section 10.1(e) of the Act, this Court must deduct $200.00 from all claims, (except in the case of an applicant 65 years of age or older) and the amount of benefits, payments .or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State Public Aid, Federal Social Security Administration burial benefits, Veteran Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal social security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant.

7. That the Claimant has received no reimbursements' as a result of the victim's death that can be counted as applicable deductions.

8. That after making .all the applicable deductions under the Act, the Claimant's loss is in excess of the $2,000.00 maximum award deemed compensable under the Act for funeral benefits.

It is hereby ordered that the sum of $2,000.00 (two thousand dollars) be and is hereby awarded to Maria

Marquez, sister of the deceased victim, Alfonso Castro, an innocent victim of a violent crime.

(No. 85-CV-0983—Claim denied.)

In re APPLICATION OF HOMERO RODARTE.

Order filed May 10,1985.

HOMERO RODARTE, pro se, for Claimant.

NEIL F. HARTIGAN, Attorney General (ALISON P. BRESLAUER, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS COMPENSATION ACT—*death in apartment fire—accidental—no evidence of crime—claim denied.* The Claimant's application for compensation for the funeral expenses of the victim of an accidental apartment fire was denied, since the Claimant submitted no substantiation to indicate that he paid any portion of the funeral expenses and there was no evidence that the accidental fire was one of the violent crimes for which compensation could be awarded.

POCH, J.

This claim arises out of an incident that occurred on March 24, 1984. Homero Rodarte seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71 et *seq.*

This Court has carefully considered the application for benefits submitted on April 5, 1984, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That on March 24, 1984, the victim and five others died of extensive burns as the result of a fire. The incident occurred in the apartment where the victim resided, located at 4448 South Hermitage, Chicago, Illinois. The victim was pronounced dead on arrival at Mercy Hospital. The investigation conducted by the police concluded that, due to the extensive burning and the collapse of the building, the cause of the fire could not be determined. Police records indicate that the incident was classified as an apparent accidental fire death. In addition, the medical examiner's certificate of death classified the victim's death as an accident.

2. That the Claimant seeks compensation for funeral expenses of the deceased victim, Santos Lupercio, age 10.

3. That funeral expenses of the six deceased victims in this incident totaled $10,394.64, or $1,732.44 for each victim's funeral. A donation of $333.33 was made toward each victim's funeral by Midwest Nut and Seed Company, leaving a balance of $1,399.11, which was paid by an unknown person or persons.

4. That the Claimant has submitted no substantiation to indicate that he incurred or paid for any portion of the funeral expenses of the deceased victim, Santos Lupercio.

5. That in order for a claimant to be eligible for compensation under the Act, there must be evidence of one of the violent crimes specifically set forth under section 2(c) of the Act. Ill. Rev. Stat. 1979, ch. 70, par. 72(c).

6. That an accidental fire is not one of the violent crimes specifically set forth under section 2(c) of the Act.

7. That the Claimant has not met the required conditions precedent for compensation under the Act.

It is hereby ordered that this claim be, and is hereby, denied.

(No. 85-CV-1026—Claimant awarded $1,830.91.)

In re APPLICATION OF KIMBERLY HOFF.

Opinion filed May 15,1985.

KIMBERLY HOFF, pro **se,** for Claimant.

NEIL F. HARTIGAN, Attorney General (ALISON P. BRESLAUER, Assistant Attorney General, of counsel), for Respondent.

CRIME VICTIMS **COMPENSATION** ACT—*factors considered in determining loss of earnings.* The loss of earnings for purposes of a claim under the Crime Victims Compensation Act is determined on the basis of the victim's average net monthly earnings for the *six* months immediately preceding the date of the injury or on $750.00 per month, whichever is less (Ill. Rev. Stat. 1983, ch. *70,* par. 72(h)).

SAME—*deductions allowed from all claims.* The amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State public aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or any other source, except annuities, pension plans, Federal Social Security payments payable to dependents of the victim and the net proceeds of the first $25,000.00 of life insurance and $200, except if the case of victims 65 years of age or older, must be deducted from all claims (Ill. Rev. Stat. 1979, ch. 70, par. 80.1(e)).

SAME—*awards may be made payable jointly to Claimant and provider of services.* Section 88(c) of the Crime Victims Compensation Act allows the Court of Claims to order that all or a portion of an award be paid jointly to the applicant and the provider of services (Ill. Rev. Stat. 1979, ch. 70, par. 88(c)).

SAME—*battery—deductible prorated between medical expenses and loss of earnings—award granted.* The Claimant was granted an award for the injuries she sustained when she was hit during the course of an attempted robbery, and, after the appropriate statutory deductions, the $200.00

deductible was prorated between the Claimant's loss of earnings and her medical and hospital expenses, and the parties providing medical and hospital services were made joint payees on those portions of the award.

PATCHETT, J.

This claim arises out of an incident that occurred on January 23, 1985. Kimberly Hoff, Claimant, seeks compensation pursuant to the provisions of the Crime Victims Compensation Act, hereafter referred to as the Act. Ill. Rev. Stat. 1979, ch. 70, par. 71, et *seq*.

This Court has carefully considered the application for benefits submitted on April 16, 1985, on the form prescribed by the Attorney General, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. That the Claimant, Kimberly Hoff, age 25, was a victim of a violent crime, as defined in section 2(c) of the Act, to wit: battery (Ill. Rev. Stat. 1979, ch. 38, par. 12—3).

2. That on January 23, 1985, the Claimant was injured during the course of a robbery attempt. The incident occurred on the corner of Orleans and Dickens Streets, Chicago, Illinois. The offender approached the Claimant and demanded money. When the Claimant refused, the offender hit her several times in the face. The Claimant sought medical attention at Swedish Covenant Hospital for the treatment of her injuries.

3. That the Claimant seeks compensation for medical/hospital expenses and for loss of earnings.

4. That the Claimant incurred medical/hospital expenses in the amount of $1,959.51, none of which was paid by insurance, leaving a balance of $1,959.51.

5. That the Claimant was employed by the Chicago Park District prior to the injury and her average monthly earnings were $314.08. Claimant was disabled and unable to work from January 25, 1985, to February 3, 1985, for a period of 5 working days.

6. That section 2(h) of the Act states that loss of earnings shall be determined on the basis of the victim's average net monthly earnings for the six months immediately preceding the date of the injury or on $750.00 per month, whichever is less. Ill. Rev. Stat. 1979, ch. 70, par. 72(h).

7. That based on $314.08 per month, the maximum compensation for loss of eamings for 5 working days is $71.40.

8. That the Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

9. That pursuant to section 10.1(e) of the Act, this Court must deduct $200.00 from all claims (except in the case of an applicant 65 years of age or older), and the amount of benefits, payments or awards payable under the Workers' Compensation Act, Dram Shop Act, Federal Medicare, State Public Aid, Federal Social Security Administration burial benefits, Veterans Administration burial benefits, health insurance, or from any other source, except annuities, pension plans, Federal social security payments payable to dependents of the victim andthenet proceeds of the first $25,000.00 (twenty-five thousand dollars) of life insurance that would inure to the benefit of the applicant. Ill. Rev. Stat. 1979, ch. 70, par. 80.1(e).

10. That the Claimant has received no reimbursements that can be counted as an applicable deduction.

11. That pursuant to section 18(c) of the Act, the Court may order that all or a portion of an award be paid jointly to the applicant and provider of services. In the instant case, the Court finds this section applicable and orders that joint payment be made. Ill. Rev. Stat. 1979, ch. 70, par. 88(c).

12. That the amount of the $200.00 deductible should be prorated respectively in accordance with the percentage of the compensable loss.

13. That after considering the applicable deductions, the Claimant's loss for which she seeks compensation is $1,830.91, based upon the following:

	Compensable Amount	Less % of $200.00 Deductible	Total
Swedish Covenant Hospital	**$1,834.51**	**90.3%**	**$1,653.91**
Michael J. Plunkett, M.D.	**125.00**	**6.2%**	**112.60**
Loss of Earnings	**71.40**	**3.5%**	**64.40**
Total	**$2,030.91**	**100.0%**	**$1,830.91**

It is hereby ordered that the sum of **$64.40** (sixty-four dollars and forty cents) be and is hereby awarded to Kimberly Hoff, an innocent victim of a violent crime.

It is further ordered that the sum of $1,653.91 (one thousand six hundred fifty-three dollars and ninety-one cents) be and is hereby awarded to Kimberly Hoff and Swedish Covenant Hospital.

It is further ordered that the sum of $112.60 (one hundred twelve dollars and sixty cents) be and is hereby awarded to Kimberly Hoff and Michael J. Plunkett, M.D.

CRIME VICTIMS COMPENSATION ACT
OPINIONS NOT PUBLISHED IN FULL
FY 1985

76-CV-0015	Foote, Richard Gerald, Sr.	Dismissed
76-CV-1539	Plummer, Cynthia and Rowe, Richard	$ 713.00
77-CV-0049	Hill, Reavis Beecher	Denied
77-CV-0149	Riddle, Ann	1,755.72
77-CV-0295	Arteaga, Maria Juarez Tellez	Denied
77-CV-0507	Ratcliff, Kathleen	10,000.00
77-CV-0620	Jackson, Ethel	Denied
78-CV-0382	Delvecchio, Elmer	Denied
80-CV-0045	Lara, Alicia	5,000.00
80–cv-0355	Hoskins, Earl	5,004.57
80-CV-0470	Palumbo, Louise	Dismissed
80-CV-0513	Jackson, Robert O.	265.20
80-CV-0628	Jackson, Mark	Dismissed
80-CV-0837	Hoskins, Earl	.00
81-CV-0154	Soeder, Linda L.	Dismissed
81-CV-0251	Yancey, Shelia K. and Mathews, Juanita	6,241.40
81-CV-0302	Patterson, Clifford	Dismissed
81-CV-0451	Blunt, Brenda	Denied
81-CV-0575	Dudzic, Wenanty	3,614.94
81-CV-0629	Hunt, Lorraine	891.45
81-CV-0702	Arifi, Dalip	2,000.00
81-CV-0733	Hoangt, Thin Thi	Dismissed
81-CV-0751	Jackson, Martha	850.00
81-CV-0800	Hurd, Sherwin	Dismissed
81-CV-0875	Williams, Daisy	1,214.10
82-CV-0020	Ostapiuk, Rose	Denied
82-CV-0021	Safarcyk, Esther R.	7,271.44
82-CV-0122	Mallady, Bonnie	Denied
82-CV-0220	Chandler, William A.	6,000.00
82-CV-0244	Walker, Melvin	Dismissed
82-CV-0292	Hams, Hattie L.	15,000.00
82-CV-0303	Neely, Willie G.	Dismissed
82-CV-0311	Williams, Byron T.	Dismissed
82-CV-0351	Sanders, Paul	37.50
82-CV-0360	Adichithara, Varghese	Dismissed
82-CV-0476	Brown, Eugene	Dismissed

82-CV-0561	Saulsberry, Richard	7,500.00
82-CV-0595	Baker, H. Stuart	5,515.90
82-CV-0629	Moreno, Edilberto and Moreno, Maria Tapia De	9,500.00
82-CV-0669	Davis, Margaret	57.78
82-CV-0758	Dorsey, George	Dismissed
82-CV-0775	Coats, Parker	3,504.71
82-CV-0820	Harris, Aaron Earl	Dismissed
82-CV-0847	Parra, Enrique L.	2,044.97
82-CV-0881	Holthaus, Judith Ann	Dismissed
82-CV-0941	Grozdich, Dean	4,977.40
82-CV-0954	Williams, Eula Mae and Williams, Carmale	1,950.00
82-CV-0959	Gross, William	2,188.05
82-CV-0967	Mance, Carol A. & Michael A.	2,050.00
83-CV-0001	Aleman, Lupe	2,050.00
83-cv-oO05	Holmes, Rebecca	Denied
83-cv-0012	Roberson, Clifton W.	Dismissed
83-CV-0043	Sumner, Kevin	Dismissed
83-cv-0059	Estrada, Jesus Serrano	Denied
83-cv-0067	Blackbum, Kathy S.	11,250.00
83-CV-0082	Seagles, Wayne	2,569.33
83-cv-0085	Basir, Iqbal A.	Denied
83-cv-0097	Howard, Ernest L.	Dismissed
83-CV-0127	Betustak, Donald A.	800.00
83-CV-0131	Bultema, Ronald & Bonnie	28.00
83-cv-0138	Manninen, Barbara & Sederholm, John L.	2,000.00
83-cv-0148	Stromsted, Mary E.	620.60
83-CV-0149	Tapia, Ponciano	3,232.76
83-cv-0165	Dillon, Edward	Denied
83-CV-0167	Kuznetzow, Robert W.	12,257.97
83-CV-0168	Marino, Lena C.	15,000.00
83-cv-0185	Higgins, Earlean	1,940.00
83-CV-0192	Randall, Elizabeth J.	Denied
83-cv-om	Malone, Thelma	1,840.00
83-CV-0215	Turner, Earle A.	559.80
83-cv-0239	Vargas, Mildverta	15,000.00
83-cv-0256	Aguirre, Margarito	Denied
83-CV-0264	Escobar, Marcial	Denied
83-cv-0266	Haynes, Shirley	Dismissed
83-cv-0269	Johnson, Ronald L.	2,442.99
83-cv-0292	Higgins, Deborah P.	1,890.25

83–cv-0299	Becker, Louva	596.32
83-CV-0316	Meyer, Scott R.	Dismissed
83–cv-0332	Burton, Evacher	Denied
83–cv-0333	Freeman, Marjorie	980.00
83–cv-0339	McGill, Dorothy Dell	1,530.00
83–cv–0352	Rodriguez, Ofelia	2,000.00
83–cv-0354	Thompson, Julie C.	Denied
83-CV-0355	DeWeese, Rodney	Denied
83-CV-0365	Cage, Hazel	15,000.00
83-CV-0366	Williams, Dawn	10,998.50
83–cv-0367	Baginski, Henry	510.00
83–cv-0373	Bymes, Roger Paul	2,293.27
83–cv-0375	Pearson, Jeannine	Denied
83-CV-0381	Bruce, David Lee	Dismissed
83-CV-0396	Sandry, Martin	259.69
83-CV-0404	Williams, Anthony J.	229.84
83-CV-0408	Dominguez, Eva	519.50
83–cv-0409	Myers, Paul Douglas	Dismissed
83-cv-0410	**Stroemer, James**	**518.98**
83-CV-0418	Black, Phillip	15,000.00
83–cv-0419	Wisham, Barbara	Denied
83-cv-0431	Depaola, Michael R.	1,921.46
83–cv–0432	Fleming, Alton	32.20
83-CV-0439	Fernetti, Carl	2,000.00
83-CV-0447	Spruille, Ruth	15,000.00
83-CV-0460	Pavon, Joyce	15,000.00
83-CV-0465	Kudrick, Shirley A.	8,196.04
83-CV-0468	Bitney, Joy S.	164.01
83-CV-0485	Ingram, Bill E.	Dismissed
83–cv-0497	Chaudoin, Inez	15,000.00
83–cv-0505	Hubbard, Christine	1,612.00
83-CV-0508	Ohr, Brian S.	800.00
83-CV-0525	Castro, Felix	145.20
83–cv–0527	Frassrand, Donald A.	371.10
83-CV-0535	Baxter, Daniel	5,988.40
83-CV-0538	Bosworth, Elmer W.	Dismissed
83-CV-0540	Weismiller, Michael	2,299.55
83–cv–0547	Kelly, Henry A.	Dismissed
83–cv–0549	Josephson, Barbara M.	Denied
83–cv-0597	Lada, Lydia M.	2,000.00
83-CV-0600	Fitzpatrick, J. Paul, III	1,335.55

83-cv-0606	Rivers, Roosevelt	1,562.00
83-CV-0607	Rothschild, Arlene	4,029.95
83–cv-0621	Allen, Rex	186.61
83–cv-0625	Hansen, Laverne B.	2,000.00
83–cv-0626	Harris, Andrew L.	610.00
83-cv-0633	Barraza, Antonio	Dismissed
83–cv-0639	Hill, Wendell P.	3,580.00
83-cv-0641	Kirk, Kyle K.	8,060.00
83-CV-0646	Martin, Odell, Jr.	142.00
83-CV-0656	Summar, Robert D.	7,281.08
83-cv-0663	Gonzalez, Juan	79.50
83-cv-0669	Starosta, Gertruda	15,000.00
83-cv-0673	Wallen, Brad	Dismissed
83-cv-0686	Anderson, Marjorie P.	328.99
83-cv-0688	Egansky, Rebecca	2,752.42
83-cv-0690	Patterson, Herman D.	Dismissed
83-cv-0700	Duran, Frank J.	7.48
83-CV-0701	Gatson, Ray	2,000.00
83-cv-0704	Jones, Gloria H.	15,000.00
83-CV-0717	Pugh, Ethel Lee	Dismissed
83-CV-0718	Rettenbacher, Thomas F.	1,385.22
83-CV-0723	Aguirre-Arellano, Arcadio	Denied
83-CV-0724	Benitez, Honorio	2.47
83–cv-0728	Perez, Floriberto	Denied
83–cv-0728	Franzen, John W.	55.32
83-CV-0735	Anderson, Cecil	Dismissed
83-CV-0741	Fattahi, Ahmad	5,439.50
83-cv-0747	Morales, Raul	Dismissed
83-CV-0753	Thomas, Ollie Marie	730.92
83-CV-0755	Evans, Julius	4,672.65
83-CV-0756	Gibson, William E., Sr.	260.77
83–cv–0759	Arellano, Panfilo	Dismissed
83-CV-0763	Garrard, James	2,000.00
83-CV-0770	Schlitt, Mark J. and Schlitt, Joan F	7,344.02
83–cv-0771	Turunen, Martin	334.35
83-CV-0782	Lawrence, Connie	3,848.28
83-CV-0786	Reid, Kenneth	489.71
83–cv-0797	Mikan, Charles J.	Dismissed
83-CV-0809	Maten, David	Dismissed
83-cv-0811	Rice, Leon, Sr.	1,420.00
83-CV-0812	Rogers, Rosie	222.00

83-CV-0816	Henley, Mary	5,548.70
83-CV-0834	Cottrell, James M.	1,689.50
83–cv-0839	Pearson, John	15,000.00
83-CV-0840	Perez, Roberto	Dismissed
83–cv-0842	Turner, Norma M.	1,313.00
83-CV-0843	Villa, Joe	2,454.93
83-cv-0845	Jackson, Linda G.	15,000.00
83–cv-0852	Harris, Donnetta	725.00
83–cv-0858	Barnes, Shirley J.	Denied
83-CV-0859	Frantz, Mary	Dismissed
83–cv-0860	Levin, Joyce Rita	Dismissed
83-CV-0864	Stroyier, Bernard	1,130.51
83–cv-0867	Jett, Ruthie L. Dudley	1,455.00
83-CV-0870	Boyd, Jim	Denied
83–cv-0873	Dirl, Theodore	Dismissed
83–cv-0874	Farias, Javier and Farias, Fernando	Dismissed
83–cv-0886	Kaufman, Peter	Denied
83-CV-0893	Westmoreland, Mark L.	Denied
83–cv-0907	Brown, Doniella	1,319.00
83–cv-0910	Turner, Timothy	Denied
83-CV-0913	Chandler, Bertha	242.38
83–cv-0923	Eliason, John F.	Dismissed
83–cv-0925	Kishkunas, Delva D.	15,000.00
83-CV-0927	Polek, Frank G.	Denied
83–cv-0935	Sprankle, Anita; Patterson, Karen Ann; and Talley, Mary Patterson	2,000.00
83–cv-0937	Garbaciak, Mary	234.27
83–cv-0944	Sain, Luvenia	325.00
83-cv-0946	Unzueta, Arcadia	15,000.00
83–cv-0950	Alexander, Allen, Jr.	84.87
83–cv-0951	Arreguin, Guadalupe	1,694.37
83-CV-0953	Diener, Anthony P.	3,446.64
83-CV-0954	Perez, Marta Araceli and Rodriguez, Emigdio	9,000.00
83-CV-0955	Guess, Sandra	11,250.00
83–cv-0957	Hams, Mattie	Denied
83–cv-0968	Rodriguez, Emigdio	Dismissed
83-CV-0970	Scalzitti, Valerie	Denied
83–cv-0973	White, Maxine Day	Dismissed
83-CV-0978	Jay, Amy	384.28
83-CV-0984	Williams, Robert C.	1,739.15

83-cv-0991	Harriston, Rena (Reasnover)	5,375.73
83-cv-0992	Iverson, Deborah Bennett	Dismissed
83-cv-0993	Johnson, Bobbie	Dismissed
83-CV-0995	Morris, Vivian	2,189.75
83-CV-0998	Tubbs, Bernard Wallace	Denied
83-cv-1004	Austin, Steven	Denied
83-CV-1007	Donzelli, Gregory Paul	1,270.30
83-cv-1012	Hart, Peter D.	Dismissed
83–cv-1019	Chaney, Rosalind	15,000.00
83-CV-1054	Santiago, Maria Yvonne	1,889.40
83-CV-1056	Wilson, Boizell	Denied
83-cv-1062	Green, Estelle and Eugene, Sr.	Denied
83-cv-1069	Vukovich, Kathleen	9,256.27
83-CV-1073	Cruz, Angelo	Denied
83-CV-1077	Howard, Eugene	Dismissed
83-cv-1081	Hull, George W.	Dismissed
83-CV-1087	Silva, Juan	Dismissed
83-cv-1088	Southward, Mattie	Denied
83-cv-1092	Aldana, Reynaldo	1,728.75
83-cv-1099	Trujillo, Elfega	15,000.00
83-cv-1101	Carter, Nathaniel Lewis	Dismissed
83-cv-1104	Lim, Yang Suk	15,000.00
83-CV-1105	Schonberg, Hayden	Dismissed
83-CV-1114	Damron, Beulah	2,000.00
83-cv-1119	Thomas, Leonard	Denied
83-cv-1125	Shaw, Alphonso P.	8,075.31
83-cv-1126	Smith, James E.	Dismissed
83-cv-1128	Danos, Louis	9,321.88
83-CV-1131	Hwang, Jung Ja	15,000.00
83-CV-1132	Hester, Nathaniel	470.00
83-cv-1135	Emery, Charles Gordon	1,294.85
83-CV-1139	Allen, Fred	Denied
83-CV-1140	Habich, Arthur	Dismissed
83-CV-1147	Elliott, Pearlene Graham	2,000.00
83-CV-1150	Hansen, Shelley (Smither)	859.72
83-CV-1162	Huijon, Alfredo Belman	Dismissed
83-cv-1165	Dolan, Kathleen M.	545.10
83-CV-1179	Triplett, Barbara J.	15,000.00
83–cv-1188	Ford, Jessie James	14,447.60
83–cv-1197	Smith, Louis	1,235.00
83-CV-1203	Patnode, James	8,194.65

83-cv-1211	Jordan, Michael	Dismissed
83-CV-1220	Ratcliff, Ethel	Denied
83–cv-1221	Roberson, Louis	7,456.25
83–cv-1222	Reliford, Alfredo	2,472.64
83-cv-1230	McClain, Rosita E.	15,000.00
83-CV-1236	McCormick, Kevin	62.56
83-CV-1237	Stout, Ann L. and King, Lynn H.	11,400.00
83-cv-1245	Gutierrez, Faustino	15,000.00
83-CV-1246	Hannah, Joe	14,119.19
83-cv-1248	Peteet, Eloise	2,000.00
84-CV-0006	Thompson, L. Adel	66.91
84-CV-0008	Gordon, Dorothy	Denied
84-CV-0014	Rezak, Eileen	2,721.60
84-CV-0016	Mroz, Susan	106.30
84-cv-0019	McCray, Lula	481.08
84-CV-0024	Del Negro, Enes	Dismissed
84-cv-0029	Jordan, Estella	Denied
84-cv-0032	Zielinski, Thomas	2,000.00
84-cv-0034	Wilhelm, Steven J.	Denied
84-cv-0035	Neal, Jacqueline	15,000.00
84-cv-0036	Davis, Ethel A.	1,685.40
84-cv-0039	Douglas, Robert L.	3,300.21
84-cv-0043	Candelario, Santo N.	43.09
84-cv-0045	Davis, Vernon Halliburton	Dismissed
84-CV-0051	Dudley, Anna Marie	Dismissed
84-CV-0052	Haseman, Susan E.	15,000.00
84-cv-0053	Hope, James E.	15,000.00
84–cv-0055	Smith, Dorothy	15,000.00
84-cv-0063	Cox, Joyce	700.00
84-cv-0067	Windsor, Clifford and Laird, David	5,500.00
84-cv-0073	Fry, Tyrone Ken	Dismissed
84-cv-0074	Jefferson, Sandra K.	Dismissed
84-cv-0084	Chambliss, Arlan L., Sr.	15,000.00
84-cv-0093	Flores, Carmen	Dismissed
84-cv-0094	Goranson, Roger Richard	257.57
84-cv-0098	Best, Dennis	Dismissed
84-cv-0106	Howard, Carole Ferreira	550.00
84-cv-0110	Wickliffe, Vernita A.	Denied
84-CV-0116	Hayum, Leslie J.	Dismissed
84-cv-0120	Rice, Avie	2,000.00
84-cv-0125	Acencio, Ruben	438.50

84–cv-0128	Liapis, William and Liapis, Pat	9,750.00
84-CV-0131	Billinis, Panagiotis	1,244.05
84-cv-0133	Dixon, Willie Mae	Denied
84-cv-0136	Walker, Barbara Jean	Dismissed
84-cv-0138	Jones, Sherry D.	Denied
84-CV-0147	Green, Larcetta L.	Dismissed
84-CV-0157	Mitchell, Wanda (Steele)	Denied
84-CV-0162	Jones, Jerome D. and Jones, Dorothy	988.96
84-cv-0163	Julitz, Patricia A.	2,000.00
84-cv-0166	Widzisz, Walter	137.75
84-CV-0167	Williams, Minnie E.	6,022.96
84-cv-0168	Corder, Maria	Denied
84-CV-0169	Gardner, Mary	Denied
84-CV-0174	Walls, Samaria A.	1,256.00
84-CV-0175	Deleon, Aurora	2,000.00
84-CV-0177	Herrera, Bertha	Denied
84-cv-0185	Meyer, Logan G.	2,343.84
84-cv-0196	Wiley, Johnnie Mae	2,000.00
84-cv-0202	Aldridge, Anthony T.	2,422.06
84-CV-0205	Fair, Rosa I.	Dismissed
84-CV-0207	Harris, Maggie L.	15,000.00
84-CV-0214	Hoppe, Robert	Dismissed
84-CV-0217	Bussie, Donna Maria	Dismissed
84-CV-0218	Horvath, Sylvia	15,000.00
84-CV-0219	Potter, Bruce Alan	841.96
84-cv-0221	Brown, Peter James	Dismissed
84-cv-0222	Deemie, Chris E.	Denied
84-CV-0223	Sutton, Edna M.	Dismissed
84-cv-0224	Adams, Reginald	Denied
84-cv-0226	Louveau, Stephen	Dismissed
84-cv-0233	Sandoval, Carmen	2,000.00
84-CV-0237	Smith, Wayne Ronald	Denied
84-cv-0244	Horn, Harold E.	2,000.00
84-cv-OM9	Greer, Dennis and Banks, Jimmy	1,684.64
84-cv-0252	Jones, Rickey	1,038.45
84-CV-0257	Walker, John Cicel	162.86
84-cv-0261	Heredia, Francisco J.	Denied
84-cv-0263	Beckner, Candice A.	38.63
84-cv-0265	Mack, Dorothy	1,809.96
84-CV-0273	Ivery, Deloris	2,000.00
84-CV-0274	McGaray, Veada	Denied

84-CV-0277	Thalman, Gregory S. and Finley, June	1,524.59
84-CV-0279	Coleman, Gregory	1,124.36
84-CV-0285	Busby, Mamie	15,000.00
84-CV-0287	Jean, Sonia	1,740.00
84-CV-0288	Rockette, Johnny	Dismissed
84-cv-0301	Figueroa, Suzanne I.	13,705.50
84-CV-0304	Snoddy, Willie L., Jr.	1,826.81
84-CV-0305	Baines, Francie	1,901.50
84-CV-0306	Ford, Gerald & Muriel	474.73
84-CV-0308	Jones, Lillian	1,570.00
84-CV-0313	Case, Glenda	2,445.00
84-CV-0314	Fletcher, Leonard L.	Denied
84-CV-0315	Fletcher, Louvada	Denied
84-CV-0321	Mayer, Ami M.	15,000.00
84-CV-0324	Acosta, Consolacion	505.07
84-CV-0327	Heisey, Lois Ann	449.23
84-CV-0329	Lemon, Darlene	564.26
84-CV-0337	Mahnesmith, Savanah, Guard. of Joshua Marsh, Minor; & Mars	7,000.00
84-cv-0339	Alexander, Alfonzo	Dismissed
84-cv-0341	Casper, Ernest	Dismissed
84-cv-0343	Flenard, Darrell	Denied
84-CV-0346	Page, Mable L.	900.00
84-CV-0349	Hammermiller, Clarence E.	3,107.00
84-cv-0351	Locke, Kristina	Denied
84-CV-0352	Miller, August A.	1,377.86
84-CV-0355	Meller, Harold	Denied
84-CV-0356	Rodriguez, Benjamin	1,337.68
84-cv-0359	Ryan, Robert E.	2,000.00
84-CV-0363	Malcom, Sharon	Dismissed
84-CV-0366	Bucciferro, Lucille	15,000.00
84-CV-0370	Sarnowski, Adam	833.87
84-CV-0372	Wells, James B.	Denied
84-cv-0375	Preston, Kenneth	Denied
84-CV-0377	Kim, Young D.	191.54
84-CV-0380	Whittaker, Leslie C.	8,672.64
84-cv-0381	Brown, Ora Mae	1,500.00
84-cv-0382	Dellitt, Doreen Louisa and Dellitt, Everett	9,500.00
84-CV-0387	Bickel, Jo Ann	183.88
84-CV-0388	Brooks, Viola	1,652.00
84-CV-0390	Jennings, Mary L.	1,310.38

84-CV-0392	McLean, Lawrence	Denied
84-CV-0395	Glorioso, Joseph L.	5,842.24
84-cv-0401	Perry, William E.	Dismissed
84-CV-0403	Vazquez, Secundino	1,516.95
84-CV-0405	Bass, Patricia	144.29
84-cv-0406	Govea, Maura	15,000.00
84-cv-0409	Tassart, Joseph, Jr.	15,000.00
84-cv-0411	Collins, Michael	Denied
84-CV-0413	Dickson, Moses	2,000.00
84-CV-0415	Matthews, Veronica	Denied
84-CV-0416	Arrington, Edward	Dismissed
84-CV-0417	Hankins, Melvin & Barbara	15,000.00
84–cv-0419	McGhee, Percy B.	Denied
84-cv-0422	Smith, Sue Ann	Denied
84-c v -0424	Mullins, William	1,827.92
84-cv-0433	Nguyen, Trinh	Dismissed
84-cv-0436	Fleming, Jerome J.	1,930.93
84-cv-04–42	Betts, Carol	661.78
84-cv-0446	Jones, Nannie	1,500.00
84-CV-0449	Sweitzer, Gretta	1,652.46
84-cv-0452	Foster, Pearletha & Robert	2,020.00
84-cv-0454	Marroquin, Liliana	3,497.00
84-cv-0455	McCain, Annie Eliza	2,000.00
84-CV-0461	Ortiz, Eloy	Dismissed
84-CV-0471	Malik, Nancy	15,000.00
84-cv-0475	Walker, Alice (Allen)	Dismissed
84-cv-0479	Royer, Norbert G.	3,341.52
84-cv-0480	Adams, Cleotha	3,439.85
84-cv-0483	Keyes, Joann	1,700.00
84-cv-0488	Basina, Tanya	1,317.50
84-cv-0489	Borofski, John B.	Dismissed
84-cv-0491	Caston, Georgia Mae	740.00
84-CV-0492	Chavez, Anita	15,000.00
84-cv-0496	Gordon, Judy Ann	1,049.00
84-CV-0499	Parks, James	1,014.92
84-CV-0500	Pillow, Carolyn	Denied
84-CV-0505	Tylka, Stanislaw	2,396.41
84-CV-0508	Altmayer, Frank	116.30
84-CV-0509	Bennett, Steven Paul	Denied
84-cv-0510	Burch, William C.	5,155.29
84-CV-0511	Daniel, Eric	Dismissed
84-CV-0513	Irving, Dorothy E.	1,297.07

84-CV-0517	Solorio, Richard	2,000.00
84-CV-0524	Bradley, Adrienne and Bradley, Ella Lee	108.00
84–cv-0525	Caldwell, Silas, Jr.	9,375.69
84-CV-0526	Ferro, Lutgarda Fernandez	2,000.00
84-CV-0528	Jedrzejczyk, Mieczyslaw	Dismissed
84-CV-0531	Worship, Hazel Edna	2,106.00
84-CV-0535	Freedman, Catherine E.	8,650.76
84-CV-0536	Garcia, Miguel	4,457.30
84-CV-0537	Grant, Donald	Denied
84-CV-0540	Houston, Cynthia Alane	183.21
84-CV-0542	Mabry, Thelma	160.42
84-CV-0545	Rowe, Larry	2,000.00
84-CV-0546	Rowe, Larry	2,000.00
84-CV-0549	Smith, Jimmy	Denied
84-CV-0553	Filippin, William Philip	Denied
84-CV-0554	Grice, John L.	Dismissed
84-CV-0558	Tyckoson, Edwin G.	Denied
84-CV-0560	Child, Dennis Lee	Denied
84-CV-0563	Donner, Christine	Denied
84-CV-0568	Little, Hazel L.	3,701.04
84-CV-0572	Pogorzelski, Thaddeus	Dismissed
84-CV-0579	Williams, Donald M.	2,000.00
84-CV-0584	Chappell, Gurtie	1,522.00
84-CV-0585	Cook, Herbert L.	1,781.91
84-CV-0586	Hall, Mary	1,265.89
84-CV-0587	Hamilton, Marentha	2,000.00
84-CV-0589	Moses, George, Jr.	Denied
84-CV-0590	Popov, Givko Stefanof	3,656.00
84-CV-0594	Kozlar, Sheryl Lynn	15,000.00
84-CV-0599	Molina, Imelda	810.00
84-CV-0602	Isaacson, Steven Jay	1,177.13
84-CV-0603	Park, Thelma May	Denied
84-CV-0604	Simon, Thomas E.	1,061.35
84-CV-0606	Gardner, Eddie	1,943.63
84-CV-0607	Merkle, Richard E.	Denied
84-CV-0609	Wall, Mary L.	464.85
84-CV-0814	Pillow, Carolyn	Denied
84-CV-0616	Switalski, Mary Lou	98.80
84-CV-0617	Torrey, John	Denied
84-CV-0620	Brown, Hesley	Denied
84-CV-0624	Johnson, Beverly	Denied

84-cv-0625	Jones, Sadie Mae	2,000.00
84-CV-0627	Kouimelis, Maria	2,522.33
84-CV-0629	Marlow, Gloria	572.82
84-cv-0632	Ward, James, III	15,000.00
84–cv-0637	Froiland, Edwina A.	Denied
84-cv-0641	Bryant, Marie	914.50
84-cv-0644	Patton, Deborah	375.00
84-cv-0646	Bermudez, Maria J.	Denied
84-cv-0649	Jerry, Margaret	2,690.19
84-cv-0651	Sandoval, Miguel Murguia	2,000.00
84-cv-0653	Benjamin, Henry	Denied
84-cv-0654	Mitchell, Lee Esther	Dismissed
84-cv-0657	Wolanin, Roger A.	Denied
84-cv-0668	Davis, Julertha H.	15,000.00
84-cv-0669	Dubsky, Lillian	725.00
84-CV-0670	Ellis, Katherine	1,997.00
84-CV-0671	Fuller, Carolyn	Denied
84-cv-0673	Jackson, Helen P.	2,000.00
84-cv-0674	McClendon, Leatha & Eugene	Denied
84-cv-0681	Fluker, Sara W.	105.51
84-CV-0682	Walker, Pearlie Mae	Dismissed
84-CV-0684	Griffith, Harold E.	2,618.22
84-CV-0692	Thompson, Wesley, Jr.	392.38
84-cv-0693	Bates, Kathy A.	5,229.09
84-cv-0696	Del Rio, Helen	4,936.92
84-CV-0700	Hill, Glenn E., Sr.	2,000.00
84-CV-0701	Jozsa, Gary Michael	314.84
84-CV-0705	Roeckeman, Jack	957.53
84-CV-0707	Avery, Foster	Denied
84-cv-0709	Brown, James D., Jr.	496.25
84-CV-0710	Felsl, Lorraine E.	1,663.90
84-CV-0711	Garza, Gloria	Denied
84-CV-0712	Home, Juanita	Denied
84-CV-0713	Jones, Carlee	2,000.00
84-CV-0720	Kurik, Frances	Denied
84-CV-0725	Ferrille, Renee	6,790.00
84-CV-0726	Williams, Nancy J.	15,000.00
84-CV-0727	Charalambous, Demetrakas	Dismissed
84-CV-0728	Gregory, Thomas J.	Dismissed
84-cv-0730	Lawson, Gloria and Lawson, Ferman	1,161.75
84-cv-0733	Schlitter, Richard D.	1,581.44

84-CV-07%	Wade, Thomas	15,000.00
84-CV-0737	Banda, Socorro Elizabeth	862.75
84-CV-0738	Escobar, Rigoberto	Dismissed
84-CV-0739	Hunt, Lenn S.	2,000.00
84-CV-0741	Dicker, Sandra	15,000.00
84-CV-0742	Walker, Dorothy L.	Denied
84-CV-0748	Jarquin, Frank	232.00
84-CV-0753	Swiney, Gladys C.	2,000.00
84-CV-0754	Williams, Margaret	2,000.00
84-CV-0755	Buckner, Steve C.	8,571.79
84-CV-0758	Grega, Thomas William	330.00
84-CV-0759	Kogelis, Marilyn	2,000.00
84-CV-0761	Rodriguez, Adalberto	Denied
84-CV-0764	Taylor, Henry K.	758.00
84-CV-0766	Gatewood, Janice	Denied
84-CV-0767	Jimerson, Cortez	902.30
84-CV-0768	Lewis, Mack	1,059.25
84-CV-0769	Lim, Pyong Soo	15,000.00
84-CV-0773	Tripp, Edward	14,316.90
84-CV-0774	Washington, Lucy Y.	Denied
84-CV-0780	Matthew, Willie Mae	Denied
84-CV-0787	Bagg, Brigette	Denied
84-CV-0791	Fedele, Patrick	Denied
84-CV-0792	Graham, Maxine	60.00
84-CV-0794	Hudson, Ava	15,000.00
84-CV-0795	McDowell, Rose	650.00
84-CV-0797	Brown, Lynn, Jr.	970.56
84-CV-0799	Budiac, Lawrence	173.50
84-cv-0800	Collins, Scott D.	182.50
84-cv-0802	Schuh, Carol S.	5,844.77
84-CV-0807	Sivisay, Anouma	Denied
84-cv-0810	King, Dorothy and Kenney, Rebia	Dismissed
84-cv-0814	Seldon, Ralph	5,143.17
84-CV-0815	Thomas, Corrine	1,187.81
84-CV-0817	Villagomez, Guadalupe	Denied
84-cv-0818	Salgado, Ramona	215.00
84-cv-0820	Curtis, Ramo J.	Denied
84-cv-0821	Deadmond, John	15,000.00
84-cv-0822	Everett, Shirley	2,000.00
84-cv-0825	Niedzwiecki, Edward, Jr.	Dismissed
84-cv-0828	Stepney, Rhonda E.	1,000.00

84-cv-0831	Clay, Lavonia	Denied
84-cv-0833	Haywood, Willa Mae	2,000.00
84-cv-0835	Philippson, Lois H.	175.00
84-CV-0836	Dotson, Bobbie J.	Dismissed
84-CV-0837	Edwards, Mable	1,007.45
84-cv-0839	Smith, Eddie Mae	1,811.48
84-cv-0841	Waldron, Ernest	426.60
84-cv-0843	Lawrence, Wilson	Denied
84-cv-0844	Sanchez, Gladys	2,000.00
84-cv-0849	Mallers, Kathryn J.	590.35
84-cv-0851	Pedro, Lorraine	1,789.31
84-cv-0856	Cleggett, Helen	Denied
84-cv-0858	Hanses, Allan F.	60.50
84-cv-0862	Watkins, Mary L.	2,000.00
84-cv-0863	**Willis,** Dorothy Ann	2,000.00
84-cv-0865	Jones, Juanita P.	Denied
84-cv-0866	Mims, James	2,000.00
84-CV-0867	Vazquez, Jesus P. & Vasquez, Ricardo	5,683.13
84-cv-0869	Donegan, David E.	199.50
84-CV-0870	Jordan, Norman	3,359.50
84-CV-0871	Kindred, Tony William	5,258.69
84-CV-0872	Moore, Nancy G.	75.00
84-CV-0874	Boom, Donald C.	607.00
84-CV-0875	Flynders, Judith A.	574.66
84-CV-0876	Harris, Crasious	8,084.55
84-CV-0879	Nichols, Christeen	940.00
84-cv-0881	Alvarado, Jose	376.10
84-cv-0882	Delgado, Nancy	3,707.00
84-cv-0883	Diaz, Felipe	7,475.87
84-cv-0884	Morris, Craig	4,059.45
84-cv-0885	Pigg, Alan Wayne	1,443.40
84-cv-0886	Rockingham, Gregory K.	582.48
84-cv-0889	Biruta, Kazimierz	12,121.50
84-CV-0890	Eddings, Junior	2,000.00
84-CV-0892	Yao, Xian-Jin	15,000.00
84-CV-0894	Davis, James	Dismissed
84-cv-0898	Bonner, Robert and Hall, Virginia	Denied
84-cv-0899	Forsyth, Mary Jane	3,539.91
84-cv-0905	Chwastek, Andrzej	Dismissed
84-cv-0907	Havatone, Sidney S.	1,746.85
84-CV-0908	Trejo, Agustin	Dismissed

84-CV-0913	Woods, Eddie	7,435.06
84-CV-0915	Bell, Diane	282.04
84-CV-0918	LaRue, Billy	Denied
84-cv-0920	Bridges, Calvin	705.54
84-CV-0921	Crane, George	2,766.88
84-cv-0925	Jackson, Callie	Denied
84-CV-0927	Keehn, Daniel M.	11,146.78
84-cv-0928	Kuba, Kathleen M.C.	15,000.00
84-CV-0929	Lentz, Joseph W.	72.72
84-CV-0932	Abbott, Tony	Denied
84-cv-0933	Corley, Edna	850.00
84-cv-0935	Brown, George	Dismissed
84-cv-0936	Calvert, Roberta J.	1,939.48
84-CV-0937	Coakley, Clarence, Jr.	15,000.00
84-cv-0938	Hughes, James	Denied
84-cv-0940	Polo, Ronald	Denied
84-cv-0941	Vaughns, Ralph	Denied
84-cv-0944	Seibold, Roy and Seibold, William 'and Theien, John & Wilma	5,781.96
84-cv-0945	Thompson, Leroy	2,000.00
84-CV-0946	Tomaras, John N.	2,000.00
84-cv-0948	Hedko, Rose	2,000.00
84-cv-0949	Parker, Cecil L.	685.68
84-CV-0950	Cook, Thomas Leroy	125.05
84-CV-0953	Dubin, Evelyn	91.70
84-CV-0956	Grant, Helen and Draper, Richard L.	1,734.15
84-cv-0957	Hertular, Janice	1,905.52
84-cv-0960	Binion, Andrew	1,375.50
84-cv-0963	Kokot, John	2,884.75
84-cv-0966	Poole, Stephen	1,475.87
84-cv-0969	Sowa, Albert G.	706.65
84-CV-0972	Dailey, Leann	238.02
84-CV-0975	Hedberg, Richard	31.20
84-CV-0978	Lindsey, Harvey	Denied
84-cv-0979	Nordman, Donald	1,662.70
84-cv-0980	Ramirez, Irene R. and Sanchez, Arturo	6,245.31
84-CV-0981	Evans, Bettye A.	2,000.00
84-CV-0982	Gardner, Debra L.	Denied
84-cv-0984	Williams, Mildred C.	Denied
84-cv-0986	Hentges, Larry D.	228.77
84-cv-0988	Parker, Richard	Dismissed

84-CV-0989	Parker, Richard	Dismissed
84-cv-0990	Parker, Richard	Digmissed
84-cv-0991	Anderson, Harold	Denied
84-CV-0992	Brown, Betty J.	Denied
84-cv-0994	Caffey, Shawn L.	2,000.00
84-CV-0995	Chadwick, William R.	480.84
84-cv-0996	Darling, Irene	Denied
84-CV-0997	Dawson, Cardell H.	413.62
84-CV-0998	Gavin, Rosalie	759.00
84-cv-0999	Jackson, Ronald	544.56
84-cv-1001	Lambus, John	Denied
84-CV-1003	Plofsky, Larry	1,933.20
84-cv-1004	Powell, Dorothy Young	864.00
84-cv-1006	Shanmugavelayutham,Ramasamy	1,095.72
84-CV-1008	Shelton, Dorothy	2,000.00
84-cv-1011	Sykes, Sabrina	458.96
84-CV-1013	Wadley, Sheila Denise	600.00
84-CV-1014	Wilbon, Wilma J.	1,929.91
84-CV-1016	Randall, Challise	465.00
84-CV-1018	Sternberg, Erv	9,021.29
84-cv-1023	Goldschmidt, Michelle M. .	633.50
84-CV-1024	Jones, Alma	15,000.00
84-CV-1029	Steinbrecher, Knox N.	2,548.66
84-CV-1032	Wilson, Joseph	378.00
84-cv-1035	Navarro, Martin	1,107.50
84-CV-1037	Tucker, Arlene	1,167.00
84-cv-1038	Crow, Stella	2,000.00
84-cv-I041	Smith, Eddie Mae	2,000.00
84-CV-1043	White, Kelly Lee	89.68
84-cv-1048	Alston, Daisy	2,934.50
84-cv-1049	Reichert, Frank Raymond	Denied
84-CV-1050	Anderson, James R.	Denied
84-CV-1054	Casey, Patrick	Denied
84-CV-1056	Ewing, Helen	Denied
84-CV-1058	Hohman, Mark S.	1,198.90
84-CV-1059	Karamzadeh, Mohamad	851.27
84-cv-1061	Anderson, Lorraine	1,242.35
84-cv-1062	Bagent, Shirley A.	2,000.00
84-cv-1063	White, Charles, Jr.	Denied
84-cv-1064	Cherry, Annie	Dismissed
84-cv-1065	Conway, Sharon	Denied
84-CV-1066	Fester, Ruby D.	2,000.00

84-CV-1070	Pratt, Frank	1,649.53
84-CV-1071	Reid, Mayphis	2,000.00
84-CV-1076	Cain, John A.	8,215.99
84-CV-1077	Dubs, Randall D.	1,715.27
84-CV-1078	Kelley, Cecile T.	1,173.16
84-CV-1080	Marshall, Lorraine	Denied
84-CV-1081	Pena, Miguel	3,369.23
84-CV-1086	Mazur, Rose M.	2,927.13
84-CV-1087	Coleman, Keith E.	1,421.30
84-cv-1091	Clark, David G.	2,974.76
84-cv-1094	Malko, James	61.00
84-CV-1095	Mojica, Orlando C.	1,350.00
84-cv-1096	Roach, Denise R.	Denied
84-CV-1097	Roach, DeWayne	1,334.32
84-cv-1101	Nemeth, Joann M.	Denied
84-cv-1102	Troche, Confesor	2,000.00
84-cv-1104	Hoffman, Marie R.	Denied
84-CV-1107	Scott, Tuscarora	1,187.50
84-CV-1108	Armour, Barbara	15,000.00
84-cv-1110	Johnson, Etta, J.	Denied
84-CV-1113	Williams, Sallie Mae	1,415.34
84-CV-1116	Bender, Barbara	1,583.81
84-CV-1117	Bender, Barbara	1,963.88
84-CV-1118	Bender, Barbara	1,963.88
84-cv-1119	Clark, Edmonson D.	Denied
84-cv-1120	Coats, Susie	1,462.00
84-cv-1125	Godzicki, Naomi and Liveris, Laura	14,250.00
84-CV-1127	Miller, Carlessa	1,120.00
84-cv-1135	White, Marilyn I.	482.00
84-CV-1140	Williams, Odice	6,376.19
84-CV-1142	Grundy, Judith A.	393.83
84-CV-1145	McDaniel, David, Jr.	1,920.00
84-CV-1146	Pedersen, James C.	2,144.94
84-CV-1147	Pender, Samuel H.	Denied
84-CV-1149	Strawinski, Gregory	410.53
84-CV-1151	Hebert, William D.	15,000.00
84-CV-1152	Shvartsman, Ida	236.22
84-CV-1153	Coleman, Thelma	2,000.00
84-CV-1154	Adrianowicz, Diane	15,000.00
84-CV-1158	Chapple, Maggie	2,000.00
84-CV-1159	Dean, Sylvia	78.96

84-CV-1161	Jointer, William B.	2,000.00
84-CV-1162	Koffski, Leonard R.	202.67
84-cv-1163	Lapidos, Lillian	2,000.00
84-cv-1164	Lowe, Ella	Denied
84-cv-1165	Lynch, Lawrence A.	1,882.18
84-CV-1166	Maldonado, Ramon	1,575.80
84-CV-1167	Mariani, Jacqueline.	2,000.00
84-cv-1168	O'Neal, Louis	Denied
84-CV-1170	Siewert, Lois L.	15,000.00
84-CV-1171	Wagner, Kenneth E.	1,720.87
84-CV-1172	Wolen, Cindy	Denied
84-CV-1173	Heard, Beatrice Wright	Denied
84-CV-1174	Sheeran, Patrick J.	Denied
84-CV-1176	Brown, Alfred	Denied
84-CV-1179	Conahan, Daniel Owen	878.50
84-CV-1180	Jones, Ethel	259.90
84-CV-1182	Schulkin, Irene	3,627.24
84-cv-1184	Whalen, Gerald Edward	8,140.41
84-cv-1186	Yanko, Joseph G.	1,321.71
84-CV-1187	Zuro, Lawrence P.	2,266.08
84-cv-1188	Aring, Richard L.	265.00
84-CV-1189	Belt, Helen Marie and Belt, Howard Leland	9,000.00
84-cv-1190	Bennett, Jessie	39.85
84-cv-1191	Brock, Vondetta & Carl	1,276.45
84-cv-1194	Foster, Pearletha & Robert L. Foster	Dismissed
84-CV-1195	Ivory, Doris	2,000.00
84-cv-1196	Krajeski, Claire L.	3,577.37
84-CV-1197	Napolillo, William M.	2,000.00
84-cv-1199	Yanko, Mary M.	1,965.21
84-cv-1200	Johnson, Dorothy	Denied
84-cv-1204	Brown, Dorothy L.	748.00
84-CV-1205	Steele, Ida Mae	980.00
84-cv-1206	Stock, Cleo	Denied
84-CV-1208	Seiber, Donald	551.50
84-CV-1209	Jacobs, Charles	1,226.00
84-cv-1210	Bertrand, Edwin W., Jr.	1,031.90
84-cv-1211	Burris, Lemar	Denied
84-cv-1212	DiGuido, Lynn	2,000.00
84-CV-1213	Miller, Kenneth Scott	14,685.02
84-CV-1216	Svoboda, Henry J.	1,577.46
84-CV-1217	Altman, Ted B.	596.07

84-cv-1221	Griffith, William E.	333.19
84-CV-1224	McHale, John P.	236.00
84-cv-1226	Schroeder, John L.	149.00
84-cv-1227	Wiggins, Willis, Sr.	Denied
84-cv-1228	Wilson, Juliette B.	2,000.00
84-cv-1229	Belk, Christine	1,462.00
84-cv-1230	Brinson, Clarence	6,043.53
84-cv-1231	Cowart, Albert	5,485.94
84-cv-1234	Smith, Hyang S.	489.60
84-cv-1235	Mitchell, Manzella	299.29
84-cv-1236	O'Reilly, Lawrence J.	5,295.00
84-CV-1237	Williams, Mary	1,230.00
84-cv-1238	Allen, Helen	2,000.00
84-CV-1244	Micus, Mary A.	1,763.58
84-cv-1219	Irving, Laverne G. & Perry, Bette, for Veronica Durham	2,000.00
84-cv-1251	Clephas, Tina	15,000.00
84-cv-1252	Dickson, Geraldine	257.20
84-CV-1255	Shelton, Dorothy A.	624.99
84-CV-1257	Umland, Steven,T.	1,731.70
84-cv-1258	Brady, Agnes G.	744.92
84-cv-1259	Canela, Alfonso	7,230.16
84-cv-1260	Jackson, Norma R.	2,040.12
84-cv-1262	Springer, Marissa G.	151.04
84-cv-1264	Jackson, Warren	2,205.00
84-CV-1268	Hauser, Emily	850.40
84-CV-1270	Porter, Verlena	225.00
84-CV-1271	Stevens, Myra G.	2,000.00
84-CV-1272	Berbig, Elizabeth C.	621.00
84-CV-1273	Collins, Mary	2,000.00
84-CV-1274	Davis, Survillia	Denied
84-CV-1275	Deverew, Eileen A.	2,000.00
84-CV-1277	Tutaj, Thomas	1,371.12
84-cv-1284	Felix, Anna	326.00
84-cv-1285	Madlangbayan, Angelina	Denied
84-CV-1292	Hams, Ellen I.	1,747.50
84-CV-1293	Langley, Leo	778.00
85-CV-0003	Joyce, Matilda C.	2,000.00
85-CV-0004	Matthews, Jacqueline	Denied
85-GV-0006	Johnson, Karla	1,130.00
85-CV-0008	Williams, Billy	2,000.00

85-CV-0009	Brown, Ruth	2,000.00
85-CV-0010	Hines, Marie	1,655.00
85-CV-0011	McGaha, Darlene	1,491.00
85-CV-0017	Moore, Bessie and Johnson, Charlesetta	5,250.00
85-CV-0018	Owens, Hilldora	157.75
85-cv-0020	Coggins, Mary E.	2,000.00
85-CV-0023	Irizarry, Eliasel	Denied
85-cv-0024	Jones, Florine	2,000.00
85-CV-0025	Kane, Michael F.	1,249.33
85-CV-0027	Rice, Delores	1,590.00
85-cv-0028	Santiago, Maria E.	2,000.00
85-CV-0030	Hackett, Joseph P.	2,000.00
85-CV-0031	Iacullo, Louis	10,515.90
85-cv-0037	Edward, Iceola	Denied
85-CV-0038	Haleem, Yousef	Denied
85-cv-0040	Johnson, Emma W.	281.45
85-cv-0041	Mora, Antonio	1,100.00
85-cv-0042	Perrone, Rose	1,381.00
85-CV-0043	Peterson, Ruth	1,859.60
85-CV-0044	Thomas, Eugene	722.60
85-CV-0046	Balfour, Hattie (Giles)	2,000.00
85-cv-0047	Katsoudas, Bill	1,662.53
85-CV-0048	Miller, Robin L.	15,000.00
85-CV-0052	Bettis, John D. & Irene Bettis	Denied
85-CV-0054	Gomez, Stephen J.	Denied
85-CV-0055	Velez, Gilbert	Denied
85-CV-0056	Walker, Beatrice	1,866.00
85-cv-0057	Chevere, Fernando	1,371.00
85-CV-0058	Flamand, Lydia A.	43.19
85-CV-0059	Koziol, Chester	1,275.85
85-CV-0061	Moist, Ellen	Denied
85-CV-0062	Quinones, Eugenia	2,000.00
85-CV-0063	Sanchez, Angel	Dismissed
85-CV-0066	Stading, James D.	Dismissed
85-CV-0067	Taylor, William C.	2,018.92
85-CV-0072	Horton, Melinda A.	404.55
85-cv-0073	Stanford, Peggy Washington	614.14
85-cv-0074	Thomas, Lue Jean	Denied
85-CV-0078	Jordan, Joe Ann	1,000.00
85-cv-0083	Broadway, Laura	2,422.35
85-cv-0085	Cross, Marvaleen	628.00

85-CV-0086	Kendricks, Evelyn	1,691.24
85-CV-0087	McGough, John J.	2,000.00
85-cv-0090	Smith, Willie B.	1,851.00
85-cv-0093	Valdez, Daniel	2,000.00
85-cv-0094	Young, Mary Margaret	6,400.00
85-CV-0097	Tyler, Theela J.	2,561.35
85-CV-0098	Barajaz, Maria	2,503.10
85-cv-0100	Boltze, Frank W.	1,593.99
85-cv-0101	Cruz, Arthur, Sr.	2,000.00
85-cv-0102	Dixon, Tyrone D.	Denied
85-CV-0103	Krizic, Karin T.	Denied
85-CV-0107	Baker, Michael Thomas	Denied
85-CV-0113	Block, L. Kean	2,000.00
85-CV-0118	Johnson, Josie	727.24
85-cv-0119	McSpadden, Kim	86.10
85-cv-0123	Schlautman, David A.	747.18
85-cv-0126	Woods, Kenneth Earl	512.85
85-CV-0127	Ellis, Mary	380.00
85-cv-01%	Hughes, Richard G.	4,001.33
85-CV-0129	Tate, Tolise	Denied
85-CV-0130	Young, Mark J.	2,344.76
85-CV-0140	Hodge, David	Denied
85-CV-0142	Jordan, Larry	Denied
85-CV-0143	Kaizer, Marie & Kaizer, Robert	10,500.00
85-cv-0144	Lichtenstein, Ben W.	1,598.84
85-cv-0145	Parson, Dortheal	854.96
85-CV-0150	Brown, Earl	637.00
85-CV-0153	McCraney, Christine	Denied
85-CV-0156	Lewis, Henry	13,570.02
85-CV-0159	Castro, Maria	1,937.00
85-CV-0160	Murphy, Paul D. and Murphy, Thomas	3,020.00
85-CV-0161	Seaquist, Joanne M., Sr.	1,847.64
85-cv-0164	Carter, Edward	1,982.00
85-cv-0165	Moses, Nonie	Denied
85-CV-0168	Stegen, Beverly J.	2,000.00
85-CV-0169	Stortzman, Rose V.	126.19
85-CV-0170	Vales, Susan C.	2,857.49
85-CV-0171	Booker, Terry J.	2,809.65
85-CV-0172	Morales, Adelaide R. and Santiago, Daniel	97.00
85-CV-0179	Terrell, Tyrone	4,502.92
85-CV-0181	Osterbuhr, Judith Lynne	1,539.00

85-CV-0182	McBee, Steven Wayne	Denied
85-cv-0183	Deblas, Doris Maldonado	2,000.00
85-cv-0185	Pedersen, Rick J.	1,488.40
85-CV-0187	Snead, Ada Mae	1,155.00
85-cv-0188	Zeigler, Willie Mae	15,000.00
85-CV-0190	Harris, Patricia	4,085.89
85-cv-0194	Gavin, Donald	Denied
85-CV-0195	Glover, Ella Wee	2,000.00
85-cv-0199	Thigpen, Timothy	Denied
85-cv-0201	Cowsert, Elmira L.	Denied
85-cv-0202	Goodloe, Leonard	2,000.00
85-CV-0204	McDaniels, Judy J.	15,000.00
85-CV-0206	Ortiz, Naomi	2,000.00
85-CV-0207	Ritchie, Shirley	1,178.70
85-CV-0209	Enghram, Webard	3,395.70
85-CV-0211	Hurtt, Norene J.	4,325.84
85-CV-0212	Jackson, Loretta	Denied
85-CV-0214	Paul, Elizabeth	Denied
85-CV-0216	Loveless, Emma L.	1,979.00
85-CV-0218	Mitchell, William A.	Denied
85-CV-0219	Peters, Christopher	94.94
85-cv-0221	Munson, Juanita	Denied
85-cv-0222	Fallon, Patricia	136.05
85-cv-0225	**Cruz,** Linda Sue	2,000.00
85-cv-0228	Castro, Nitza M.	2,000.00
85-CV-0230	Daniels, Patricia L.	2,000.00
85-CV-0231	Holness, Patsy	5,150.25
85-cv-0232	Kilcoyne, Brenda	Denied
85-CV-0233	Lopez, Kimberly Renee	377.85
85-CV-0234	Reed, Mamie L.	2,000.00
85-CV-0238	Moore, Jerome P.	Denied
85-cv-0240	Ealy, Katherine	1,512.14
85-cv-0241	Smith, William B.	2,000.00
85-CV-0243	Cooper, Lynn M.	Dismissed
85-cv-0244	Devine, Marion T.	2,000.00
85-CV-0246	Miller, Mary A.	201.00
85-cv-0249	Chmieleski, Ambrose	Denied
85-CV-0250	Drew, Willie Ann	1,704.10
85-cv-0251	Massey, Mary Janice	2,000.00
85-cv-0252	McRoberts, Charlotte	2,000.00
85-CV-0255	Dominick, Laura	2,226.27

85-CV-0256	Johnson, Katherine	Denied
85-cv-0260	Ewing, John A.	Denied
85-cv-0262	Gutierrez, Algene	2,000.00
85-CV-0265	Thompson, Ernestine	2,000.00
85-CV-0267	Dycus, Diane M.	15,000.00
85-cv-0269	Kaiser, Lawrence E.	478.83
85-CV-0270	Rednour, Lanny R.	468.50
85-CV-0271	Reed, Eldred & Gladys	2,000.00
85-CV-0274	Phillips, Mary A. Wilson	Denied
85-CV-0276	Brazley, Sandra J.	Denied
85-cv-0280	Horton, Rickey	Denied
85-cv-0283	Jolliff, Louise C.	Dismissed
85-cv-0285	Pendola, Catherine	2,905.16
85-CV-0286	Rangel, Dennis V.	600.00
85-cv-0290	Wright, Bertha	807.98
85-CV-0294	Szweda, Dorothy	2,061.66
85-CV-0297	Ponder, Anna M.	2,000.00
85-CV-0298	Schroeder, Cheri, for Leslee Schroeder	15,000.00
85-CV-0299	Smith, Georgia Joy	2,000.00
85-CV-0300	Sudduth, Cassandra	Denied
85-cv-0301	Sudduth, Karetha	Denied
85-CV-0304	Devito, Mike	5,128.63
85-CV-0305	Kelley, Harry L., Jr.	3,733.70
85-cv-0309	Abraham, Alice Marie	920.65
85-cv-0310	Bubb, Darrell L.	1,877.55
85-cv-0311	Falls, Artie Williams	1,700.47
85-CV-0312	Ferguson, Harold B.	2,000.00
85-CV-0313	Voudrie, Leto D. & Esther I.	2,000.00
85-CV-0315	Barnes, Carl	8,444.65
85-CV-0316	Clay, Sally	2,798.41
85-cv-0319	McCoy, Willie Mae	Denied
85-CV-0321	Smedley, Robert Wayne	Denied
85-CV-0322	Traska, Donald W.	680.00
85-CV-0326	McMiller, Willie D.	2,000.00
85-CV-0328	Ashford, Eunice	2,000.00
85–cv-0330	McKnight, Pamela M.T.	Denied
85-cv-0331	Brown, Vivian R.	Denied
85-cv-0334	Carlos, Francisco B.	2,000.00
85-CV-0337	Gardiner, Wallace	2,000.00
85-cv-0339	Glysh, Sister Elizabeth Ann	1,660.00
85-cv-0340	Hampton, Rosetta	2,000.00

85-cv-0341	Hornback, Catherine	2,000.00
85-cv-0342	Hyler, Linda	1,482.00
85-CV-0345	McDaniel, Barbara	1,690.40
85-CV-0348	Smith, Larry, Jr.	9,114.22
85-CV-0350	Calhoun, Malcie	Denied
85-cv-0355	Franklin, Melzenia and Franklin, Linda	9,000.00
85-cv-0356	Halbert, Marilyn	2,000.00
85-cv-0359	Huling, Ellen Jane	682.70
85-cv-0360	Janczewski, Jeffrey R.	419.74
85-CV-0367	Weathers, Thomas R.	1,077.80
85-CV-0370	Nusko, Steven F.	1,002.00
85-CV-0373	Knox, Carol	1,754.00
85-CV-0374	Shifrin, Beatrice S.	529.00
85-CV-0375	Williams, Bobbie R.	2,000.00
85-CV-0376	Young, Hattie K.	2,000.00
85-CV-0377	Compton, Lula	2,000.00
85-CV-0378	Mapps, Johnny Lee, Sr.	Denied
85-cv-0379	Sheppard, Earl & Ann	2,000.00
85-CY-0381	Williams, Jean	Denied
85-cv-0383	Clendenny, Betty Jean	Dismissed
85–cv-0384	Elder, Leonard W.	6,460.56
85-CV-0392	Kyriakides, Andreas	2,000.00
85-CV-0393	Lawary, Fred	15,000.00
85-CV-0399	Dillard, Willie	956.71
85–cv-0402	Minor, Lindell Ray, Jr.	2,531.92
85-CV-0403	Williams, Robert T.	1,446.16
85-cv-0404	Crouse, Pamela J.	2,000.00
85-CV-0408	Kent, Michael C.	2,000.00
85-cv-0409	McAllister, Frederick B.	1,548.96
85-CV-0417	Young, Dorothy	895.00
85-cv-0419	Dworak, Joseph	46.81
85-cv-0421	Simenas, Patricia M. and Simenas, Robert A.	7,979.68
85-CV-0424	Karl, James Daniel	Denied
85-cv-0426	Sanders, Geneva	2,000.00
85-CV-0427	Flagg, Luella	Denied
85–cv-0430	Smith, Betty	1,744.00
85-cv-0432	Howard, Christine	2,000.00
85-cv-0434	Starks, John	513.04
85-cv-0437	Smylie, Diane L.	1,563.12
85-cv-0438	Tennial, Olga and Tennial, J. W.	2,000.00
85-cv-0444	Freeman, Jesse B.	Denied

85-CV-0445	Heberer, Clinton R.	395.69
85-CV-0447	Lilly, Diane	468.04
85-CV-0452	Peters, Christopher	Dismissed
85-CV-0453	Tumbarello, Candiss M.	863.50
85-CV-0455	Baker, Esther N.	5,591.50
85-CV-0456	Cater, Lyle W.	2,000.00
85-CV-0459	Humphreys, Clifton R.	474.00
85-CV-0460	Kimbro, Edith L.	808.07
85-CV-0461	Lowe, Terry	85.50
85-CV-0469	England, Allen & Marilyn	Denied
85-CV-0471	Barlow, Virginia M.	2,231.80
85-CV-0472	Chan, Wi	932.41
85-cv-0475	Joiner, Ethelyn K.	Denied
85-cv-0477	McMullen, Bill	Denied
85-cv-0478	Mitchell, Florine	2,000.00
85-cv-0480	Richard, Shirley	2,000.00
85-cv-0485	Wilburn, Deborah	Denied
85-CV-0487	Barrow, Verdell, Mrs.	1,147.60
85-CV-0488	Levine, Bernice M.	2,000.00
85-CV-0490	Zimmer, Arnold	825.00
85-cv-0493	Dawud, Assad	2,000.00
85-cv-0494	Degen, Pamela Sue and Degen, Thomas E., Sr.	2,000.00
85-cv-0499	Johnson, James, Sr.	Denied
85-CV-0500	Roberts, Laura	943.60
85-CV-0502	Beaudion-Arnold, Brenda	1,960.00
85-CV-0503	Brewer, Leon	Denied
85-CV-0505	Duckwiley, Cozetta	Denied
85-CV-0506	Jamison, Mr. & Mrs. L. B.	Denied
85-CV-0508	McCall, Stanley	Denied
85-CV-0512	Hernandez, Felicita	2,000.00
85-CV-0513	Frey, Connie	Denied
85-CV-0515	Lowther, George V.	15,000.00
85-CV-0518	McCauley, Patricia Ann and McCauley, Loy	1,858.48
85-CV-0519	McCauley, Patricia Ann and McCauley, Loy	1,858.48
85-CV-0520	McCauley, Patricia Ann and McCauley, Loy	1,729.96
85-CV-0521	Micono, Mary	Dismissed
85-CV-0522	Mohammed, Mohammed A.	4,848.21
85-CV-0524	Robinson, Cora	15,000.00
85-CV-9525	Williams, Annie Lois	1,950.00
85-CV-0529	Nitti, Charles A.	7,284.29

85-CV-0532	Von Hatten, Victor	2,000.00
85-CV-0534	Wright, Magalene	Denied
85-CV-0537	Bartosivic, Georgia	Denied
85-CV-0538	Byrd, Joseph	844.87
85-CV-0540	Hofer, Martha	315.00
85-CV-0541	Jackson, Elnora and Walton, Ethel L.	2,000.00
85-CV-0543	Perkins, William	1,850.30
85-CV-0545	Ryan, Beverly	2,000.00
85-CV-0546	Steiner, Lou	2,000.00
85-CV-0547	Turner, George, Jr.	1,495.00
85-CV-0550	Webb, Vernell	75.60
85-CV-0553	Brent, David L.	5,439.26
85-CV-0555	Gilliand, Alfred	Denied
85-CV-0557	Lakin, Robert E.	207.00
85-CV-0560	Diduch, Zenona	362.55
85-CV-0561	Earley, Patricia	565.50
85-cv-0563	Johnson, Marilyn	2,000.00
85-CV-0564	Mobley, Elizabeth B.	2,000.00
85-CV-0567	Allen, Rose M.	Denied
85-cv-0568	Barson, Beverly	2,272.78
85-CV-0570	Purnell, William, Sr.	1,613.00
85-CV-0571	Serrano, Juanita Joyce	735.58
85-CV-0573	Vorman, Cheryl	Denied
85-cv-0574	Jenkins, David B.	693.45
85-CV-0575	Owens-Smith, Bernice L.	1,893.65
85-CV-0576	Bonilla, Jose	15,000.00
85-CV-0578	Arias, Trinidad	1,775.00
85-CV-0580	Villagomez, Michael	5,566.00
85-CV-0582	Deibert, Milo W.	2,000.00
85-CV-0584	Kirkpatrick, Ronald J.	Denied
85-cv-0585	Murry, Violar	2,000.00
85-CV-0586	Santiago, Marcial	1,462.42
85-CV-0587	Sisson, William T.	2,000.00
85-CV-0589	Brown, Laura	3,839.10
85-cv-0591	Hill, Carnell Leo	Dismissed
85-cv-0594	Vorman, Cheryl	Denied
85-CV-0595	Vorman, Mik	Denied
85-CV-0598	King, Nina	2,000.00
85-CV-0600	Lim, Fong You	Denied
85-cv-0601	Lopez, Samuel	Denied
85-cv-0602	Mathis, Emma	Denied

85-CV-0603	Ramirez, Felipe G.	2,000.00
85-cv-0610	Main, Ada M.	2,107.50
85-CV-0613	Brown, Ernestine	Denied
85-CV-0615	Collins, Ethel	2,000.00
85-CV-0625	**Cruz,** Enrique	160.35
85-CV-0627	Massih, Pierre Abdl	7,608.90
85-CV-0628	Sanford, John	585.10
85-CV-0630	Correa, Iris A.	1,724.31
85-CV-0631	Degen, Thomas, Sr.	Dismissed
85-CV-0633	Williams, Mary M.	2,000.48
85-CV-0638	McCoy, Helen E.	183.40
85-cv-0641	Hernandez, Sacramento	2,000.00
85-cv-0642	Jones, Delouise	1,504.00
85-CV-0643	Lee, Ming Sun	9,243.30
85-CV-0644	Neal, Kenneth L.	Denied
85-cv-0647	Combs, Dorothy	1,288.00
85-cv-0650	Dobbins, Cathey	Dismissed
85-CV-0651	Esposito, Ricardo	Denied
85-CV-0660	Hurley, John J., M.D.	6,409.37
85-CV-0661	McGee, Lillian	427.98
85-CV-0665	Botta, George, Sr.	2,000.00
85-CV-0668	Reynolds, Beulah A.	2,753.72
85-CV-0669	Riley, Janice L.	1,800.00
85-CV-0672	Dunham, Beatrice Charlene	4,631.97
85-CV-0673	Kimbrough, Patsy M.	260.25
85-cv-0674	Phillips, Beverly Davenport	1,839.00
85-CV-0677	Stogner, Deborah	Denied
85-CV-0682	Fuerst, Barry John	464.95
85-CV-0684	Elliff, Michael	384.98
85-cv-0685	Murdock, Aaron M.	Denied
85-CV-0687	Simmons, Julius	1,742.85
85-cv-0688	Santiago, Lucrecia	2,000.00
85-cv-0691	Daly, Karen Ann	Denied
85-CV-0693	Harris, Mary Ann	2,000.00
85-cv-0697	Wade, Leroy	1,897.00
85-CV-0700	Gerlitz, Dorothy	2,000.00
85-CV-0701	Mueller,,Ruth	1,844.65
85-CV-0703	Davis, Karen	478.46
85-cv-0706	Modglin, Marcia	Denied
85-CV-0707	Timmons, Kathleen A.	Denied
85-CV-0710	Ashford, John B.	2,000.00

85-CV-0714	Kirov, Todor P.	3,892.79
85-CV-0715	Ricketts, Elaine S.	626.75
85-CV-0716	Struck, Patricia A.	18.52
85-CV-0717	Travis, Paul	255.14
85-CV-0720	Creghin, Harold H.	244.01
85-CV-0723	Walker, Rosemary	2,000.00
85-CV-0724	Bartlett, Regina L.	1,799.20
85-CV-0728	Kelly, Henry	2,000.00
85-CV-0729	Kosin, Robert	1,400.00
85-CV-0730	Lindwall, Charles W.	6,353.47
85-CV-0735	Golden, David	2,834.54
85-cv-0737	Locke, Scott A.	3,917.10
85-CV-0741	Pasquale, Camille E.	2,000.00
85-CV-0745	Colson, Carol Marie	Denied
85-CV-0753	O'Neill, Sharon	12,053.93
85-cv-0757	Harris, Dorothy L.	2,000.00
85-CV-0759	Miller, Agnes A.	2,000.00
85-CV-0760	Motch, Mollie	56.44
85-CV-0761	Walker, William	1,692.16
85-CV-0762	Williams, Maggie K.	2,000.00
85-cv-0764	Isquierdo, Carmen G.	Dismissed
85-CV-0766	Wheaten, Teresa J.	2,000.00
85-CV-0767	Bronge, Richard	1,272.30
85-CV-0769	Hunt, Michael E.	4,783.85
85-cv-0770	Leblanc, Larry	1,375.40
85-CV-0777	Jackson, Dennis K.	1,022.95
85-CV-0784	Feuling, Laverne F.	2,000.00
85-CV-0787	Hollingsworth, Tanya Jo	2,000.00
85-CV-0792	Pereira, Oscar Rene	2,819.05
85-CV-0796	Wehner, Lucille M..	27.80
85-CV-0797	Hernandez, Francisco	2,000.00
85-cv-0801	Franks, Matilda	916.00
85-cv-0802	Franks, Matilda	411.17
85-cv-0803	Franks, Matilda	1,023.45
85–cv-0804	Eskridge, Floyd Lee	Denied
85–cv-0806	Lukes, Richard & Mary	Denied
85-CV-0809	Cole, Patricia	2,000.00
85-cv-0830	Gold, Jeffrey	276.00
85-cv-0834	Hunter, Velma	2,000.00
85-CV-0835	Love, Martha E.	Dismissed
85-CV-0837	Mashaw, Robert	272.00

85-cv-0842	Onesti, Guy A.	2,667.56
85-CV-0843	Riley, David E.	2,000.00
85-CV-0846	Shores, Kenneth E.	84.99
85-cv-0862	Oss, Clifford	45.00
85-cv-0869	Miles, Mary	1,406.00
85-CV-0872	Block, Marilyn A.	2,000.00
85-CV-0877	Bukowski, Stefania	877.00
85-CV-0886	Jamison, Eddie Mae	4,685.00
85-CV-0891	Riley, Carl Norman	2,000.00
85-cv-0901	Arroyo, Stanley	1,847.00
85-cv-0902	Castillo, Rudolph	2,000.00
85-cv-0910	Mitchell, Annie	1,785.00
85-CV-0916	Cooper, Terry D.	1,208.64
85-cv-0923	Laurenzana, Jose Luis	Denied
85-CV-0932	Ochoa, Carolina Rodriguez & Rodriguez, Zacarias	5,000.00
85-cv-0935	Warren, Celestine	2,000.00
85-cv-0948	Trucina, Edward	4,743.00
85-cv-0949	Adams, George W.	2,000.00
85-CV-0958	Gutowski, Chester	123.00
85–cv-0969	Hunter, Ann	2,000.00
85-cv-0984	Rodarte, Homero	Denied
85-cv-0985	Rodarte, Homero	Denied
85-cv-0986	Rodarte, Homero	Denied
85-CV-0987	Rodarte, Homero	Denied
85-cv-0988	Rodarte, Homero	Denied
85-cv-1012	Mitchell, Marie	1,792.45
85-CV-1013	Mitchell, Marie	1,815.56
85-CV-1027	Jackson, Dorothy L.	778.20
85-CV-1029	Santiago, Antonio	2,000.00
85-CV-1039	Wakeford, Richard E.	2,042.92
85-CV-1053	McPhearson, Fred, Sr.	1,280.00
85-CV-1059	Iglesias, Gisela	1,922.48

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