

ARKANSAS LEGISLATIVE COUNCIL

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Room 315, State Capitol Building
Little Rock, AR 72201

Marty Garrity
Executive Secretary

Tel: 501-682-1937
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December 19, 2014

Senator Robert Thompson, Co-Chair
Subcommittee on Claims
of the Joint Budget Committee
One Capitol Mall, Fifth Floor
Little Rock, AR 72201

Representative Lane Jean, Co-Chair
Subcommittee on Claims
of the Joint Budget Committee
One Capitol Mall, Fifth Floor
Little Rock, AR 72201

Dear Senator Thompson and Representative Jean:

The Legislative Council met December 19, 2014 and passed a motion to adopt the Report of the Claims Review Subcommittee of the Legislative Council with the exception of the following items and that these items be referred for consideration by the Joint Budget Committee Subcommittee on Claims:

- Item B.1. #13-0865-CC Estate of Brenda Mize vs. Department of Human Services-Developmental Disabilities Services Division; and
- Item B.3. #14-0651-CC APAC-Tennessee, Inc. vs. Arkansas Highway and Transportation Department and Arkansas State Highway Commission.

The Report of the ALC Claims Review Subcommittee is attached for your reference. Please let me know if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Marty Garrity".

Marty Garrity
Executive Secretary

MG:vjf

Cc: Kevin Anderson, Staff, Joint Budget Committee
Denise Tarter, Staff, Claims Review Subcommittee

**REPORT
CLAIMS REVIEW SUBCOMMITTEE
OF THE
ARKANSAS LEGISLATIVE COUNCIL**

Friday, December 19, 2014

Mr. Chairmen:

Your Claims Review Subcommittee met on Monday, December 15, 2014 and makes the following recommendations to the Arkansas Legislative Council:

A. Re-Issuance of Warrant/Unpaid Bill

1. #13-0734-CC City Corporation vs. AR Highway and Transportation

Department

Affirmed. Amount Awarded: \$22,779.53

2. #15-0240-CC CeQuel Communications vs. AR Highway and Transportation

Department

Affirmed. Amount Awarded: \$23,877.46

B. Awarded Claim

1. #13-0865-CC Estate of Brenda Mize vs. Department of Human Services-Developmental

Disabilities Services Division

Affirmed. Amount Awarded: \$600,000.00

2. #14-0631-CC Lien Technologies, Inc. vs. Department of Finance and Administration

Affirmed. Amount Awarded: \$250,000.00

3. #14-0651-CC APAC-Tennessee, Inc. vs. Arkansas Highway and Transportation Department and Arkansas State Highway Commission

Amend the ruling of the Claims Commission. Amount Awarded: \$495,000.00

4. #14-0690-CC Nationwide Construction Group vs. Arkansas Highway and Transportation

Department

Affirmed. Amount Awarded: \$27,659.48

C. Negotiated Settlement

1. #12-0151-CC W.W. Magness Company, Inc., d/b/a Magness Toyota vs. Department of Finance and Administration /Revenue Division

Affirmed. Amount Awarded: \$40,000.00

2. #14-0498-CC Northeast Arkansas Community Mental Health Center, Inc. vs. Department of Human Services/Behavioral Health Division

Affirmed. Amount Awarded: \$23,500.00

D. Negotiated Settlement/Appeal of Claims Commission Denial of Settlement

1. #13-0715-CC The Estate of Charles Hopson, Deceased vs. Arkansas Department of Education
Amend the ruling of the Claims Commission. Amount Awarded: \$25,000.00

E. Denied and Dismissed Appealed by Claimant

1. #13-0880-CC Thomas and Judy Freeman vs. Department of Human Services/Children and Family Services

Affirmed. Amount Denied: \$2,500,000.00

2. #14-0453-CC Sherri Crimmins vs. Department of Human Services/Developmental Disability Services/Medical Services

Affirmed. Amount Denied: \$81,334.04

Respectfully Submitted,

Senator Robert Thompson, Chairman

Representative Jon Eubanks, Chairman



STATE OF ARKANSAS
BUREAU OF
LEGISLATIVE RESEARCH

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Matthew Miller, Assistant Director
for Legal Services
Richard Wilson, Assistant Director
for Research Services

TO: CLAIMS REVIEW SUBCOMMITTEE

FROM: Legal Division Staff

SUBJECT: Summary of legal issues
*APAC-Tennessee, Inc. v. AR Highway and Transportation Dept. and AR
State Highway Commission
Awarded Claim*

Date of Occurrence: 2013
Date of Claim Filed: February 24, 2014
Amount Claimed: \$893,254.26
Amount Awarded: \$745,770.98
Claimant's Representative: Jack East, III
Respondent's Representative: Mark Umeda

Allegations of Claimant: The claimant, APAC-Tennessee, entered into a contract with the Respondents for approximately seven miles of roadwork and bridge rehabilitation. The original contract called for the job to be complete in 67 working days. However, the AHTD improperly rejected the claimant's concrete-mix design until 80 days had elapsed since initial submittal. The mix design ultimately approved was identical to the mix design it had originally submitted. The wrongful initial rejection of the mix design impacted the claimant's work performance and it had to request additional time to complete the job. Ultimately, the AHTD has wrongfully charged the claimant with overrunning the contract term by 22 days, which resulted in penalties being assessed. The claimant argues that the respondents breached the contract by failing to perform its mix-design approval responsibilities in a timely manner so as to not interfere with the progress of the work.

Agency Response: The respondent generally denied the complaint.

Opinion of the Claims Commission: After a hearing, the Claims Commission unanimously found that the respondent had breached the contract and caused the claimant to incur unexpected and unnecessary expenses. It awarded \$745,770.98 in damages.

Previous History of Claim (if any): None.

Issue(s) for Consideration: None.



STATE OF ARKANSAS
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for Fiscal Services
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TO: CLAIMS REVIEW SUBCOMMITTEE
FROM: Legal Division Staff
SUBJECT: Summary of legal issues
*The Estate of Brenda Mize v. Department of Human Services
Awarded Claim*

Date of Occurrence: February 9, 2013
Date of Claim Filed: June 4, 2013
Amount Claimed: \$1,000,000.00
Amount Awarded: \$600,000.00
Claimant's Representative: Darren O'Quinn
Respondent's Representative: Richard Rosen

Allegations of Claimant: Brenda Mize was a patient at the Arkadelphia Human Development Center due to a diagnosis of an intellectual disability, emotional disorder, and swallowing problems. She was supposed to be monitored while eating due to being a choking risk. However, Ms. Mize was allowed to wander into the kitchen where she found a food item to eat. Despite a staff member seeing her and telling her to leave the kitchen, she was allowed to take the food she found back to her room, where she was unsupervised. There she choked on the food and fell out into the hall where she was seen by the same staff member. However, the center did not have proper equipment so that correct emergency choking interventions were utilized. The center called 911 and Ms. Mize was taken to the hospital, and ultimately to Baptist Hospital in Little Rock, where she died as a result of this occurrence. The Estate of Ms. Mize now seeks damages for negligence, mental anguish, wrongful death, failure to follow procedures, pain and suffering, and refund of expenses.

Agency Response: The agency generally denied the claim, arguing that the death of Ms. Mize was not proximately caused by the agency's action or inaction. Specifically, the case plan did not call for restricted movements or direct supervision except at mealtime. Moreover, there was no duty to supervise Ms. Mize at time of the incident, which is a required element of negligence.

Opinion of the Claims Commission: In an lengthy opinion, the Claims Commission unanimously found that the agency was negligent, awarding \$600,000.00 to the claimant.

Previous History of Claim (if any): None.

Issue(s) for Consideration: Did the claimant prove by a preponderance of the evidence that the agency was negligent?