

WEST VIRGINIA LEGISLATURE

Performance Evaluation and Research Division

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Date: November 27, 2012

To: Honorable Herb Snyder
Honorable Jim Morgan
Co-Chairs, Joint Committee on Government Organization

From: John Sylvia, Director
Performance Evaluation and Research Division

Subject: Update of the November 2010 Report on the West Virginia Court of Claims

Background

During the November 2010 interim meeting of the Joint Committee on Government Operations, and Joint Committee on Government Organization, the Performance Evaluation and Research Division (PERD) provided a Special Report regarding the claims-review process of the West Virginia Court of Claims for small claims made against the State. PERD reviewed small claims filed in 2008 and 2009. Over 70 percent of all claims against the State were filed against the Division of Highways (DOH). In addition, more than 70 percent of all claims filed against the DOH were for road hazard incidents. Of all the claims filed against the State, 84 percent of them were for values under \$2,500, and the average amount claimed in those cases was \$475. However, the average cost to the State to completely adjudicate one claim was \$1,339.

During the course of the review, PERD found that the Court had 840 cases, \$2,500 or under, that were pending a small claims hearing. The large number of pending files had contributed to claims not being heard for over a year and awards not being distributed to claimants for two and a half years. During 2008 and 2009, claims were filed against a variety of state agencies, but the DOH was the only agency that denied every claim, thus forcing a hearing. While other state agencies would often settle with the claimants without a need for a hearing, the DOH would not. Generally, half of the claimants would not show for the hearing. **The Legislative Auditor determined that the DOH practice of denying every claim was a way of taking advantage of claimants not appearing for a hearing, and therefore, DOH would not have to pay an award.** The DOH denied this assertion. While the practice of denying every claim saved the DOH money, it contributed to a large number of pending cases, increased the cost to the State, and placed an undue burden on the public.

The Legislative Auditor's recommendations reflect his concern with the costs of the small claims review process and the significant delays in awarding payments to the public. Therefore, the Legislative Auditor recommended the Legislature consider establishing a claims review procedure for claims against the State under \$2,500 to be determined by the West Virginia Clerk of the Court of Claims without a need for a hearing. If the Legislature decides to accept the recommendations, they should also consider allowing the non-hearing administrative review process to be used retroactively for all current pending

cases under \$2,500. Finally, the Legislative Auditor recommended that PERD review any procedural changes made within one to two years after the start of the changes.

Update

Since the 2010 PERD report was issued, no legislative action has been taken regarding the Legislative Auditor’s recommendations but there has been a procedural change of note. As a result of the report, the DOH began reviewing each file and not taking every claim to court. **According to the Clerk of the Court, for claims filed in 2011, 75 percent of the claims made against the DOH were denied compared to 100 percent in previous years. This reduction in denials by the DOH relieved the Court of hearings for 25 percent of DOH claims.** According to the West Virginia Clerk of the Court of Claims,

The Court has been very pleased with counsel for the Division of Highways. Claims are being reviewed as filed. If a determination is made that the claim should be submitted as a moral obligation of the State, an Omnibus Order with several claims or even with just one claim is submitted to the Court to be entered. These Orders make awards to the claimants. This avoids setting the claims on a docket for hearing.

The procedural change of DOH -- providing an Omnibus Order for claims it does not deny – was used for many backlogged claims, and newer claims filed in 2010. This helped reduce the number of backlogged pending claims. The West Virginia Clerk of the Court of Claims reported,

The process for Omnibus Orders was agreed to by the Court and the Division of Highways and this agreement alleviated the backlog of claims against the Division during the years prior to and including the 2010 calendar year. Therefore, in the 2011 Claims Bill there were a total of 468 claims which is more than average (about 150 claims in previous Claims Bills).

Table 1 below documents the number of Omnibus Orders that were awarded utilizing the Court of Claims’ last two Claims Bills presented to the Legislature.

Claims Bill Presented to the Legislature	Number of DOH Claims Awarded	Number of DOH Claims Awarded due to Omnibus Order	Amount Paid to Claimants on Claims made against DOH
2009	108	n/a	\$508,745.28
2010	135	n/a	\$1,565,282.71
2011	466	281	\$2,389,259.77
2012	342	183	\$2,092,001.45
2013*	78	48	n/a

*Source: West Virginia Court of Claims Annual Reports 2009-2012.
The data in this table were not audited by the Legislative Auditor.
* Figures for the 2013 Claims Bill are current as of September 21, 2012 according to the Clerk of the Court of Claims.*

Conclusion

As in the 2010 report, the DOH continues to be the state agency that most claims are filed against by the public. According to the Clerk of the Court of Claims, *“There were a total of 721 claims filed in 2011; approximately 621 were filed against the Division of Highways; this represents 86% of all claims.”* Therefore, the DOH’s new policy to not deny every claim and submit an Omnibus Order helps to significantly decrease the amount of time the public must wait for awards, lowers the costs to the public to attend hearings, and lowers the workload and administrative costs for the court to hear such claims. According to the West Virginia Clerk of the Court of Claims, *“All in all, the Court is satisfied that counsel for the Division of Highways is trying to be fair and reasonable to the claimants who file claims in our Court.”* However, the Clerk notes that the number of Omnibus Orders from the DOH in 2012 that will be presented in the 2013 Claims Bill has dropped from the previous two years. According to a DOH representative, the recent reduction in Omnibus Orders may be attributed to *“...the dramatic reduction in the total amount of claims filed against DOH this year combined with problems with the completeness of some claim forms....”*

While there may be a reduction in the total number of Omnibus Orders since the 2011 Claims Bill, the ratio of claimants that received awards due to Omnibus Orders to total DOH awards presented to claimants has stayed consistent. According to Table 1, the percentage of total DOH awards that are Omnibus Orders in 2011 was 60 percent, while in 2012 it was 54 percent and so far for 2013 it is 62 percent. Therefore, DOH’s use of the Omnibus Orders is consistent from 2011- 2013, and the smaller number of Omnibus Orders is likely the result of a smaller number of claims filed against the DOH. It should also be pointed out that there is the potential for additional Omnibus Orders to be included in the 2013 Claims Bill as there are four more months left for the Court to send new claims to the DOH to review that may be included in the 2013 Claims Bill.

The practice of the DOH reviewing, identifying and resolving cases that are appropriate for an Omnibus Order has had a positive impact, and the DOH has reported it will continue the process. According to a DOH representative, *“The DOH will continue the practice of reviewing claims and identifying those small (“pothole”) claims that are appropriate for resolution and reporting those claims to the Court of Claims (the “omnibus process”).* It is the Legislative Auditor’s opinion that DOH’s procedural change in using Omnibus Orders has significantly reduced the burden to the public and the State, and the DOH’s willingness to continue the process precludes the need of future updates



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

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October 26, 2012

Mr. John Sylvia
West Virginia Legislature
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RE: Update of the November 2010 Special Report

Dear Mr. Sylvia:

Thank you for your October 1, 2012, letter and the opportunity for the Division of Highways ("DOH") to respond to your Update of the November 2010 Special Report regarding the West Virginia Court of Claims.

Your Update reflects that the Court of Claims is satisfied with DOH's review and resolution of claims against DOH in the Court of Claims. As we advised in our November 4, 2010, letter, DOH launched an internal initiative to review and adjust claims in a balanced and fair manner consistent with Article VI, Section 35 of the West Virginia Constitution and *State ex rel. Adkins v. Sims*, 46 S.E.2d 81 (W.Va. 1947). While DOH continues to find that some claims are improper or information presented to DOH in some claims is deficient to allow a proper early evaluation and resolution, DOH believes that its initiative promotes a fair and expeditious resolution of claims. As always, we will continue to work with the Court of Claims and its staff to attempt to balance the needs of the citizens of West Virginia and the legal obligations of DOH to pay claims that are meritorious.

Thank you for the opportunity to respond to your report. Please contact me if you have any questions or need additional information about this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Anthony G. Halkias".

Anthony G. Halkias
Director of Legal Division