

LEGISLATIVE AUDIT REPORT

WEST VIRGINIA COURT OF CLAIMS

REPORT SUMMARY

- The Court of Claims Caused the Joint Committee on Government and Finance to Pay Up to \$23,597 in Wages that Were not Earned or for Leave not Taken.
- The Former Business Manager of the Court of Claims Maintained Possession of her \$1,100 State-Issued Microsoft Surface Pro for Over a Year Following the End of Her Employment with the Court of Claims.
- The Adjudication Process for Claims Against the Division of Highways is Inefficient and Costly to the State.



WEST VIRGINIA LEGISLATIVE AUDITOR POST AUDIT DIVISION



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A REPORT TO THE WEST VIRGINIA LEGISLATURE

Post Audits Subcommittee

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The Honorable William P. Cole III
The Honorable Mike Hall
The Honorable Jeffrey V. Kessler

House Members

The Honorable Tim Armstead
The Honorable Eric Nelson, Jr.
The Honorable Timothy Miley

Aaron Allred, Legislative Auditor

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Denny Rhodes
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The Honorable William P. Cole III, President
West Virginia State Senate
Post Audits Subcommittee, Co-Chair
Room 229 M, Building 1
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Charleston, WV 25306

The Honorable Timothy Armstead, Speaker
West Virginia House of Delegates
Post Audits Subcommittee, Co-Chair
Room 228 M, Building 1
State Capitol Complex
Charleston, WV 25306

Dear Mr. President and Mr. Speaker:

In compliance with the provisions of the *West Virginia Code, Chapter 4, Article 2*, as amended, the Legislative Auditor conducted a performance audit of the Court of Claims for the period of July 1, 2010 through June 30, 2016.

The audit was *not* conducted in accordance with *all* Generally Accepted Government Auditing Standards (GAGAS) due to the Court of Claims falling within the management oversight of the Legislative Manager, who is also the Legislative Auditor. However, we planned and performed the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives by increasing the level of independent review and verification of all data. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit disclosed certain findings, which are detailed in this report. The Court of Claims' management response to the audit findings is included at the end of the report.

Respectfully submitted,

A handwritten signature in blue ink that reads "Denny Rhodes".

Denny Rhodes

Joint Committee on Government and Finance

TABLE OF CONTENTS

ISSUE 1: The Court of Claims Caused the Joint Committee on Government and Finance to Pay Up to \$23,597 in Wages that Were Not Earned or for Leave Not Taken 1

ISSUE 2: The Former Business Manager of the Court of Claims Maintained Possession of her \$1,100 State-Issued Microsoft Surface Pro for Over a Year Following the End of Her Employment with the Court of Claims..... 14

ISSUE 3: The Adjudication Process for Claims Against the Division of Highways is Inefficient and Costly to the State..... 16

LIST OF APPENDICES

APPENDIX A: Summary of Costs to the Joint Committee on Government and Finance per Audit Approach 22

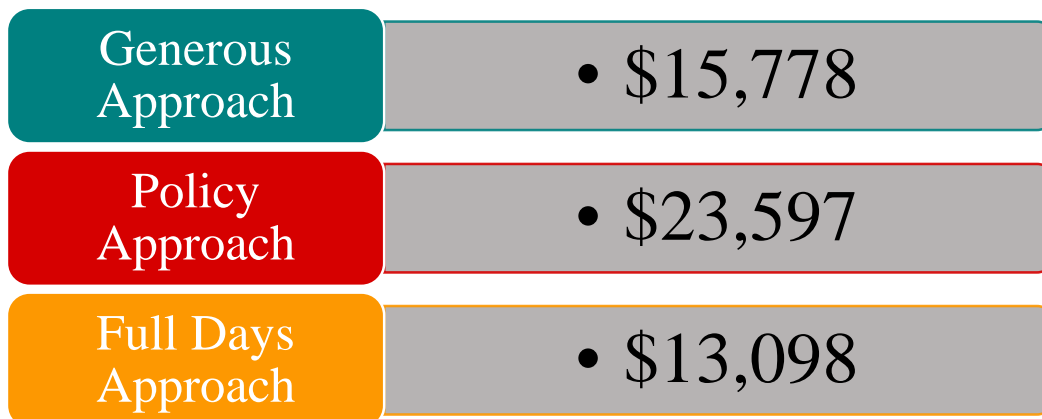
APPENDIX B: Court of Claims Response to the Audit Findings..... 23

ISSUE 1: The Court of Claims Caused the Joint Committee on Government and Finance to Pay Up to \$23,597 in Wages that Were Not Earned or for Leave Not Taken

The West Virginia Court of Claims is organizationally structured as a division of the Legislature’s Joint Committee on Government and Finance, and falls within the management oversight of the Legislative Manager. As a result of concerns about the time and leave management with Court of Claims employees, the Post Audit Division began conducting an audit of the Court of Claims on July 19, 2016. Due to the serious nature of the problems, the Post Audit Division provided the Post Audits Subcommittee with preliminary findings on August 21, 2016 for four employees – three current and one former. This report is the final audit of time and leave for all current Court of Claims full-time employees and four former employees.

The Court of Claims consists of the Clerk, Chief Deputy Clerk, and nine employees. This audit finds that five of those nine employees had significant time and leave issues. Each of the four former employees audited had time and leave issues ranging from moderate to significant. Thus, 9 out of the 15 (60 percent) Court of Claims current and former employees had issues with their time and leave. The Post Audit Division took three separate audit approaches to analyze the Court of Claims time and leave: a **generous approach**, allowing time to be carried over from week to week; a **policy approach** which followed the Joint Committee on Government and Finance Policy of a minimum 35-hour workweek; and a **full days approach** which only calculated the number of full days that the employee took off a full day of work but did not submit annual or sick leave. The Post Audit Division also quantified the total cost to the Joint Committee on Government and Finance based on each approach. As shown in the following chart, the Court of Claims caused the Joint Committee on Government and Finance to pay Court of Claims employees’ wages that were not earned or for leave not taken: **\$15,778** based on the generous approach; **\$23,597** based on the policy approach; or **\$13,098** based on the full days approach **for 83 individual full days not worked**. (See the chart in Appendix A for the total list of all employees)

Cost of Wages that Were Not Earned or for Leave Not Taken



Identification of Initial Problem

On Monday, July 18, 2016, the Clerk of the Court of Claims signed and submitted for the approval of the Legislative Manager a *Leave Without Pay (LWOP) Form* for a Court of Claims employee which included dates from May and June 2016. A LWOP form is needed when an employee has exhausted all annual and sick leave, thus requiring an adjustment to the employee's paycheck and leave accrual. When these adjustments are required, it is imperative that LWOP forms are submitted in a timely manner. On Tuesday, July 19, 2016, the Legislative Manager received the form, immediately questioned it, and realized the employee had already been paid for those days not worked. The Legislative Manager, who also serves as the Legislative Auditor, directed the Post Audit Division to conduct an audit of the leave records of all Court of Claims employees.

Causes of the Time and Leave Issues

As a division within the Joint Committee on Government and Finance, the Court of Claims is to follow the Joint Committee on Government and Finance Employee Policies and Procedures Handbook. But, as stated in the preliminary findings released on August 21, 2016, the Clerk and the judges of the Court of Claims are fostering an environment where employees are not required to follow the policies and procedures adopted by the Joint Committee on Government and Finance or state law. The Post Audit Division has identified three primary causes for the time and leave issues within the Court of Claims:

1. The Clerk and the Chief Deputy Clerk of the Court of Claims have had a disregard for statute by allowing employees to not work and not requiring those employees to submit annual/sick leave or going on LWOP. Specifically, the Clerk and Chief Deputy Clerk have knowingly violated West Virginia Code §12-3-13 which states:

No money shall be drawn from the treasury to pay the salary of any officer or employee before his services have been rendered.

2. The Clerk, Chief Deputy Clerk, and the judges of the Court of Claims have a disregard for the Joint Committee on Government and Finance Employee Policies and Procedures Handbook. The Policy states in Section 1.2 that:

The minimum full-time workweek is 35 hours. Employees are expected to observe daily work hours and maintain accurate records of their work hours.

The Clerk did not require employees to work a 35-hour work week, nor did she require them to maintain accurate records of their work hours.

3. Employees were negligent in their duty to maintain accurate records of their work hours, and negligent in their duty to submit the annual or sick leave in a timely manner.

Methodology of Auditing Time and Leave

To perform the analysis, Post Audit obtained employee time records from the Court of Claims, employee leave records from the Legislative Fiscal Office, and employee travel reimbursements from the State Auditor’s Office through myApps and wvOASIS. Using the data, we analyzed the number of hours worked each day based on the sign-in and sign-out times, the amount of leave entered into the Joint Committee leave system, and time owed considering a normal seven-hour work day. Travel reimbursements were cross-referenced with the time records to account for the time the employees were not in the office due to being on travel status.

According to the Clerk, all Court of Claims employees are able to make up time missed by working through lunch or working over seven hours in a day, provided that the time is made up within the same week. Therefore, Post Audit analyzed time worked and leave taken as a weekly total based on a normal workweek of 35 hours. We provided the employees with the benefit of the doubt in various instances. If information was not available for review, for reasons such as missing time records or the employee failed to sign out for the day, it was assumed the employee worked the full seven-hour day. We also gave the employee credit for working through lunch if there was no clear indication that a lunch had been taken. Further, we have assumed the times the employees have written down on the sign-in and sign-out sheets are accurate. Finally, each employee time analysis was reviewed and verified for accuracy by an Audit Manager with a Certified Public Accountant license¹.

Approach

Post Audit staff used three different approaches to analyze the data. The chart below summarizes each approach.

Method 1	“Generous Method” A formula intended to excuse each employee in every area in which any assumption would be made, despite surrounding evidence.	Method 2	“Accurate Policy Method” A formula intended to utilize The Joint Committee’s Policy & Procedures in every applicable area in regards to each employee’s Time and Leave management.	Method 3	“Full Day Method” A focused view that only considers full days missed, as missed in one full scheduled work day.
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The *generous approach* allowed time and leave totals over 35 hours in one workweek, to be applied to any past or future workweek in which time worked was under 35 hours, up to the

¹ The analysis for Employee 1 was conducted by the Post Audit Division Director, then reviewed by an audit manager with the Post Audit Division. An additional review and verification was completed by a second audit manager with a Certified Public Accountant (CPA) license. Further, an additional Post Audit CPA created a separate analysis to add additional assurance that the analysis was accurate and complete.

amount of leave taken in the workweek. For example, the table below shows an employee that worked 32 hours and took 4 hours of leave in one workweek was given a one-hour credit. The credit was used to reduce the time owed in another workweek that the employee's time and leave totaled less than 35 hours.

This approach also allowed full days to be made up within the same week. Thus, if an employee worked 8 hours one day and was absent the next, the employee would only owe 6 hours of leave.

The *policy approach* using Joint Committee policy only issued credit if too much leave was taken in one day. In the example below, the employee would have only received 0.25 hours of credit. Additionally, a full day absent from work required seven hours of leave to be taken; therefore, Week 2 would have required the employee to take a full 7 hours of leave.

EXAMPLE OF AUDIT APPROACHES						
	Hours Worked	Leave Submitted	Total Hours	Time Under/(Over)	Generous Approach	Policy Approach
Week 1						
Monday	3.25	4.00	7.25	(0.25)		
Tuesday	7.00	0.00	7.00	0.00		
Wednesday	7.50	0.00	7.50	(0.50)		
Thursday	7.25	0.00	7.25	(0.25)		
Friday	<u>7.00</u>	<u>0.00</u>	<u>7.00</u>	<u>0.00</u>		
Totals	<u>32.00</u>	<u>4.00</u>	<u>36.00</u>	<u>(1.00)</u>	(1.00)	(0.25)
Week 2						
Monday	7.00	0.00	7.00	0.00		
Tuesday	8.00	0.00	8.00	(1.00)		
Wednesday	0.00	0.00	0.00	7.00		
Thursday	7.00	0.00	7.00	0.00		
Friday	<u>7.00</u>	<u>0.00</u>	<u>7.00</u>	<u>0.00</u>		
Totals	<u>29.00</u>	<u>0.00</u>	<u>29.00</u>	<u>6.00</u>	<u>6.00</u>	<u>7.00</u>
Balance					<u>5.00</u>	<u>6.75</u>

The *full days approach* analyzed the number of full days the employee did not come to work at all and did not enter any leave. This number is significant to the audit because an employee missing an entire day of work and not submitting leave should be more noticeable to management and the employee. Therefore, these numbers provide evidence of the seriousness of the leave issues in the Court of Claims. If this audit would not have occurred, when any of the employees separated employment from the State, they could have received an annual leave payout for the annual days that were not actually worked. Similarly, if any of the employees retired from the State, they could have received retirement benefits for sick leave that should have been taken. This actually happened in the case of Employee 2 discussed below who received an annual leave payout of \$1,514 for time not actually worked.

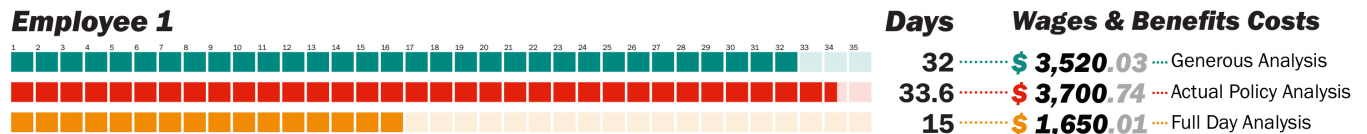
Update to Employees Identified in August 21, 2016 Preliminary Audit

The leave issues for four Court of Claims employees were discussed in the preliminary audit released on August 21, 2016.

Employee 1:

The generous analysis showed Employee 1 was paid for a total of 32 days, or 224 hours, that were not actually worked between December 16, 2014 and June 30, 2016 for which the employee was illegally paid \$2,707 in wages and approximately \$812 in benefits. As of June 30, 2016, the employee had worked 81 weeks and owed partial time for 48 of those weeks (59%). From September 2015 through June 2016, the employee consistently added to the amount of time owed each month. In addition, the employee did not enter leave for November and December 2015 in a timely manner; thus, creating a false impression that the employee had a positive leave balance. The employee entered 76.75 hours for November and December 2015 after the January 2016 leave accruals on January 29, 2016. Based on Joint Committee policy, Employee 1 owed an additional 11.50 hours for a total of 33.64 days at a cost of \$3,701. This includes 15 days that Employee 1 did not come to work and did not enter any time in the leave system.

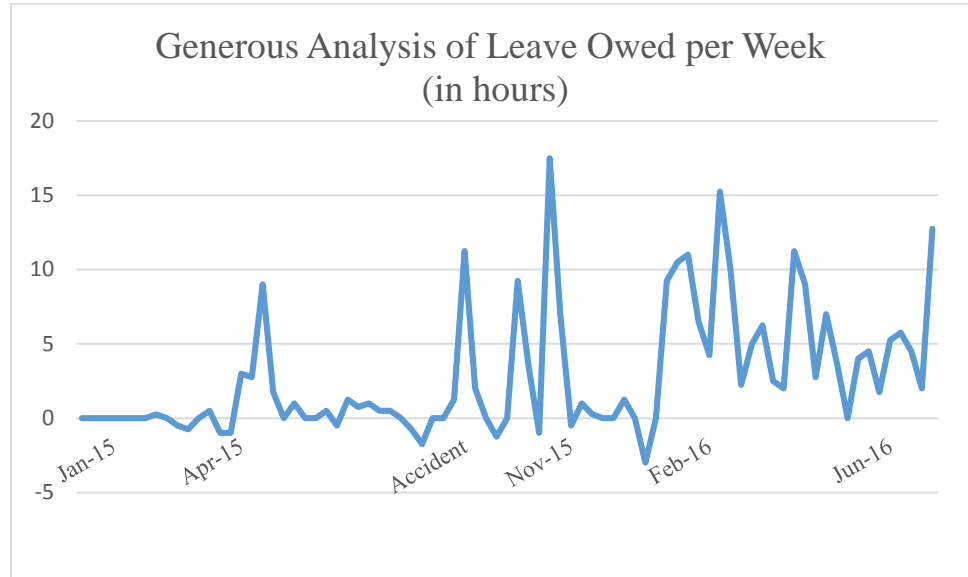
Employee 1



The Director of the Post Audit Division initially interviewed the Clerk regarding the employee’s late LWOP submission and time discrepancies. **The Clerk indicated she was aware that the employee owed time, but had decided not to take time away because she sympathized with the employee.** The Clerk stated that an unwritten agreement was made with the employee to make up the time owed by working extra hours and on Sundays. During June 2016, the Clerk realized that the employee was not making up the time and furthermore, was missing additional work. Another unwritten agreement was made with the employee to take three days of leave without pay for each of the next three paychecks for a total of nine days. However, there was no documentation to support the actual amount of time owed.

Additionally, in her response to the preliminary audit report the Clerk stated Employee 1 “had no issues with annual and/or sick leave until after Employee 1 was involved in a serious automobile accident in August 2015.” *Actually*, Employee 1 began having significant issues the beginning of April

2015 – less than four months after employment by the Court of Claims and almost 5 months prior to the automobile accident. The graph below represents Employee 1’s missing time throughout her employment.



In her response to the committee the Clerk provided multiple reasons why she authorized Employee 1 to be paid for hours not worked, but did not acknowledge that she, nor anyone else, had the authority to break the law by doing so.

Employee 2:

The generous approach showed Employee 2 owed a total of 24.89 days, or 174.25 hours, between March 25, 2013 and August 20, 2015. This resulted in the employee illegally receiving \$3,112 in wages and approximately \$934 in benefits. **The employee separated from employment on August 20, 2015 and was paid an additional \$1,514 for an annual leave balance of 82.75 hours.** Based upon the employee’s unverified claims that she worked through lunch with verbal approval from the Clerk, the auditors gave the employee credit for 69.25 work hours. Based on Joint Committee policy, the former employee owed an additional 55.50 hours for a total of 32.82 days at a cost of \$6,848 (including the annual leave payout). This number includes 17 days that Employee 2 did not come to work and did not enter any time in the leave system.

Employee 2

Days	Wages & Benefits Costs
24.89	\$ 5,559.60 (Generous Analysis)
32.82	\$ 6,848.16 (Actual Policy Analysis)
17	\$ 2,762.85 (Full Day Analysis)

The Clerk responded that Employee 2, upon becoming the business manager in 2014, was responsible for reviewing all leave records at the end

of every month. She stated the employee “vehemently asserts that this allegation is false and unfounded.” Employee 2 was contacted about the time, provided all information available to Post Audit, and given until September 7, 2016 to respond to her alleged claim. No response was ever provided. The previous director of the fiscal office under the Joint Committee contacted Post Audit after learning of the preliminary report from a newspaper article. She questioned if Employee 2 was the previous Business Manager for Court of Claims and shared details of a telephone conversation she had with the Clerk concerning Employee 2’s leave. She attested the following:

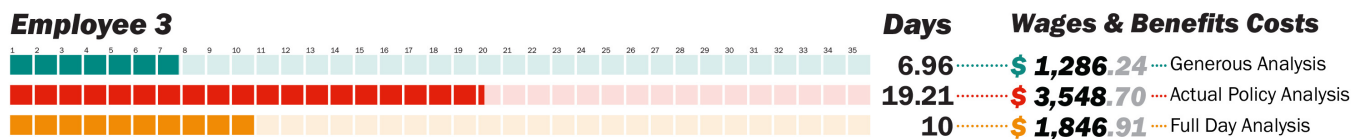
I know I asked about [Employee 2’s] leave status and if any leave without pay forms had been completed. [The Clerk] told me she had no LWOP and she had accrued leave in the system.

I think what prompted me to ask the LWOP question was because I was aware that she had been off a lot and wondered if she had a time issue.

It should also be noted during our audit of the Court of Claims it was brought to our attention that computer equipment assigned to Employee 2 during her employment could not be located. Details are described in **Issue 2** of this report.

Employee 3:

The generous approach showed Employee 3 owed a total of 6.96 days, or 48.75 hours², between January 1, 2014 and June 30, 2016. This resulted in the employee inappropriately receiving \$988 in wages and approximately \$297 in benefits. Had the employee properly entered leave owed on a weekly basis to account for a 35-hour workweek, the employee would have been required to go on *Leave Without Pay (LWOP)* status a total of 7.04 days, or 49.25 hours. This includes three days in November 2015 when the Clerk allowed the employee to miss work without taking leave, directing her to make up the time at a later date. The employee was not required by Court of Claims staff to submit a *Leave Without Pay Form*, so the employee has been paid for time not worked. Based on Joint Committee policy, Employee 3 owed an additional 85.75 hours for a total of 19.21 days at a cost of \$3,549. This number includes 10 days that Employee 3 did not come to work and did not enter any time in the leave system.

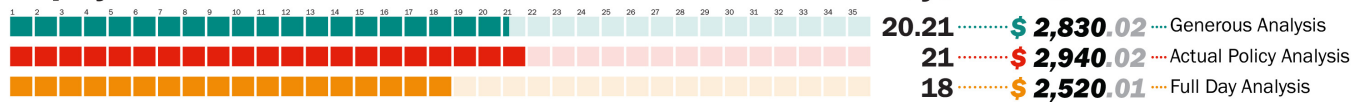


² This number differs from the amount noted in the preliminary report presented to the Post Audits Subcommittee on August 21, 2016 due to a reduction of 1.25 hours determined to be travel time to court.

Employee 4:

The generous approach of Employee 4 showed a total of 20.21 days, or 141.50 hours, owed between July 1, 2015, and June 30, 2016, because no leave had been entered into the leave system since December 28, 2015. This resulted in the employee inappropriately receiving \$2,177 in wages and approximately \$653 in benefits. The number of hours differs from the amount noted in the preliminary report presented to the Post Audits Subcommittee on August 21, 2016 due to a reduction of 4.50 hours. The employee claims she was told she had a “10-minute grace period.” We generously credited her 1.25 hours (or 0.25 over 5 days). Additionally, we credited 3.25 hours for a day she claims she “failed to sign in or out for the day.” Based on Joint Committee policy, Employee 4 owed an additional 5.50 hours for a total of 21.00 days at a cost of \$2,940. This number includes 18 days that Employee 4 did not come to work and did not enter any time in the leave system.

Employee 4



In a response from Employee 4, she stated “I was never instructed in regards to time and how to enter it into the system.” However, Employee 4 successfully entered time into the leave system on seven separate occasions previous to and including December 28, 2015. Additionally, management had reason to know the employee needed to submit leave as the employee was out of the office for several full weeks. However, the Court of Claims failed to require the employee to submit leave.

The Clerk Had Insignificant Issues and the Chief Deputy Clerk Had No Issues with Their Time Sheets and Leave Submissions

Clerk:

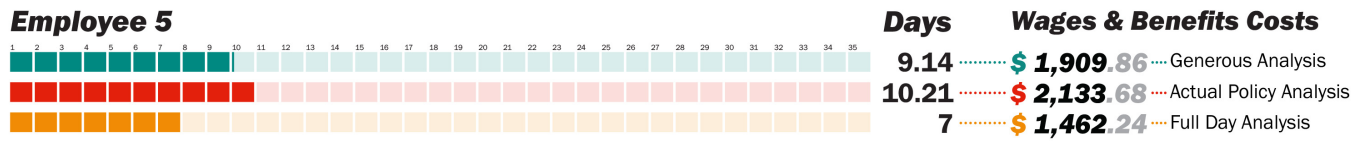
The generous approach showed the Clerk did not owe any time between July 1, 2015 and June 30, 2016. However, the accurate analysis based on Joint Committee policy indicated the Clerk owed 5.75 hours (\$349.33) for time made up outside of the workweek in which time was missed.

Deputy Clerk:

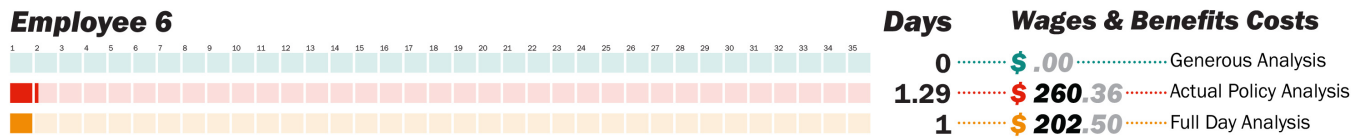
No issues.

Four of Eight Current Employees of the Court of Claims Have Significant Leave Issues

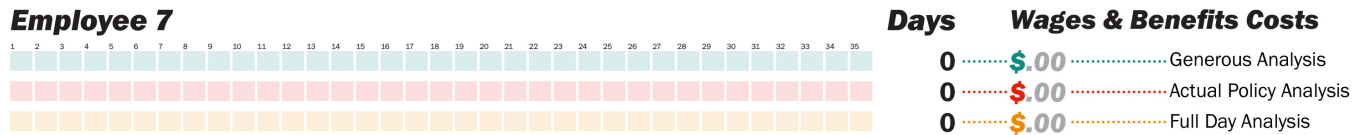
Employee 5: The generous approach showed Employee 5 owed a total of 9.14 days, or 64 hours, between January 1, 2014 and June 30, 2016. This resulted in the employee inappropriately receiving \$1,469 in wages and approximately \$441 in benefits. However, based on Joint Committee policy, Employee 5 owed an additional 7.50 hours for an accurate total of 10.21 days at a cost of \$2,134. This number includes 7 days that Employee 5 did not come to work and did not enter any time in the leave system. This employee has entered some of the full days into the system as a result of this audit.



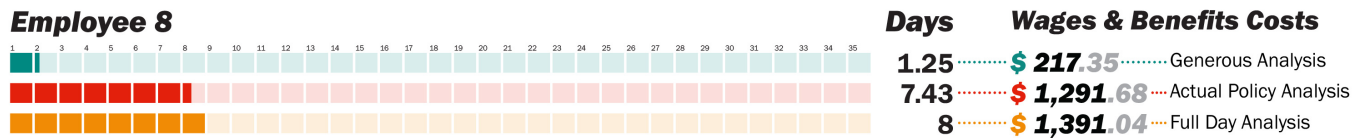
Employee 6: The generous approach showed Employee 6 did not owe any time between July 1, 2015 and June 30, 2016. However, based on Joint Committee policy, Employee 6 owed 9.00 hours including one full day³ for a total of \$260.



Employee 7: No issues.



Employee 8: The generous approach showed Employee 8 owed a total of 1.25 days, or 8.75 hours, between January 1, 2014 and June 30, 2016. This resulted in the employee inappropriately receiving \$167 in wages and approximately \$50 in benefits. However, based on Joint Committee policy, Employee 8 owed an additional 43.25 hours for a total of 7.43 days at a cost of \$1,292. There were 8 full days the employee was not at work and did not enter leave into the leave system. This employee has entered some of the full days into the system as a result of this audit.

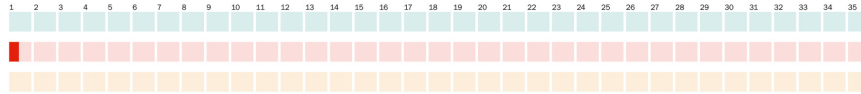


³ Employee 6 failed to enter leave for 4 full days; however, he entered leave for 3 other days in error. Therefore, the employee only owed one full day.

Employee 9:

The generous approach showed Employee 9 did not owe any time between July 1, 2015 and June 30, 2016. However, based on Joint Committee policy, Employee 9 owed 3.00 hours (\$69.64) which appeared to be due to simple math errors in calculating her time and leave.

Employee 9

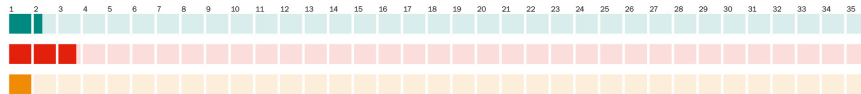


Days	Wages & Benefits Costs
0	\$.00 Generous Analysis
0.43	\$ 69.64 Actual Policy Analysis
0	\$.00 Full Day Analysis

Employee 10:

The generous approach showed Employee 10 owed 1.39 days, or 9.75 hours, between July 1, 2015 and June 30, 2016. This amounts to an inappropriate payment of \$143 in wages and approximately \$43 in benefits. However, based on Joint Committee policy, Employee 10 owed an additional 10.50 hours for a total of 2.89 days at a cost of \$387. This included a full day the employee was not at work and did not enter leave into the leave system. This employee has entered the full day of leave into the system as a result of this audit.

Employee 10



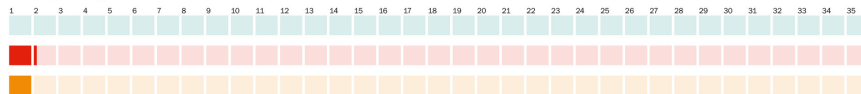
Days	Wages & Benefits Costs
1.39	\$ 186.32 Generous Analysis
2.89	\$ 386.98 Actual Policy Analysis
1	\$ 133.77 Full Day Analysis

Three Additional Former Employees of the Court of Claims Had Varying Degrees of Leave Issues

Employee 11:

The generous analysis showed Employee 11 did not owe any time between July 1, 2014 and January 2, 2015. However, based on Joint Committee policy, Employee 11 owed 10.00 hours at a total of \$286 which included a full day the employee was not at work and did not enter leave into the leave system.

Employee 11

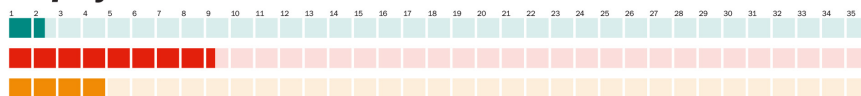


Days	Wages & Benefits Costs
0	\$.00 Generous Analysis
1.14	\$ 286.17 Actual Policy Analysis
1	\$ 250.40 Full Day Analysis

Employee 12:

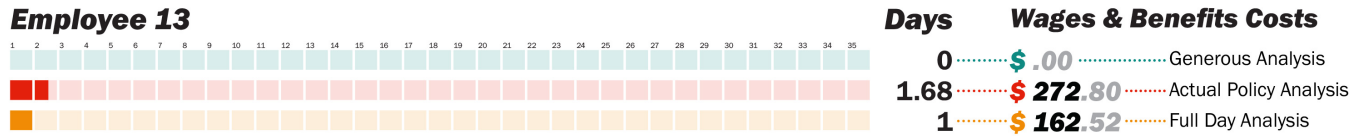
The generous analysis showed Employee 12 owed a total of 1.5 days, or 10.50 hours, between January 1, 2013 and February 6, 2015. This amounts to an inappropriate payment of \$207 in wages and approximately \$62 in benefits. However, based on Joint Committee policy, former Employee 12 owed an additional 48.50 hours for a total of 8.43 days at a cost of \$1,509. This included 4 full days the employee was not at work and did not enter leave into the leave system.

Employee 12



Days	Wages & Benefits Costs
1.5	\$ 268.47 Generous Analysis
8.43	\$ 1,508.54 Actual Policy Analysis
4	\$ 715.92 Full Day Analysis

Employee 13: The generous approach showed Employee 13 did not owe any time between January 1, 2014 and May 19, 2015. However, based on Joint Committee policy, Former Employee 13 owed 11.75 hours for a total of 1.68 days at a cost of \$273. This included one full day the employee was not at work and did not enter leave into the leave system.



Conclusion

Court of Claims employees did not input the correct amount of leave for time not worked. Half of those employees below management had significant issues. Former employees also had issues ranging from moderate to significant. As previously noted, the generous approach allowed time worked over 35-hours in one week to be applied to other workweeks because this practice was permitted by management. However, this is not consistent with the Joint Committee policy 1.2 (1) which specifies a minimum full-time workweek of 35 hours. Had time owed been based only on the Joint Committee policy of a 35-hour work week, a noticeable difference is seen in the amount of time owed. In the case of some employees, the Post Audit Division found that multiple full days were taken off work by Court of Claims employees without annual or sick leave being entered into the Joint Committee leave system. Based upon this analysis, the Clerk, the Chief Deputy Clerk, and the judges of the Court of Claims are fostering an environment where employees are not required to follow the policies and procedures adopted by the Joint Committee on Government and Finance or state law. The failure to require employees to either work a full 35-hour workweek or use paid leave to receive their full wages is a violation of West Virginia Code §12-3-13. Fostering that environment has allowed employees to regularly work through lunch, and did not make them accountable for maintaining accurate work hours.

Management Responsibility

Leave issues can be highly attributed to management’s disregard for both the Joint Committee policy and WV State Code. Through conversations with management and staff, it was disclosed that leave issues had been brought to the attention of management by multiple staff members, including the current Business Manager. He was told by the Clerk that she wasn’t concerned because, in the case of Employee 1, she didn’t make much money. In addition, the Post Audit Division interviewed an employee who acknowledged making an anonymous written complaint regarding Employee 1’s failure to report to work approximately one year ago. The

Presiding Judge of the Court of Claims acknowledged that he received the complaint regarding Employee 1, but threw it away.

According to the Clerk, the Business Manager has been assigned the duty of reviewing all leave taken by staff since the inception of the position. Only the Clerk and Chief Deputy Clerk have the authority to approve and alter leave records in the Joint Committee leave system. Time and leave records were not properly reviewed for approximately nine months because (1) the business manager position was vacant in September and October 2015, and (2) the current business manager started employment in November 2015, but was instructed by the Clerk to complete other duties that she deemed critical before beginning to review time and leave records in June 2016. Despite delegation of timekeeping duties, management bears the ultimate responsibility for ensuring attendance records are accurately and consistently maintained, and that leave is properly entered into the leave system.

Working Through Lunch Allowed Regularly

It was noted during the analysis that employees frequently worked through lunch in order to make time up, or in many cases, leave early for the day. While this is permitted by the Legislative Manager, the ability to work through lunch should not be abused. Working through lunch is a benefit provided to the employees that should be considered the exception rather than the rule.

Employee Responsibility

Leave issues can also be attributed to negligence by the employees. Court of Claims employees should maintain accurate records of their work hours in accordance with Joint Committee policy 1.2(1).

The Court of Claims and its staff must follow the Joint Committee on Government and Finance's written policies and procedures designed to ensure that employees are properly recording time and leave.

Recommendations

- 1-1 The Post Audit Division recommends that the Court of Claims follow the Joint Committee on Government and Finance Policies and Procedures Handbook requiring employees to work a minimum 35-hour workweek, or use paid leave. In the case that leave is not available the Clerk should require employees to go on Leave Without Pay.
- 1-2 The Post Audit Division recommends that the Court of Claims monitor employee time and leave records on a regular basis and in a timely manner.
- 1-3 The Post Audit Division recommends that the Court of Claims require employees to monitor their own time in accordance with Joint Committee policies.

ISSUE 2: The Former Business Manager of the Court of Claims Maintained Possession of her \$1,100 State-Issued Microsoft Surface Pro for Over a Year Following the End of Her Employment with the Court of Claims

The former Business Manager of the Court of Claims – listed as Employee #2 in the previous issue – voluntarily separated employment from the Joint Committee on Government and Finance in August 2015. Not long afterward, the Clerk discovered that the former Business Manager’s Surface Pro tablet was missing.⁴ This occurred before the new Business Manager started in November 2015. According to the Clerk, she contacted the former Business Manager, who told her that it had been left on the desk she was assigned. Based upon this information, the Clerk stated that a search of the Court of Claims offices was conducted to locate the Surface Pro. When it could not be found, the Clerk said that she assumed that someone had stolen it out of the Court of Claims offices. **Notably, the Clerk did not report the suspected theft to the Legislative Manager or the Joint Committee’s IT Director.**

The Joint Committee’s IT Director had several inventories of Court of Claims equipment conducted in 2016. However, as Court of Claims staff did not indicate during these inventories that the Surface Pro may have been stolen, it was simply noted as “unaccounted” for during the inventory process. Following several months of searches and follow-ups from the IT Director’s staff to locate the Surface Pro, on August 26, 2016, the IT Director informed the Legislative Manager that the Surface Pro was missing. He then contacted the Director of the Post Audit Division, and then both the Legislative Manager and Director of the Post Audit Division contacted the Capitol Police, and reported the \$1,100 Surface Pro as missing.

Capitol Police Discovered that the Former Business Manager Still Had Possession of the \$1,100 Surface Pro

During the meeting with Capitol Police to report the Surface Pro as missing and possibly stolen, the Post Audit Director gave the Capitol Police the contact information for the former Business Manager who had relocated to Columbus, Ohio. According to Capitol Police, they contacted the former Business Manager, and asked her about the Surface Pro. She stated that she would see if she could find it. The following day, she admitted that she found the Surface Pro in her office bag, and had forgotten about it. The former Business Manager was then directed to ship it to the Capitol Police overnight. On September 8, 2016, the Capitol Police returned the Surface Pro to the Joint Committee.

⁴ The Clerk of the Court of Claims was attempting to get approval for the former Business Manager to work remotely or work under contract after she left employment with the Joint Committee on Government and Finance. The Clerk was also aware that the former Business Manager had transported the Surface Pro to test whether it could work remotely.

Conclusion

While no definitive conclusions can be made as to whether the former Business Manager having possession of the \$1,100 Surface Pro was intentional, several questions can be raised:

1. Why didn't the Clerk of the Court of Claims report the missing Surface Pro as stolen, since that was what she thought happened to it?
2. Why did the former Business Manager say in the Fall of 2015 that she remembers returning the Surface Pro? Did she do a thorough search for it?

Furthermore, since the Surface Pro was not reported as missing or stolen to the Legislative Manager or IT Director, this adds to the Post Audit Division's continued conclusion that the Clerk participates in fostering a culture of autonomy from the Joint Committee on Government and Finance.

ISSUE 3: The Adjudication Process for Claims Against the Division of Highways is Inefficient and Costly to the State

The Increase in Claims Filed Against the Division of Highways is the Primary Contributor to the Court’s Overall Increase in Its Workload

During the August interim meeting of the Post Audits Subcommittee, the Clerk of the Court of Claims (Court) indicated that the Court’s workload has dramatically increased over the last several years. The Legislative Auditor evaluated this claim by examining the number of claims processed by the Court from 2010 to 2015, as reported in the Court’s annual report.

According to the Court’s 2010 annual report, it awarded 175 claims and disallowed 19 claims during 2010. In 2015⁵, the Court awarded 1,404 claims, while disallowing 29. The overall change in the number of claims processed amounts to 1,229 additional claims, or an increase of over 600% from 2010 to 2015. Table 1 shows a full breakdown over this time period.

Table 1 Total Number of Claims Processed Year 2010 to 2015				
Year	Number of Claims Paid	Number Disallowed	Total Processed	% Change
2010	175	19	194	-
2011	525	37	562	189.7%
2012	370	18	388	(31%)
2013	346	27	373	(3.7%)
2014	1,290	42	1,332	257.1%
2015	1,404	29	1,433	7.6%

Source: Court of Claims Annual Reports for 2010 through 2015

A November 2010 Special Report on the Court, conducted by the Legislative Auditor’s Performance Evaluation and Research Division (PERD), found that for the years 2008 and 2009, “over 70 percent of all claims were filed against the Division of Highways (DOH),” mostly for road hazard incidents. The Legislative Auditor’s analysis of the Court’s annual reports from 2010 to 2015 show that this trend has continued. As Table 2 shows, claims filed against the DOH have accounted for the vast majority of all claims processed by the Court since 2010. In three separate years, claims made against the DOH accounted for over 90 percent of all claims that were processed by the Court.

⁵2015 is the last year for which data is available.

Year	Total Claims Processed	Total DOH Claims	% DOH
2010	194	148	76%
2011	562	503	90%
2012	388	358	92%
2013	373	283	76%
2014	1,332	1,062	80%
2015	1,433	1,320	92%

Source: Post Audit Analysis of Court of Claims Annual Reports 2010 to 2015.

The number of DOH claims processed by the Court increased from 148 in 2010 to over 1,300 in 2015. Therefore, the Legislative Auditor determines that the Court’s increased workload is attributable to the increase in claims against the DOH.

The Current Process Creates Spatial Inequities for Certain Geographic Regions of the State

The Clerk of the Court provided the Post Audit Division with a listing of each scheduled docket hearing for the Court for calendar years 2015 and 2016, which included the dates and locations of each court hearing. Post Audit’s analysis of the Court’s docket schedule finds that no hearings were held in the Princeton, Lewisburg, Elkins, or Martinsburg districts in 2015. Further, no hearings have been scheduled in Elkins or Lewisburg for 2016.

A resident of Martinsburg, WV who filed a contested claim against the DOH in January of 2015 would have been required to wait until the Court set a docket date in the Martinsburg district. In 2015 and 2016, only one set of hearings was schedule in Martinsburg, WV (May 4-6, 2016). Therefore, the claimant would be forced to wait 16 months for a hearing. The next closest hearing location is Morgantown, WV. Even assuming that a claimant’s case could be added to the docket for a hearing in Morgantown, the claimant would be forced to drive in excess of 300 miles and 5 hours (roundtrip) to attend a hearing. The Legislative Auditor concludes that the associated costs of travel in addition to lost wages for a missed day of work could exceed the amount ultimately awarded to the claimant.

Adjudicating Small Claims Filed Against the Division of Highways Through the Court of Claims Is Both Inefficient and Costly

PERD’s 2010 Special Report on the Court of Claims also found that, “The claims review process of the [Court] for small claims against the State is unduly burdensome to citizens and costly to the State.” Specifically, the report found that the administrative cost for the Court to fully

adjudicate each claim⁶ was \$932. In addition, the report found that, “The large number of pending files has contributed to claims not being heard for over a year and awards not being distributed to claimants for **two and a half years**” (emphasis added).

The Legislative Auditor requested that the Court explain any significant changes in its process for adjudicating claims since the release of the PERD report. The Court’s response detailed, at considerable length, the aforementioned increase in workload, but did not detail any changes in its processes for adjudicating claims. Therefore, the Legislative Auditor calculated the administrative cost for the Court to adjudicate a claim against the state using the “approximate times for the performance of tasks,” as provided by the Court for the PERD report. The Legislative Auditor calculated the administrative cost to the State for the Court to adjudicate DOH claims in 2015 (Table 3).

Table 3 Court of Claims Administrative Cost to Adjudicate DOH Claims 2015		
	Cost per Claim	Average Award per DOH Claim
Cost Per DOH Claim	\$872	\$343
*This cost excludes the DOH’s administrative costs Source: PERD’s November 2010 report and the Post Audit Division’s Analysis of DOH claims in the Court’s 2015 annual report.		

The average award for a DOH claim in 2015 was \$343⁷, yet the Court of Claims spent approximately \$872 in staff time to process claims filed against the DOH. **It should be noted that at this time, the Post Audit Division has not calculated the additional administrative cost for the DOH to adjudicate small claims filed against it.** The DOH was asked to update the approximate percentage of claims filed against it for which a court hearing is required. The DOH indicated that for 2015, “approximately 54 percent” of small claims against the DOH were resolved by Omnibus Orders, in which multiple claims are resolved without necessitating a court hearing.

Claims Filed Against the DOH Are Rarely Disallowed and Awards Are Typically Ordered in the Full Amount Claimed

The Legislative Auditor reviewed the Court’s annual reports between 2010 and 2015 to determine what percentage of claims filed against the DOH are awarded by the Court. As Table 4 shows, the Court has awarded claims against the DOH in more than 90 percent of cases since 2010, including awarding 98 percent of claims in each of the last 2 years.

⁶ The November 2010 PERD report limited its scope to reviewing claims of \$2,500 or under.

⁷ Mirroring PERD’s methodology, Post Audit included only claims of \$2,500 or less. This excluded from our analysis 21 claims, with an average award of \$26,000. If included in this analysis, the average award for a claim against DOH rises to \$760.03.

Table 4 Percent of DOH Claims Awarded by the Court 2010-2015			
Year	Total DOH Claims Processed	Total DOH Claims Awarded	Percent of DOH Claims Awarded
2010	148	133	89.86%
2011	503	466	92.64%
2012	358	342	95.53%
2013	283	259	91.52%
2014	1,062	1,041	98.02%
2015	1,320	1,294	98.03%
<i>Source: Post Audit Analysis of the Court's Annual Reports 2010-15.</i>			

In addition, the Legislative Auditor analyzed the DOH awards to determine how many claims are awarded the exact amount claimed by the claimant. According to the Court's 2015 annual report, the Court awarded 1,273 claims (\$2,500 and under⁸) against the DOH. Of the claims awarded against the DOH, 1,252 (or 98.35%) were awarded for the exact dollar amount claimed upon initial filing.

Conclusion

W. Va. Code 14-2-15 states that the Court of Claims' rules for governing proceedings before the court are to, "...be designed to assure a simple, expeditious and inexpensive consideration of claims." It is the opinion of the Legislative Auditor that the current process for adjudicating small claims filed against the DOH is neither expeditious nor inexpensive, but rather inefficient and costly. Further, the length and cost of this process is illogical when over 98 percent of all claims against the DOH are ultimately awarded in the same amount as filed.

The Legislative Auditor concludes that there are more efficient policy alternatives that could be considered in favor of the current process:

Create Tax Credits

One option is that the Legislature could consider issuing tax credits in lieu of claim awards for DOH claims. A citizen could submit a claim to the DOH, which would then review and investigate the claim. If the DOH concurs with the claim, it could issue a letter entitling the claimant to the tax credit for the specified amount, and the claimant could then file the DOH's letter with his or her state tax returns.

⁸ If the 21 claim awards in excess of \$2,500 were included in this analysis, 97.6% of DOH claims were awarded for the exact amount claimed upon initial filing.

The Legislature would need to create the tax credit by statute and decide whether to simultaneously terminate the Court’s process for adjudicating DOH claims. Shifting from the current process to a tax credit would limit the equitable compensation for DOH claims and reduce the Court’s workload. However, prior to adopting such a system, the potential financial impact on the Tax Department for the administrative costs need to be determined.

Require Necessary Documentation for Both Parties to Fully Evaluate Claims

The DOH indicated to the Legislative Auditor that:

...the mere filing of an Answer [to a DOH claim] does not mean that DOH ‘denied’ a claim. An Answer can be filed for various reasons. . . For example, many claimants file claim forms that do not include copies of the insurance declarations page, invoices, or other necessary documents to evaluate the claim. . .Had the claimant provided or been required to provide the necessary information in a timely fashion, a hearing could have been avoided.

Therefore, the Court should establish a process by which claimants are required to submit all of the documentation necessary to fully evaluate the claim upon initial filing before a claim is submitted to the DOH for review and response.

Establish an Administrative Process

The Legislature could consider legislation that would allow the Court to make recommendations to the Legislature for payment of DOH claims without a hearing, if the claim is less than \$2,500.⁹

Terminate the Practice of Compensating Individuals for DOH Road Hazard Claims

The State of West Virginia is immune from lawsuits based upon pothole claims, and is not obligated to compensate individuals for damages caused by these road hazards. DOH claims are only an available remedy because the Legislature has created a special forum—the Court of Claims—for allowing this process. Thus, the Legislature could enact legislation that removes DOH road hazard claims from the Court’s jurisdiction.

Constitutional Amendment to Allow DOH to Pay Claims from an Appropriation

The Legislature could create a process by which the DOH could award equitable compensation to private individuals from a specific appropriation fund. However, the West Virginia Constitution states that:

⁹ This recommendation was originally made in the aforementioned PERD report.

...the credit of the state shall not be granted to, or in aid of any [...] persons; nor shall the state ever assume or become responsible for the debts or liabilities of any [...] person.

Therefore, a constitutional amendment may be necessary to allow the Legislature to create a special fund from which the DOH would be authorized to pay damages for road hazard claims from the appropriated funds.

Recommendation

- 3-1 The Legislature should consider methods to modify the process to pay pothole claims in a more efficient, timely, and geographically equitable manner.

Appendix A

Days Owed and Financial Cost of Each Court of Claims Employee Audited

	Generous Approach		Policy Approach		Full Days Approach	
Employee #	Days Owed	Cost	Days Owed	Cost	Days Owed	Cost
1	32.00	\$ 3,520.03	33.64	\$ 3,700.74	15	\$ 1,650.01
2	24.89	5,559.60	32.82	6,848.16	17	2,762.85
3	6.96	1,286.24	19.21	3,548.70	10	1,846.91
4	20.21	2,830.02	21.00	2,940.02	18	2,520.01
5	9.14	1,909.86	10.21	2,133.68	7	1,462.24
6	-	-	1.29	260.36	1	202.50
7	-	-	-	-	-	-
8	1.25	217.35	7.43	1,291.68	8	1,391.04
9	-	-	0.43	69.64	-	-
10	1.39	186.32	2.89	386.98	1	133.77
11	-	-	1.14	286.17	1	250.40
12	1.50	268.47	8.43	1,508.54	4	715.92
13	-	-	1.68	272.80	1	162.52
Clerk	-	-	0.82	349.33	-	-
Deputy Clerk	-	-	-	-	-	-
Totals	97.34	\$ 15,777.89	141.00	\$ 23,596.80	83.00	\$ 13,098.17

Appendix B
Court of Claims Response



West Virginia Court of Claims

Chief Judge
J. David Cecil
Judges
T. C. McCarthy Jr.
George F. Fordham

1900 Kanawha Blvd., E., Rm. W-334
Charleston, WV 25305-0610
Telephone (304) 347-4851
Facsimile (304) 347-4915

Cheryle M. Hall
Clerk
Becky A. Ofiesh
Chief Deputy Clerk

September 16, 2016

Denny Rhodes, Director
Post Audit Division
Building 1, Room W-314
1900 Kanawha Blvd. East
Charleston, WV 25305-0610

Joint Committee
SEP 16 2016
Post Audit Committee

Dear Mr. Rhodes:

This is in response to your latest report dated September 12, 2016, with the final draft hand-delivered to me at 3:20 p.m. today. I have been out of town this week for Court in Princeton. I have received numerous letters and documents from you during the week via emails or fax.

I am unable to respond fully due to my extended absence, which included a medical appointment this morning. However, I do wish to note that the list of employees provided is incomplete.

During the period of the audit, there were actually nineteen employees, not thirteen. Out of that number, only six were found to have leave issues. Out of those six, three had adequate leave to cover the unreported days.

As for the other three employees: one has been terminated, one has left the State and does owe for unreported leave, and the third is ready and willing to repay the State.

I will respond more fully at the meeting on Sunday, September 18, 2016, before the Post Audits Subcommittee.

Very truly yours,

A handwritten signature in blue ink that reads "Cheryle M. Hall".

Cheryle M. Hall,
Clerk

CMH:mf