



Volume 71 | Issue 1

Article 7

December 1968

Court of Claims--Effect of an Award on Claimant's Rights to Further Proceed

Danny Lee Stickler

West Virginia University College of Law

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>

 Part of the [Civil Procedure Commons](#), and the [Torts Commons](#)

Recommended Citation

Danny L. Stickler, *Court of Claims--Effect of an Award on Claimant's Rights to Further Proceed*, 71 W. Va. L. Rev. (1968).

Available at: <https://researchrepository.wvu.edu/wvlr/vol71/iss1/7>

This Case Comment is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

**Court of Claims — Effect of an Award on Claimant's
Rights to Further Proceed**

Barnett, a state employee, while negligently operating a state owned truck, struck a parked automobile owned by Sargis, an Ohio resident. Sargis' wife, who was in the automobile at the time of the collision, sustained physical injuries that left her ten to fifteen per cent permanently disabled. Sargis and his wife filed notice in the West Virginia Court of Claims asking for an award of damages. Following a hearing on the claim, the Court of Claims awarded Sargis and his wife a total of \$3,277.11. This award was subsequently approved by the West Virginia Legislature and payment was accepted by Sargis and his wife. An action was then brought in federal district court against the employee, Barnett, for damages arising from the accident. *Held*, action dismissed. The plaintiffs voluntarily elected to submit their claim to the Court of Claims. A satisfaction of the claim against the state precluded them from proceeding against Barnett, because only one satisfaction is allowed on a claim arising from the same injury. *Sargis v. Barnett*, 287 F. Supp. 835 (N.D.W. Va. 1968).

Traditionally states have enjoyed an immunity from tort liability on the principle that the king can do no wrong—*Rex non potest peccare*.¹ As a matter of justice and good public morals, it would seem that any aggrieved person should have the same rights against the government as he has against private citizens.² Enlightened states have made efforts to provide citizens with the means whereby their injuries can be compensated.³ Some states have gone so far as to consent to be sued;⁴ however, other states, including West Virginia, can not constitutionally waive their sovereign immunity.⁵ For this reason, West Virginia has established a Court of Claims to determine claims against the state.

The present statutes pertaining to the Court of Claims are strik-

¹ BLACK'S LAW DICTIONARY 1485 (4th ed. 1951).

² Anderson, *Claims Against States*, 7 VAND. L. REV. 234, 245 (1954).

³ See generally Note, *Administration of Claims Against the Sovereign*, 68 HARV. L. REV. 506 (1955).

⁴ ARIZ. REV. STAT. § 12-841 (1956); CAL. GOVT. CODE § 910 (Deering Supp. 1968); CONN. GEN. STAT. ANN. § 4-141 (1960); IDAHO CONST. art. V, § 10; ILL. ANN. STAT. c. 37, § 439.1 (Supp. 1967); IND. STAT. 3-3401 (1968); MASS. ANN. LAWS c. 58, §§ 1-5 (1968); MICH. STAT. ANN. § 27.2543 (1960); NEB. CONST. art. VIII, § 9; N.Y. CONST. art. VI, § 23; N.C. CONST. art. IV, § 9.

⁵ ALA. CONST. art. 1, § 14; ARK. CONST. art. V, § 20; ILL. CONST. art. IV, § 26; W. VA. CONST. art. 6, § 35.

ingly similar to the statutes pertaining to an earlier Court of Claims established in 1941⁶ and abolished in 1953.⁷ The present Court of Claims is empowered to hear claims which would, except for the state's constitutional immunity, be tried in the judicial courts of the state.⁸ It hears contested issues and determines the amount, if any, to be awarded. An award is subject to legislative approval.⁹ There are three judges on the court who are required to be attorneys, licensed to practice in West Virginia for at least ten years prior to their appointment to the court.¹⁰ The 1941 Court of Claims was similarly constructed with the exception that the judges were not required to be lawyers.¹¹

In order to pay awards approved by the Court, the legislature must appropriate public funds to the private individual. The West Virginia Supreme Court of Appeals has held that the Legislature may lawfully appropriate public funds to a private citizen when the claim against the state is based on a moral obligation created by contract or resulting from an act which would be judicially recognized as creating a legal or equitable claim between private citizens.¹² However, the Supreme Court of Appeals has consistently held that its determination is final as to whether a moral obligation exists.¹³ It is on this issue that the West Virginia Supreme Court of Appeals has ruled in many cases decided by the earlier Court of Claims. A claimant before the Court of Claims has no right to judicial review since the Court is not a Court of record and it has no judicial power.¹⁴

Other states having courts similar to West Virginia's Court of

⁶ Acts of the 45th W. Va. Leg. ch. 20, art. 2, § 1, Reg. Sess. (1941).
See also Williams, *State Court of Claims*, 49 W. VA. L. REV. 45 (1943).

⁷ Acts of the 45th W. Va. Leg. ch. 20, art. 2, Reg. Sess. (1941).

⁸ W. VA. CODE ch. 14, art. 2, § 12 (Michie Supp. 1968).

⁹ W. VA. CODE ch. 14, art. 2, § 20 (Michie Supp. 1968).

¹⁰ W. VA. CODE ch. 14, art. 2, § 10 (Michie Supp. 1968).

¹¹ Acts of the 45th W. Va. Leg. ch. 20, art. 2, § 10 (1941).

¹² *State ex rel. Vincent v. Gainer*, 151 W. Va. 1002, 158 S.E.2d 145 (1967); *State ex rel. Cox v. Sims*, 138 W. Va. 482, 77 S.E.2d 151 (1953); *State ex rel. Cashman v. Sims*, 130 W. Va. 430, 43 S.E.2d 805 (1947), noted in 33 IOWA L. REV. 755 (1948).

¹³ See n. 12 *supra*.

¹⁴ W. VA. CODE ch. 29A, art. 5, § 4 (1963). This statute provides for judicial review of decisions by state agencies involving contested cases; however, W. VA. CODE ch. 29A, art. 1, § 1 (1963), defines an agency as "any state board, commission, department or officer authorized by law to make rules or adjudicate contested cases, except those in the legislative or judicial branches." This latter statute coupled with the absence of a judicial review provision in the statutes pertaining to the Court of Claims prevent any judicial review of a claimant's case.

Claims have treated cases similar to the *Sargis* case in varying ways. In a Tennessee case,¹⁵ involving a state employee and a private citizen, the Tennessee Court of Appeals held that an award made to the citizen by the Tennessee Claims Board was to be likened to a judgment at law, and by accepting this award the citizen's cause of action against the employee was barred.

The statutes relating to the Tennessee Board are similar to the present West Virginia Court of Claims Act.¹⁶ They set guidelines to ensure that a fair hearing is given to the claimant and that adequate compensation is awarded. The Tennessee Claims Board is entitled to hear only those claims against the state that would be allowed in the judicial courts of the state except for the doctrine of sovereign immunity. One noteworthy difference appears between the Tennessee Claims Board and the West Virginia Court of Claims. Any award granted by the Tennessee Board is paid automatically from an existing appropriation,¹⁷ whereas any award granted by the West Virginia court must be approved by the Legislature unless it is covered by an existing appropriation made expressly for the case under consideration.

A Georgia case¹⁸ concerning a decision by the Georgia Claims Advisory Board, held that the Board lacked the guidelines of the Tennessee Claims Board to ensure a fair hearing and fair compensation to the claimant. An award determined by the Board and later paid by the Georgia Legislature did not act as a release to the employee but was rather a payment based on the state's moral obligation and not a legal right. An early Massachusetts case¹⁹ found that payment made to the claimant by the state was a gift and did not operate so as to release the joint tort-feasor.

¹⁵ *Schoenly v. Nashville Speedways, Inc.*, 208 Tenn. 107, 344 S.W.2d 349 (1961). Defendant, a state employee, negligently injured plaintiff. Plaintiff received an award from the Tennessee Claims Board before bringing an action against defendant.

¹⁶ TENN. CODE ANN. ch. 8, § 9-812 (Supp. 1968).

¹⁷ Compare TENN. CODE ANN. ch. 8, § 9-812 (Supp. 1968), with W. VA. CODE ch. 14, art. 2, § 12 (Michie Supp. 1968).

¹⁸ *Trice v. Wilson*, 133 Ga. App. 715, 149 S.E.2d 530 (1966). The plaintiff's decedent was killed in an accident caused by negligence of defendant, a state employee. Plaintiff received an award from the Georgia Claims Advisory Board before bringing an action against defendant.

¹⁹ *Pickwick v. McCauliff*, 193 Mass. 70, 78 N.E. 730 (1906). Plaintiff, a state employee, was injured by defendant's negligence. Plaintiff received compensation from the state legislature before bringing an action against defendant. The court held that the compensation from the state was a gift since the state was immune from suit and it did not release defendant as a joint tort-feasor.

As the West Virginia Court of Claims is now established, it is a quasi-judicial body that advises the legislature as to the validity of claims against the state, to be approved or rejected as the legislature sees fit. Possibly the court's decisions would gain more importance if the Legislature would appropriate a fund, based on estimates of expected claims, from which an award approved by the court would be paid directly without the necessity of legislative approval in each case. This would give the court greater stature and relieve the Legislature of the time-consuming process of approving every award. Another solution might be for the state to follow New York²⁰ and allow itself to be sued in the courts of the state as a citizen, but this would require a constitution amendment. Nevertheless, the establishment of the Court of Claims in West Virginia marks a significant advance in West Virginia law toward the treatment of persons who deal with or who are injured by state employees.

Danny Lee Stickler

Criminal Law—Plea Bargaining

Ray Bailey was charged with murder in 1932. The prosecution and defense attorneys agreed that if Bailey would plead guilty to murder with a recommendation for mercy, then the solicitor and chief of police would recommend a pardon or parole after Bailey had served not more than ten years. Bailey's understanding was that he was to be released after serving no more than ten years. However this agreement between the prosecutor and the defense was entirely extrajudicial. Bailey pleaded guilty as agreed, but no inquiry or mention was made to determine whether Bailey understood the charges or whether his plea was voluntary. After the ten year period, the Governor and the State Parole Board refused to grant Bailey a pardon or parole. The Court of Appeals for the Fourth Circuit held that Bailey's plea was not voluntarily or understandingly made and therefore was void. *Bailey v. MacDougall*, 392 F.2d 155 (4th Cir. 1968).

I. The Practice of Plea Bargaining and Its Support

Plea bargaining is a commonly used technique in the administration of criminal justice. The most common forms of plea arrange-

²⁰N.Y. CONST. art. 6, § 23 (1950). The constitution provides for a court of six judges, with power in the Legislature to increase the number. The court is one of record. It appoints its own clerk. It has jurisdiction to hear and determine "claims against the state or by the state against the claimant or between conflicting claimants as the legislature may provide."