# Harwood: Collins's settlement not typical

*Continued from Page One*

A Providence Journal review of all stress cases disposed of in the Rhode Island Workers' Compensation Court since Jan. 1, 2001, shows that Collins received eight times more than any other state worker who settled a stress case without an admission of liability.

The settlement also was unusual because it involved the creation of a state job for Collins.

Collins, a single mother with three young children, received $45,000 for workplace stress and $5,000 for a two-year-old knee injury. Collins's settlement also included a new state job as property coordinator at RIC; such jobs come with free tuition for an employees' children.

As part of a side agreement — not part of the court settlement — Collins received an additional $25,000 in return for her pledge not to pursue a civil-rights case or other actions.

Of the $75,000, Collins got $50,000; her lawyer, Stephen J. Dennis, received $25,000.

**THE COLLINS** case was one of only six occupational stress cases that the state has settled in Workers' Compensation Court since January 2001. In the five others:

■ A nurse at the corrections department received a $9,000 settlement — of which her lawyer got $1,350 — and later returned to her job.

■ A prison guard received $6,375 and his lawyer, $1,125, from the guard's claim that he feared contracting hepatitis after an altercation with an inmate. He is still working as a correctional officer.

■ A female prison counselor received $3,100, and her lawyer, $1,000, to settle her stress complaint.

■ An office manager at a rehabilitation center received $5,000, and her lawyer $750, and signed a letter of resignation, which is in the court file.

■ A secretary for the Department of Human Services got $2,975, and her lawyer $525. She also resigned.

**WORKERS'** Compensation Court judges — including the one who presided over the Collins settlement — said it is unusual for an employee to receive a new job and a lump-sum settlement in a stress case where his or her employer does not admit liability.

George E. Healy, a veteran Workers' Compensation Court judge, said that usually if the state agrees to pay a lump-sum stress settlement without admitting liability, the state requires the employee to sign a letter of resignation to avoid future liability.

"The employer wants to close the employment file and tells the employees, 'Look we'll give you money, but you've got to resign,'" said Healy.

Healy and others said that stress cases are rare in the Workers' Compensation Court. They are hard to prove, and they are fact-intensive. Employers often dispute the claims and investigate the employees' medical histories, which most employees do not want because of privacy concerns.

If a stress case goes to trial, the judge said, the employee "will be forced to relive whatever they're complaining of in testimony from the witness stand" and that can be very painful.

The employee's burden of proof is also high, especially in cases where the worker is claiming emotional injury without physical injury.

Healy is a co-author, with Samuel L. DiSano, one of the state's lawyers who approved the Collins settlement, of the Rhode Island Workers' Compensation Desk Reference.

The book emphasizes that if an employee is claiming just emotional injury "for the stress-related injury to be compensable, it must be of the type that is SO OUT OF THE ORDINARY than that faced by other employees on a daily basis without serious mental injury."

**UNANIMOUS RESOLUTION: Speaker of the House John B. Harwood, right, leaves a meeting of the Joint Committee on Legislative Services escorted by lawyer John Lynch.**

JOURNAL PHOTO / JOHN FREIDAH

The standard for compensation in emotional-stress claims was set in a 1981 decision by the Rhode Island Supreme Court — the case of Beulah Seitz v. L & R Industries, Inc.

The court ruled that an employee who alleges occupational stress — without physical injury — must show that the stress was greater than the day-to-day tension experienced by all employees in the same job.

Workers who suffer mental problems from ordinary job stress cannot collect workers' compensation, the court ruled.

**HEALY** estimates that of approximately 8,500 workers' compensation cases filed in his court in the last year, only about "60 to 80" were based on occupational stress.

Since Jan. 1, 2001, only nine stress cases involving state workers were disposed of in Workers' Compensation Court: the six settled without trial, with no admission of liability, and three others where the employees withdrew the petitions before trial.

Dennis, Collins's lawyer, was the attorney in four of the six settled cases.

Dennis said the Collins case "is the largest stress case I've ever settled." He said the settlement was unusual because it allowed her to keep working for the state and, at the same time, get a large monetary settlement.

"Hardly anyone retains employment if they get a lump sum settlement," Dennis said. "They usually slap a resignation on you."

Dennis said that, in effect, Collins's settlement actually amounts to about $1 million. He calculated that, in addition to the $50,000 Collins has already received from the state, she could earn $896,000 in her new job at RIC over the next 28 years, plus she could get free college tuition for her children.

**WHY DID** the state agree to settle the Collins case for what she got?

"I didn't think there was any way it was going to settle," said Dennis.

Dennis said the state initially offered $50,000, without a new job, which would have left Collins unemployed.

Dennis said he and his client rejected that, and that the state then offered $50,000 with the new job at RIC.

Dennis and Collins also rejected that offer.

Only then, said Dennis, did the state up its offer to $75,000 with the RIC job.

Dennis said that he thinks the psychiatric report by Dr. James A. Gallo, who examined Collins, played a "pivotal" role in the state's decision to settle the case.

Gallo concluded in his report that Collins "has suffered significantly due to on-going stressors over the last two years which included on-going sexual activity which she felt she was forced into doing so that she could prove herself as a quality worker for the state of Rhode Island."

"She was devastated and humiliated to know that he [the Speaker] never wanted her to work for her talents and only wanted to take advantage of her sexually," wrote Gallo.

Samuel DiSano, the lawyer for the Department of Administration who supervised the Collins settlement, said that he viewed the Gallo report in terms of how much the allegations could have cost the state if Collins had pursued a sexual-harassment claim under Title VII of the Civil Rights Act of 1964.

"Ah, a Title VII matter, you know what a Title VII matter could cost the state? Hundreds of thousands of dollars in defense," he said. "That's just one of the factors that were considered by us here in trying to resolve this case."

**WORKERS'** Compensation Judge George T. Salem, the judge in the Collins case, said he played no role in fashioning the settlement.

He said the terms of her settlement were worked out solely by her lawyer, Dennis, and state lawyers.

Salem and Healy said that — based on the Rhode Island Supreme Court's 1979 decision in the case of Randall v. Norberg — judges don't have much authority to veto settlements worked out by lawyers — unless they believe that the settlements are unjust.

The Supreme Court said that if the parties to a case agree to the facts and there is no factual conflict presented for resolution to a judge, "the court is left with no independent factfinding function."

"We don't scratch too far under the surface if the parties come up with a settlement" unless the settlement seems outrageous, said Healy.

Healy used the hypothetical example of a worker who becomes paralyzed as a result of a work injury and then gets offered a settlement of $1,000. That would be something, Healy said, that a judge would not approve.

But in general, "on these type of cases," said Healy, "we defer to the lawyers a lot. They know what's in the file."

Before they became judges, Healy and Salem specialized in defending workers' compensation claims for the Aetna Casualty Insurance Co.

**SALEM SAID** that Dennis showed him the first 1¼ pages of the Gallo report during a pretrial conference on March 4 in the presence of Eric B. Sweet, a lawyer who works under DiSano in the Department of Administration and who was one of the attorneys representing the legislature in the Collins case. Sweet has declined to comment on the case.

Salem said he believes the part of the Collins settlement that he approved — $45,000 for stress and $5,000 for a knee injury — was "in the best interest of the parties."

Salem said he came to this conclusion knowing the contents of the Gallo report and taking into account these other factors:

■ The high average weekly wage — Collins was earning $650 per week at the time of her alleged injury.

■ Collins had been out of work for over a year.

■ Her stress claim included an allegation that she was being "tormented and tortured" by coworkers.

Salem said that because the case never reached him for trial, he has no idea whether Collins's allegations are true and that he has not formed any opinion about them.

"I had no idea whether the allegations against Harwood were true or false. I would have needed evidence," the judge said. "I never heard a word of testimony. . . . It was a settlement of a disputed claim."

But Salem said that if the case had gone to trial and "if she had won at trial before me, I think the case would be worth more than $45,000."

Salem said of the Collins case: "I was just happy it was settled quite timely."

"To this day," he said, "I think it was a good settlement for both sides. It was a compromise. The state had tremendous potential liability and she could have gotten nothing. This was somewhere in the middle."

# Investigators to probe whether Ky. governor used office in affair

Gov. Paul E. Patton denies he used his authority against his former mistress.

THE NEW YORK TIMES

FRANKFORT, Ky. — With two investigations expected into assertions that he let adultery compromise his public responsibilities, Gov. Paul E. Patton put his political career on the line Friday night when he admitted that he had an extramarital affair with a woman who did business with the state and now accuses him of sexual harassment.

"My mistakes are mine alone," Patton declared, teary-eyed at an emergency news conference. "I take full responsibility for them."

Startled state residents, who heard the admission after a week of denials, noted that Patton, 65, a Democrat and chairman of the National Governors Association, was widely expected to challenge Sen. Jim Bunning, a Republican, in 2004.

"It seems so ridiculously Clintonesque," said Scott Vander Ploeg, an English professor from Madisonville who said friends in the Democratic Party had been talking privately for some time about Patton's risky peccadilloes.

Patton's former mistress has accused him of using his power as governor to favor her nursing home while the affair flourished and then to harass her and drive her out of business when she ended it.

After having firmly denied the affair, Patton admitted his relationship with his accuser, Tina Boyd Conner, when a newspaper's investigation found records of 440 telephone calls in five years from the governor's office to Conner or her office.

Conner owned the Birchtree Healthcare home in western Kentucky. Patton appointed her to the state lottery board two years ago.

While Patton admitted he had lied in denying the affair, he would not take questions from reporters about the effect of the affair on his conduct as governor. But he denied that he or anyone under his authority had used his state position against Conner.

Conner filed a lawsuit on Wednesday accusing the governor of showering her business with state support during the affair. When she ended it, she contends, Patton retaliated by flooding the nursing home with state inspectors, who found many violations. The nursing home was disqualified for Medicaid and Medicare coverage and forced into bankruptcy, Conner contends. The governor harassed her extensively and lewdly in his later phones calls, her suit says.

Patton, however, told the people of Kentucky, "I have not let my personal weakness affect my administration of government."

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