

# Child-death lawsuit will move forward

## DHS workers' bid for immunity fails

By **ROBERT BOCZKIEWICZ**  
World Correspondent

DENVER — Three Oklahoma Department of Human Service workers are not immune from a lawsuit stemming from the death of 2-year-old Kelsey Smith-Briggs, an appeals court ruled Wednesday.

The ruling by the 10th U.S. Circuit Court of Appeals means that the lawsuit against the three workers and other defendants will move forward.

Joe White, an attorney for Kelsey's father, Raymond Briggs, said, "This allows us the opportunity . . . to begin questioning those people who we feel are responsible for what happened to little Kelsey."

Action on the 2006 lawsuit had been on hold until Wednesday's ruling because Briggs' attorneys were not able to gather their evidence while DHS employees Kristal Johnson, Yolanda Hunter and David Burgess sought immunity in the courts.

Johnson and Hunter were child-welfare workers at the time, while Burgess was a supervisor. All worked in the Lincoln County DHS office.

Briggs alleges in the lawsuit that the defendants created the danger that caused the child's death.

DHS Assistant General Counsel Joseph Streatly, speaking from Oklahoma City, said Wednesday's ruling does not preclude the department from again asking a judge in Oklahoma City to grant immunity to the three workers.

He said DHS has not had time to decide whether it will ask the appeals court to re-



Courtesy

**Kelsey Smith-Briggs, 2, died in October 2005. Her mother, Raye Dawn Smith, was sentenced in September to 27 years in prison for enabling child abuse.**

consider the ruling.

Kelsey was removed from the custody of her mother, Raye Dawn Smith, and placed in DHS custody in January 2005 after the agency concluded that Kelsey had sustained broken bones and bruises while in Smith's care.

A state judge allowed unsupervised visits between the mother and child at Smith's home near Meeker. During those visits, Kelsey continued to sustain broken bones and other injuries before her death in October 2005.

Smith was sentenced in September to 27 years in prison for enabling child abuse.

Briggs' lawsuit in U.S. District Court in Oklahoma City alleges that the defendants violated Kelsey's civil rights by discouraging the reporting of additional abuse after earlier incidents of abuse had been reported to the department.

Also named as defendants were Carla Lynch, Jean Bonner and Eastern Oklahoma Youth Services Inc. That agency made regular visits to Smith's home on behalf of DHS under a contract between the agencies, Streatly said, and Lynch and Bonner were employees of the youth services agency.

Briggs alleges that Lynch and Bonner instructed at least one person, who was not identified in Wednesday's ruling, to stop reporting ongoing abuse against Kelsey.

Kelsey's paternal grandmother was involved in reporting that Kelsey was being abused during the unsupervised visits.

Kelsey's death led to an Oklahoma law bearing her name that improved training of court-appointed child advocates and makes judges more accountable for their rulings in child-placement cases.

Oklahoma ranks in the bottom five states in overall child vulnerability and is the worst for child-abuse deaths based on population, according to a national report released earlier this month.

Johnson, Hunter and Burgess claimed that they were immune from the lawsuit because Briggs had failed to allege facts demonstrating that affirmative conduct on their part created or increased the danger to Kelsey.

They also claimed that they were immune because their conduct was not "conscience-shocking."

"Conscience shocking" is one of the legal standards required to have a valid lawsuit based on a claim that government employees created the danger that caused a harm.

# Action vowed in job-site death

► The Tulsa tragedy is the subject of a U.S. Capitol hearing.

By **JIM MYERS**  
World Washington Bureau

WASHINGTON — Members of a key House panel vowed Wednesday to a son of a Tulsan who was killed in an industrial accident that his father's death would bring about changes to prevent more such tragedies.

"We are not going to let this stand," said U.S. Rep. Lynn Woolsey, chairwoman of the House Subcommittee on Workforce Protections.

As Woolsey, D-Calif., concluded a hearing that focused on the 2007 death of Eleazar Torres-Gomez at Cintas Corp.'s facility at 5940 S. 129th East Ave. in Tulsa, she said that tragedy would put such workplace issues back on the public agenda.

She repeated that commitment after the hearing to Emmanuel Torres, who had testified at the hearing. Torres expressed hope that the commitment would be kept.

"It was a good hearing if everything goes as they were saying," he said.

Cintas, a supplier of uniforms, is appealing a \$2.78 million fine proposed by the Occupational Safety and Health Administration.

The company did not accept an invitation to testify at the hearing. That clearly irritated several lawmakers.

"I find it extremely difficult, and I am more than angry that they couldn't take the time out of their busy schedules to come to this hearing," Rep. Phil Hare, D-Ill., said.

Heather Trainer, a corporate communications manager for Cintas, confirmed the scheduling conflicts but also said its officials had received legal advice not to testify because of pending litigation.

Frank Frasier, a lawyer in Tulsa, said a lawsuit is being

pursued.

In a written statement, Cintas defended its commitment to worker safety and outlined steps it has taken after the 2007 death. It read, in part: "Cintas continues to evaluate our policies and procedures to ensure that each of our employee-partners works in the safest workplace possible."

A bill has been introduced to increase federal penalties.

Eleazar Torres-Gomez, 46, was killed March 6, 2007.

He reportedly was dragged into an industrial dryer as he was trying to free clothes that had become jammed.

He was trapped in the dryer in temperatures of as much as 300 degrees for at least 20 minutes.

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## DAVID YURMAN



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# Kansas towns' water has uranium overload

LAKIN, Kan. (AP) — Public water supplies in nine communities in Kansas have consistently registered quantities of uranium exceeding federal standards, and one city showed an amount nearly three times greater than recommended, officials said Wednesday.

But Joe Blubaugh, a spokesman for the Kansas Department of Health and Environment, said that although long-term exposure to large amounts of uranium in drinking water can lead to kidney damage and cancer, the current quantities don't pose an immediate threat to the public.

"These are lifetime-exposure health effects," Blubaugh said. "So it's not like there are acute health risks. The standards are based on 70 years exposure."

The nine Kansas communities that showed uranium in excess of the Environmental Protection Agency's standard of 30 parts per billion over three years of sampling were: Atwood, Clay Center, Gaylord, Morganville, Norton, Oberlin, Lakin, Rooks County Rural Water District 1, and a water supply in a Garden City subdivision identified as Towns Riverview.

The Health and Environment Department said Lakin and Oberlin showed the biggest amounts. One test sample in Lakin reached a concentration of 64 parts per billion, more than twice the standard.

Testing at three sample locations in Oberlin ranged from 20 parts per billion to 85 parts per billion, the department said.

Don Whittemore, a senior scientific fellow at the Kansas Geological Survey in Law-

rence, said uranium is a naturally occurring element that can seep into water supplies from rocks and ash deposits.

"Natural sediments and bedrock can supply higher concentrations of uranium in some instances," he said.

He added that although some rock can contain large quantities of uranium, higher concentrations than normal in southwestern Kansas can also be attributed in part to the depletion of the Arkansas River before it reaches Kansas.

"Colorado consumes so much of the water . . . that some of the minor and trace constituents — like uranium — will stay primarily in the water as the water becomes more concentrated," Whittemore said.

"Some will precipitate out, like lead and so forth. But a couple of constituents that often do stay in the water are uranium and selenium."

Blubaugh said the affected communities would decide individually how to tackle the problem.

The contamination in Lakin was believed to be coming from one of three wells, so likely solutions may include eliminating the well with the high concentrations or mixing the contaminated water with other water to dilute the amount, he said.

Lakin city officials said it would be late summer before a study is completed that will suggest ways for the city to address its uranium problem.

City Administrator Fred Jones said the town had hired an engineering firm that would produce a recommendation near the end of summer.

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