

## **STATE OF WISCONSIN CLAIMS BOARD**

**The State of Wisconsin Claims Board convened on November 15, 2007, at the State Capitol Building and on November 29, 2007, at the Department of Administration Building, in Madison, Wisconsin to consider the claim of Georgia Thompson against the State of Wisconsin, Department of Administration.**

### ***The Board Finds:***

Claim for damages related to defense of federal criminal charges arising from the performance of the claimant's duties as a DOA employee. In January 2006, a federal grand jury indicted the claimant, charging misapplication of funds and theft of honest services. The indictment alleged that the claimant, as a member of the evaluation committee for a state travel procurement, intentionally influenced the vendor selection process for the political advantage of her supervisors and to help her own job security. The claimant plead not guilty and vigorously defended against the charges, but was convicted and sentenced to 18 months in prison with a \$4,000 fine. The claimant began serving her sentence on November 27, 2006. She appealed her conviction and on April 5, 2007, within two hours of hearing oral argument, the Seventh Circuit Court of Appeals reversed her conviction and ordered her acquittal and immediate release from prison that very day. The court's decision makes it clear that the claimant's actions were proper and lawful. The claimant is not able to bring a claim under § 895.46(1) or § 775.05, Stats., but instead makes a claim for reimbursement based on equitable principles, because the criminal charges against her were based on the proper and lawful discharge of her duties as a state employee. The claimant believes that reimbursement of a state employee's legal fees in a case such as this is appropriate and just and is also good public policy. The claimant requests reimbursement for her legal fees, fines, assessments and taxes relating to this claim.

The Department of Administration supports payment of this claim. DOA had no role in the charges brought against the claimant and the claimant is not alleging any negligence on the part of any DOA employee, however, the claim is filed "against" DOA because the charges involved discharge of the claimant's duties as an employee of DOA. At no time during the travel procurement, criminal investigation or trial has DOA alleged that the claimant abused her discretion or acted outside the scope of her employment and DOA promptly re-employed the claimant upon her release from prison. DOA states that the claimant has been and remains a hard-working, respected and dedicated employee. DOA points to the fact that the Seventh Circuit Court of Appeals took the unusual step of calling for her immediate release from prison, noting that the evidence against her was "beyond thin." DOA believes that the claimant has suffered much because of her imprisonment for a crime she did not commit. DOA points to the fact that state employees from all agencies in state government, including the legislature and the court system, routinely exercise discretion in the proper discharge of their duties. DOA does not believe that these employees, acting in good faith and exercising their best judgment based on established law and policy, should work in fear of facing criminal charges for making the "wrong" decision, and when acquitted, not receiving appropriate restitution for the damages they suffer. DOA agrees with the claimant's analysis that relief is not available to her under § 895.46(1) or Chapter 775, Stats., and requests that the Board reimburse the claimant based on equitable principles.

The Board recommends that the legislature direct the Department of Administration to pay Hurley, Burish and Stanton, S.C. directly for defending Ms. Thompson, its employee, against federal criminal charges arising from the performance of her duties as a DOA employee. Wis. Stats. § 895.46(1) requires the state to pay reasonable attorney's fees and costs its employees incur while defending civil and some criminal actions taken against them by virtue of state employment. The Board

concludes that although indemnification of Ms. Thompson in this particular criminal prosecution is not specifically contemplated by § 895.46(1), indemnification of Ms. Thompson furthers the purpose of that statute and is equitable in light of Ms. Thompson's acquittal. The legal fees, fines and assessments incurred in this matter are an obligation of the employer (State of Wisconsin) rather than its employee (Ms. Thompson). Such an indemnification eliminates Ms. Thompson's obligation to pay the fees and costs and therefore creates no tax burden for Ms. Thompson when the State of Wisconsin is instead obligated to pay them directly. Finally, the Board concludes that the attorney's fees incurred in this matter are reasonable and recommends that the Legislature direct the Department of Administration to pay the fees, fines and assessments in full in the amount requested, \$228,792.62. The Board further recommends that payment should be made from the Department of Administration appropriation § 20.505(1)(kf), Stats.

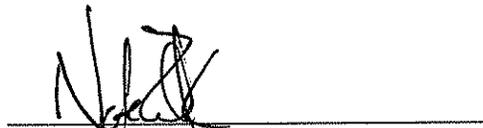
***The Board recommends:***

**Payment of \$228,792.62 be made to Hurley, Burish and Stanton, S.C., by the State of Wisconsin from § 20.505(1)(kf), Stats., for the defense costs, fines and assessments of State of Wisconsin employee Georgia Thompson.**

Dated at Madison, Wisconsin this 4TH day of DECEMBER, 2007.

  
Robert Hunter, Chair  
Representative of the Attorney General

  
Cari Anne Renlund, Secretary  
Representative of the Secretary of  
Administration

  
Nate Zolik  
Representative of the Governor

  
Mark Miller  
Senate Finance Committee